

R14-2-1816. Waiver from the Provisions of this Article

- A. The Commission may waive compliance with any provision of this Article for good cause.
- B. Any Affected Utility may petition the Commission to waive its compliance with any provision of this Article for good cause.
- C. A petition filed pursuant to these rules shall have priority over other matters filed at the Commission.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 2389, effective August 14, 2007 (Supp. 07-2).

Appendix A. Sample Tariff

Unless otherwise ordered by the Commission, the renewable energy standard surcharge shall be assessed monthly to every retail electric service. This monthly assessment will be the lesser of \$0.004988 per kWh or:

1. For residential customers, \$1.05 per service;
2. For non-residential customers, \$39.00 per service;
3. For non-residential customers whose metered demand is 3,000 kW or more for three consecutive months, \$117.00 per service;
4. For non-metered services, the lesser of the load profile or otherwise estimated kWh required to provide the service in question, or the service's contract kWh shall be used in the calculation of the surcharge.

Historical Note

New Appendix A made by final rulemaking at 13 A.A.R. 2389, effective August 14, 2007 (Supp. 07-2).

ARTICLE 19. CONSUMER PROTECTIONS FOR UNAUTHORIZED CARRIER CHANGES

Article 19, consisting of R14-2-1901 through R14-2-1913, made by final rulemaking at 10 A.A.R. 2409, effective July 23, 2004 (Supp. 04-2).

R14-2-1901. Definitions

- A. "Authorized Carrier" means any Telecommunications Company that submits, on behalf of a Customer, a change in the Customer's selection of a provider of telecommunications service, with the Subscriber's authorization verified in accordance with the procedures specified in this Article.
- B. "Commission" means Arizona Corporation Commission.
- C. "Customer" means the person or entity in whose name service is rendered, as evidenced by the signature on the application or contract for service, or by the receipt or payment of bills regularly issued in their name regardless of the identity of the actual user of service.
- D. "Executing Telecommunications Carrier" means a Telecommunications Company that effects a request that a Subscriber's Telecommunications Company be changed.
- E. "Letter of Agency" means written authorization, including internet enabled with electronic signature, by a Subscriber authorizing a Telecommunications Company to act on the Subscriber's behalf to change the Subscriber's Telecommunications Company.
- F. "Subscriber" means the Customer identified in the account records of a Telecommunications Company; and any person authorized by such Customer to change telecommunications services or to charge services to the account; or any person contractually or otherwise lawfully authorized to represent such Customer.
- G. "Telecommunications Company" means a public service corporation, as defined in the Arizona Constitution, Article 15, § 2, which provides telecommunications services within the

state of Arizona and over which the Commission has jurisdiction.

- H. "Unauthorized Carrier" means any Telecommunications Company that submits, on behalf of a Customer, a change in the Customer's selection of a provider of telecommunications service without the subscriber's authorization verified in accordance with the procedures specified in this Article.
- I. "Unauthorized Change" ("slamming") means a change in a Telecommunications Company submitted on behalf of a Subscriber that was not authorized in accordance with R14-2-1904 or not verified in accordance with R14-2-1905.
- J. "Unauthorized Charge" means any charge incurred as a result of an Unauthorized Change.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2409, effective July 23, 2004 (Supp. 04-2).

R14-2-1902. Purpose and Scope

These rules shall be interpreted to ensure that all Customers in this state are protected from an Unauthorized Change in their intraLATA, or interLATA long-distance Telecommunications Company. The rules shall be interpreted to promote satisfactory service to the public by local and intraLATA or interLATA long-distance Telecommunications Companies and to establish the rights and responsibilities of both company and Customer. The rules shall be interpreted to establish liability standards and penalties to ensure compliance.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2409, effective July 23, 2004 (Supp. 04-2).

R14-2-1903. Application

These rules apply to each Telecommunications Company. These rules do not apply to providers of wireless, cellular, personal communications services, or commercial mobile radio services.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2409, effective July 23, 2004 (Supp. 04-2).

R14-2-1904. Authorized Telecommunications Company Change Procedures

- A. A Telecommunications Company shall not submit a change on behalf of a Subscriber prior to obtaining authorization from the Subscriber and obtaining verification of that authorization in accordance with R14-2-1905.
- B. A Telecommunications Company submitting a change shall maintain and preserve records of verification of individual Subscriber authorization for 24 months.
- C. An Executing Telecommunications Carrier shall not contact the Subscriber to verify the Subscriber's selection received from a Telecommunications Company submitting a change.
- D. An Executing Telecommunications Carrier shall execute such changes as promptly as reasonable business practices will permit, which shall not exceed 10 business days from the receipt of a change notice from a submitting Telecommunications Company. The Executing Telecommunications Carrier shall have no liability for processing an Unauthorized Change.
- E. If a Telecommunications Company is selling more than one type of service, for example, local, intraLATA, or interLATA, it may obtain authorizations from the Subscriber for all services authorized during a single contact.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2409, effective July 23, 2004 (Supp. 04-2).

R14-2-1905. Verification of Orders for Telecommunications Service

- A.** A Telecommunications Company shall not submit a change order unless it confirms the order by one of the following methods:
1. The Telecommunications Company obtains the Subscriber's written authorization, including internet enabled authorization with electronic signature, in a form that meets the requirements of this Section.
 2. The Telecommunications Company obtains the Subscriber's electronic or voice-recorded authorization for the change that meets the requirements of this Section.
 3. An independent third party, qualified under the criteria set forth in subsection (F), obtains and records the Subscriber's verbal authorization for the change that confirms and includes appropriate verification data pursuant to the requirements of this Section.
- B.** Written authorization obtained by a Telecommunications Company shall:
1. Be a separate document containing only the authorizing language in accordance with verification procedures of this Section,
 2. Have the sole purpose of authorizing a Telecommunications Company change, and
 3. Be signed and dated by the Subscriber requesting the Telecommunications Company change.
- C.** A Letter of Agency may be combined with a marketing check subject to the following requirements. The Letter of Agency when combined with a marketing check shall not contain promotional language or material. The Letter of Agency when combined with a marketing check shall have on its face and near the endorsement line a notice in bold-face type that the Subscriber authorizes a Telecommunications Company change by signing the check. The notice shall be in easily readable, bold-face type and shall be written in both English and Spanish, as well as in any other language which was used at any point in the sales transaction. If a Telecommunications Company cannot comply with the requirements of this Section, it may not combine a Letter of Agency with a marketing check.
- D.** An electronically signed Letter of Agency is valid written authorization.
- E.** A Telecommunications Company that obtains a Subscriber's electronic voice recorded authorization shall confirm the Customer identification and service change information. If a Telecommunications Company elects to verify sales by electronic voice recorded authorization, it shall establish one or more toll-free telephone numbers exclusively for that purpose. A call to the toll-free number shall connect the Subscriber to a recording mechanism that shall record the following information regarding the Telecommunications Company change:
1. The identity of the Subscriber,
 2. Confirmation that the person on the call is authorized to make the Telecommunications Company change,
 3. Confirmation that the person on the call wants to make the Telecommunications Company change,
 4. The name of the newly authorized Telecommunications Company,
 5. The telephone numbers to be switched, and
 6. The types of service involved.
- F.** A Telecommunications Company that verifies a Subscriber's authorization by an independent third party shall comply with the following:
1. The independent third party shall not be owned, managed, or controlled by the Telecommunications Company or the company's marketing agent.

2. The independent third party shall not have any financial incentive to verify that Telecommunications Company change orders are authorized.
3. The independent third party shall operate in a location physically separate from the Telecommunications Company or the company's marketing agent.
4. The independent third party shall inform the Subscriber that the call is being recorded and shall record the Subscriber's authorization to change the Telecommunications Company.
5. All third party verification methods shall elicit and record, at a minimum:
 - a. The identity of the Subscriber,
 - b. Confirmation that the person on the call is authorized to make the Telecommunications Company change,
 - c. Confirmation that the person on the call wants to make the Telecommunications Company change,
 - d. The name of the newly authorized Telecommunications Company,
 - e. The telephone numbers to be switched, and
 - f. The types of service involved.
6. The independent third party shall conduct the verification in the same language as was used in the initial sales transaction.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2409, effective July 23, 2004 (Supp. 04-2).

R14-2-1906. Notice of Change

When an Authorized Carrier changes a Subscriber's service, the Authorized Carrier, or its billing and collection agent, shall clearly and conspicuously identify any change in service provider, including the name of the new Authorized Carrier and its telephone number on a bill, a bill insert, or in a separate mailing to the Subscriber. The notice of change shall be printed in both English and Spanish.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2409, effective July 23, 2004 (Supp. 04-2).

R14-2-1907. Unauthorized Changes

- A.** A Subscriber shall notify the alleged Unauthorized Carrier within a reasonable period of time after receiving notice of an Unauthorized Change. Any period of time of 60 days or less shall automatically be presumed to be reasonable, and any period of time longer than 60 days may be reasonable based on the circumstances.
- B.** After a Subscriber notifies the alleged Unauthorized Carrier that the change was unauthorized, the alleged Unauthorized Carrier shall take all actions within its control to facilitate the Subscriber's return to the original Telecommunications Company as promptly as reasonable business practices will permit, but no later than five business days from the date of the Subscriber's notification to it.
- C.** If an alleged Unauthorized Carrier has been notified that an Unauthorized Change has occurred and the alleged Unauthorized Carrier cannot verify within five business days that the change was authorized pursuant to R14-2-1905, the alleged Unauthorized Carrier shall:
1. Pay all charges to the original Telecommunications Company associated with returning the Subscriber to the original Telecommunications Company as promptly as reasonable business practices will permit, but no later than 30 business days from the date of the alleged Unauthorized Carrier's failure to confirm authorization of the change;

2. Absolve the Subscriber of all charges incurred during the first 90 days of service provided by the alleged Unauthorized Carrier if a Subscriber has not paid charges to the alleged Unauthorized Carrier;
 3. Forward relevant billing information to the original Telecommunications Carrier within 15 business days of a Subscriber's notification. The original Telecommunications Company may not bill the Subscriber for unauthorized service charges during the first 90 days of the alleged Unauthorized Carrier's service but may thereafter bill the Subscriber at the original Telecommunications Company's rates; and
 4. Refund to the original Telecommunications Company, 100% of any alleged Unauthorized Carrier's charges that a Subscriber paid to the alleged Unauthorized Carrier. The original Telecommunications Company shall apply the credit of 100% to the Subscriber's authorized charges.
- D.** Until the alleged Unauthorized Carrier certifies with supporting documentation to the Subscriber that the change was verified pursuant to R14-2-1905, the billing Telecommunications Company shall not:
1. Suspend, disconnect, or terminate telecommunications service to a Subscriber who disputes any billing charge pursuant to this Section or for nonpayment of a charge related to an unauthorized change unless requested by the Subscriber, or
 2. File an unfavorable credit report against a Customer who has not paid charges that the Subscriber has alleged were unauthorized.
- E.** The Customer shall remain obligated to pay any charges that are not disputed.
- F.** The alleged Unauthorized Carrier shall maintain and preserve individual Customer records of Unauthorized Change complaints for 24 months.
- G.** Each occurrence of slamming to an individual account shall constitute a separate violation of this Article, subject to individual enforcement actions and penalties as prescribed herein.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2409, effective July 23, 2004 (Supp. 04-2).

R14-2-1908. Notice of Subscriber Rights

- A.** A Telecommunications Company shall provide to each of its Subscribers notice of the Subscriber's rights regarding Unauthorized Changes and Unauthorized Charges.
- B.** The Subscriber notice shall include the following:
 1. The name, address and telephone numbers where a Subscriber can contact the Telecommunications Company;
 2. A Telecommunications Company is prohibited from changing telecommunications service to another company without the Subscriber's permission;
 3. A Telecommunications Company that has switched telecommunications service without the Subscriber's permission is required to pay all charges associated with returning the Customer to the original Telecommunications Company as promptly as reasonable business practices will permit, but no later than 30 business days from the Subscriber's request;
 4. An Unauthorized Carrier shall absolve a Subscriber of all unpaid charges which were incurred during the first 90 days of service provided by the Unauthorized Carrier;
 5. If a Subscriber incurred charges for service provided during the first 90 days of service with the Unauthorized Carrier, the Unauthorized Carrier shall forward the relevant billing information to the original Telecommunications Company. The original Telecommunications

Company may not bill the Subscriber for unauthorized service charges during the first 90 days of the Unauthorized Carrier's service but may thereafter bill the Subscriber at the original Telecommunications Company's rates;

6. If a Subscriber has paid charges to the Unauthorized Carrier, the Unauthorized Carrier must pay 100% of the charges to the original Telecommunications Company and the original Telecommunications Company shall apply the 100% as credit to the Customer's authorized charges;
 7. A Subscriber who has been slammed can contact the Unauthorized Carrier to request the service be changed back in accordance with R14-2-1907;
 8. A Subscriber who has been slammed can report the Unauthorized Change to the Arizona Corporation Commission;
 9. The name, address, web site, and toll free consumer services telephone number of the Arizona Corporation Commission; and
 10. A Subscriber can request their local exchange company place a freeze on the Customer's long distance telecommunications service account.
- C.** Distribution, language, and timing of notice.
1. A Telecommunications Company shall provide the notice described in this Section to new Customers at the time service is initiated, and upon a Subscriber's request.
 2. A Telecommunications Company that publishes a telephone directory or contracts for publication of a telephone directory, shall arrange for the notice to appear in the white pages of its annual telephone directory.
 3. A Telecommunications Company with a web site shall display the notice described in this Section on the company's web site.
 4. The notice of subscriber rights described in this Section shall be written in both English and Spanish.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2409, effective July 23, 2004 (Supp. 04-2).

R14-2-1909. Customer Account Freeze

- A.** A Customer account freeze prevents a change in a Subscriber's intraLATA and interLATA Telecommunications Company selection until the Subscriber gives consent to lift the freeze to the local exchange company that implemented the freeze.
- B.** A local exchange company that offers a freeze shall do so on a nondiscriminatory basis to all Subscribers.
- C.** A Telecommunications Company that offers information on freezes shall clearly distinguish intraLATA and interLATA telecommunications services.
- D.** A local exchange carrier shall not implement or remove a freeze without authorization obtained consistent with R14-2-1904 and verification consistent with R14-2-1905. However, a local exchange carrier shall remove a freeze if authorized by the subscriber in a three-way conference call meeting the requirements of 47 C.F.R. 64.1190(e)(2) incorporated by reference. This reference to 47 C.F.R. 64.1190(e)(2) is to the version in effect as of January 1, 2004 and no future editions or amendments. Copies of 47 C.F.R. 64.1190(3)(2) are available from the Federal Communications Commission at 445 12th Street SW, Washington D.C. 20554 and at the offices of the Arizona Corporations Commission at 1200 W. Washington Street, Phoenix, Arizona 85007 and online at www.gpoaccess.gov and are on file with the Office of the Secretary of State.

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- E. A Telecommunications Company shall not charge the Customer for imposing or removing a freeze except under a Commission approved tariff.
- F. A Telecommunications Company shall maintain records of all freeze authorizations and repeals for the duration of the Customer account freeze or at least 24 months following the cancellation of the Customer account freeze or discontinuance of service provided to that account.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2409, effective July 23, 2004 (Supp. 04-2).

R14-2-1910. Informal Complaint Process

- A. A Subscriber may file an informal complaint within 90 days of receiving notice of an Unauthorized Charge, or, thereafter, upon a showing of good cause. The complaint shall be submitted to the Commission Staff in writing, telephonically, or via electronic transmission, and shall include:
1. Complainant's name, address, telephone number;
 2. The names of the Telecommunications Companies involved;
 3. The approximate date of the alleged Unauthorized Change;
 4. A statement of facts, including documentation, to support the complainant's allegation;
 5. The amount of any disputed charges, including any amount already paid; and
 6. The specific relief sought.
- B. Commission Staff shall:
1. Assist the parties in resolving the informal complaint;
 2. Notify the Executing Telecommunications Company, original Telecommunications Company, and alleged Unauthorized Carrier of the alleged Unauthorized Change;
 3. Require the alleged Unauthorized Carrier to provide an initial response within five business days of receipt of notice from the Commission;
 4. Require the alleged Unauthorized Carrier to provide documentation of the Subscriber's authorization. If such information is not provided to Staff within 10 business days of the initial Staff notification, Staff shall presume that an Unauthorized Change occurred;
 5. Advise the Telecommunications Company that it shall provide Staff with any additional information requested by Staff within 10 business days of Staff's request; and
 6. Inform the Telecommunications Company that failure to provide the requested information or a good faith response to Commission Staff within 15 business days shall be deemed an admission to the allegations contained within the request and the Telecommunications Company shall be deemed in violation of the applicable provisions of this Article.
- C. If the parties do not resolve the matter, the Staff will conduct a review of the informal complaint and related materials to determine if an Unauthorized Change has occurred, which review shall be completed within 30 days of the Staff's receipt of the informal complaint.
- D. Upon conclusion its review, Staff shall render a written summary of its findings and recommendation to all parties. Staff's written summary is not binding on any party. Any party shall have the right to file a formal complaint with the Commission under A.R.S. § 40-246. Staff's written summary shall not be admissible in the formal complaint proceeding.

Historical Note

New Section made by final rulemaking at 10 A.A.R.

2409, effective July 23, 2004 (Supp. 04-2).

R14-2-1911. Compliance and Enforcement

- A. A Telecommunications Company shall provide a copy of its records of Subscriber verification and Unauthorized Changes maintained under the requirements of this Article to Commission Staff upon request.
- B. If the Commission finds that a Telecommunications Company is in violation of this Article, the Commission shall order the company to take corrective action as necessary, and the Commission may impose such penalties as are authorized by law. The Commission may sanction a Telecommunications Company in violation of this Article by prohibiting further solicitation of new customers for a specified period, or by revocation of its Certificate of Convenience and Necessity. The Commission may take any other enforcement actions authorized by law.
- C. The Commission Staff shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anti-competitive business practices with the Arizona Attorney General.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2409, effective July 23, 2004 (Supp. 04-2).

R14-2-1912. Severability

If any provision of this Article is found to be invalid, it shall be deemed severable from the remainder of this Article and the remaining provisions of this Article shall remain in full force and effect.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2409, effective July 23, 2004 (Supp. 04-2).

R14-2-1913. Script Submission

- A. Each Telecommunications Company shall file under seal in a docket designated by the Director of the Utilities Division ("Director") a copy of all sales or marketing scripts used by its (or its agent's) sales or customer service workers. For the purpose of this rule, "sales or marketing scripts" means all scripts that involve proposing a change in Telecommunications Company or responding to an inquiry regarding a possible change in Telecommunications Company.
- B. A Telecommunications Company shall make the filing described in R14-2-1913(A) at the following times:
1. 90 days from the day these rules are first published in a Notice of Final Rulemaking in the Arizona Administrative Register;
 2. On April 15 of each year;
 3. Whenever directed to do so by the Director; and
 4. Whenever a material change to a script occurs or a new script is used that is materially difference from a script on file with the Director.
- C. The Director may request further information or clarification on any script, and the Telecommunications Company shall respond to the Director's request within 10 days.
- D. The Director may initiate a formal complaint under R14-3-101 through R14-3-113 to review any script. The failure to file such a complaint or request further information or clarification does not constitute approval of the script, and the fact that the script is on file with the Commission may not be used as evidence that the script is just, reasonable, or not fraudulent.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2409, effective July 23, 2004 (Supp. 04-2).