

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

Arizona Corporation Commission

DOCKETED

MAY 11 2004

DOCKETED BY [Signature]

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MAY 12 2004

ARIZONA CORPORATION COMMISSION
DIRECTOR OF UTILITIES

IN THE MATTER OF RULES TO ADDRESS
SLAMMING AND OTHER DECEPTIVE
PRACTICES.

DOCKET NO. RT-00000J-99-0034

DECISION NO. 66967

ORDER

Open Meeting
May 6, 2004
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On January 28, 1999, U S West Communications, Inc. n/k/a Qwest filed an Application for Emergency Rulemaking suggesting that the Commission adopt rules against slamming. Interested parties filed responses to this Application.

2. On May 22, 2001, the Arizona Corporation Commission Staff ("Staff") released an initial draft of Commission proposed rules R14-2-1901 through R14-2-1912, and R14-2-2001 through R14-2-2-2010 (the "Proposed Rules") regarding Unauthorized Charges ("Cramming") and Unauthorized Carrier Changes ("Slamming"). On June 7, 2001, Staff received comments from interested parties. On June 13, 2001, Staff conducted a workshop regarding the Proposed Rules and received input from interested parties. On July 2, 2001, Staff released a second draft, of the Proposed Rules. Interested Parties filed comments on the second draft by August 6, 2001. Staff released a third draft of the Proposed Rules on August 22, 2001. Comments to the third draft were due on August 30, 2001, and on that date Staff conducted a second workshop regarding the Proposed Rules.

3. On November 2, 2001, Staff forwarded to the Commission their final draft of the Proposed Rules and recommended that the Commission issue a notice of proposed rulemaking for the Proposed Rules.

1 4. On December 12, 2002, in Decision No. 65452, the Commission adopted the
2 Proposed Rules and ordered the Commission Staff submit the rules to the Office of the Attorney
3 General for endorsement.

4 5. On July 23, 2003 and August 5, 2003, the Office of the Attorney General sent the
5 Commission letters indicating the Attorney General would not approve the final rules, stating the
6 Commission lacked the requisite authority to adopt rules as to wireless communications. The
7 Attorney General's office also indicated that there were "other issues" regarding the rules.

8 6. Staff recommends that the Commission modify the rules by eliminating the wireless
9 carriers from the proposed rules. The text of the Proposed Rules is attached to and incorporated in
10 this Decision as Appendix A showing all modifications from the Notice of Proposed Rulemaking
11 published in the *Arizona Administrative Register* (including changes previously approved in
12 Decision No. 65452).

13 7. We reluctantly conclude that eliminating wireless carriers from the rules at this time is
14 appropriate. It is imperative that some rules be enacted to protect the consumers of this state. Our
15 action in this regard in no way alters our view that wireless consumers also deserve robust consumer
16 protection. Accordingly, we direct Staff to evaluate further options with regard to wireless carriers.

17 8. The Attorney General has requested six changes:

- 18 1) That the term "alleged Unauthorized Carrier" be used throughout R14-2-
19 1907(c) replacing the inconsistent usage of two other terms:
20 "Telecommunications Company" and "Unauthorized Carrier";
- 21 2) That the refund for slamming be reduced from 150% to 100% to follow the
22 state Slamming Act rather than the federal slamming rules;
- 23 3) That references to the Code of Federal Regulations be made using the
24 incorporation by reference language mandated by A.R.S. § 41-1028;
- 25 4) That the Staff arbitrator's non-binding report be made inadmissible in
26 subsequent formal proceedings (R14-2-1910 and 2008);
- 27 5) That the provisions for waivers be eliminated; and
- 28 6) That wireless carriers no longer be subject to the proposed rules.

29 9. Staff recommends that the Commission adopt these six changes in order to move
30 forward with the rules. While we do not necessarily agree with all of these changes, we believe that
31 it is important to adopt them so that the rules may be placed into effect at the earliest possible
32 moment.

33 10. The Proposed Rules, as modified herein, will provide Arizona consumers, except

1 wireless consumers, with protection in non-wireless communications from unauthorized changes in
2 their telecommunication services providers and from charges for services and products they did not
3 authorize. The modified Proposed Rules establish liability standards and penalties to ensure
4 compliance.

5 11. Staff further recommends that the Commission allow Staff to make any appropriate,
6 non-substantive amendments to the Proposed Rules as are necessary for publication in the Arizona
7 Administrative Register by the Secretary of State.

8 12. Staff's recommendations are in the public interest and should be adopted.

9 **CONCLUSIONS OF LAW**

10 1. The Commission has the authority to enact the Proposed Rules under Article XV of
11 the Arizona Constitution; Title 40 of the Arizona Revised Statutes; A.R.S. §§ 44-1572 *et seq.* and 47
12 C.F.R. § 1110(a).

13 2. The elimination of wireless carriers and the other changes adopted herein do not
14 constitute a substantial change as defined in A.R.S. § 41-1022(E).

15 3. The Commission may amend Decision No. 65452 pursuant to A.R.S. §40-252.

16 **ORDER**

17 IT IS THEREFORE ORDERED that a revised Notice of Final Rulemaking for the Proposed
18 Rules be submitted to the Attorney General for review. This submission is strictly voluntary and is
19 without waiver of our claim to constitutional authority for the Proposed Rules.

20 IT IS FURTHER ORDERED that Staff may make any appropriate, non-substantive
21 amendments to the Proposed Rules that are necessary for publication with the Secretary of State.

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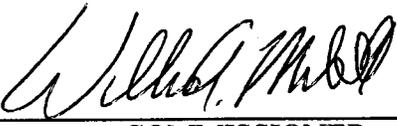
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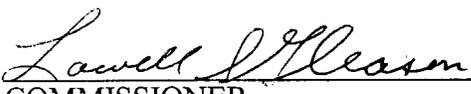
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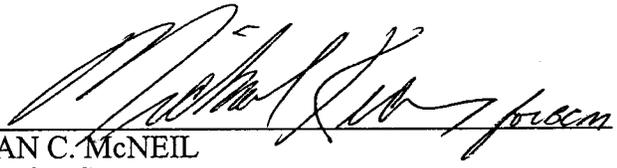
IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION


 CHAIRMAN-COMMISSIONER
 
 COMMISSIONER
 
 COMMISSIONER


 COMMISSIONER
 
 COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 11th day of MAY, 2004.


 BRIAN C. McNEIL
 Executive Secretary

DISSENT: _____

TJS:vk

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2 DOCKET NO.:

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RT-00000J-99-0034

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**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATIONS**

CHAPTER 2. CORPORATIONS COMMISSION FIXED UTILITIES

ARTICLE 19. CONSUMER PROTECTIONS FOR UNAUTHORIZED CARRIER CHANGES

ARTICLE 20. CONSUMER PROTECTIONS FOR UNAUTHORIZED CARRIER CHARGES

Section

- R14-2-1901. Definitions
- R14-2-1902. Purpose and Scope
- R14-2-1903. Application
- R14-2-1904. Authorized Telecommunications Company Change Procedures
- R14-2-1905. Verification of Orders for Telecommunications Service
- R14-2-1906. Notice of Change
- R14-2-1907. Unauthorized Changes
- R14-2-1908. Notice of Subscriber Rights
- R14-2-1909. Customer Account Freeze
- R14-2-1910. Informal Complaint Process
- R14-2-1911. Compliance and Enforcement
- ~~R14-2-1912. Waivers~~
- ~~R14-2-1913. Severability~~
- R14-2-1912. Severability
- ~~R14-2-1914. Script Submission~~
- R14-2-1913. Script Submission
- R14-2-2001. Definitions
- R14-2-2002. Purpose and Scope
- R14-2-2003. Application
- R14-2-2004. Requirements for Submitting Authorized Charges
- R14-2-2005. Authorization Requirements

- R14-2-2006. Unauthorized Charges
- R14-2-2007. Notice of Subscriber Rights
- R14-2-2008. Informal Complaint Process
- R14-2-2009. ← Compliance and Enforcement
- ~~R14-2-2010. Waivers~~
- ~~R14-2-2011. Severability~~
- R14-2-2010 Severability
- ~~R14-2-2012. Script Submission~~
- R14-2-2011 Script Submission

ARTICLE 19. CONSUMER PROTECTIONS FOR UNAUTHORIZED

CARRIER CHANGES

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.** "Customer Account Freeze" ("freeze") means an authorization, whether written, electronic, or internet with electronic signature authorization or verbal with third party verification, from a Subscriber to impose a stay on any change in telecommunications services.
- E.D.** "Executing Telecommunications Carrier" means a Telecommunications Company that effects a request that a Subscriber's Telecommunications Company be changed.
- F.E.** "Letter of Agency" means written authorization, including internet enabled with electronic signature, ~~from a Subscriber for a change in~~ by a Subscriber authorizing a Telecommunications Company to act on the Subscriber's behalf to change the Subscriber's Telecommunications Company.
- G.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.
- H.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.
- I.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.
- J.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.

K.J. "Unauthorized Charge" means any charge incurred as a result of an Unauthorized Change.

R14-2-1902. ← Purpose and Scope

These rules ~~are intended~~ 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 ~~by establishing~~ 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.

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, ~~until those Telecommunications Companies are mandated by law to provide equal access.~~

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 ~~Company~~ Carrier shall not contact the Subscriber to verify the Subscriber's selection received from a Telecommunications Company submitting a change.
- D. An Executing Telecommunications ~~Company~~ 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 ~~authorization~~ authorizations from the Subscriber for all services authorized during a single contact.

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.

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.

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 a ~~Telecommunications Company~~ an alleged Unauthorized Carrier has been notified that an Unauthorized Change has occurred and the ~~Telecommunications Company~~ alleged Unauthorized Carrier cannot verify within five business days that the change was authorized pursuant to R14-2-1905, the ~~Telecommunications Company~~ 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, ~~150%~~ 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 ~~150%~~ 100% to the Subscriber's authorized charges.
- D. Until the ~~Telecommunications Company~~ 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 ~~Telecommunications Company~~ 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.

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. ~~An Unauthorized Telecommunications Carrier changing telecommunications service without the Subscriber's permission is required to remove all Unauthorized Charges from the Subscriber's account;~~
 - 4.3. 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;
 - 5.4. 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;
 - 6.5. 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 Telecommunication Company. ~~The original Telecommunications Company may bill the Customer for those services at the original Telecommunications Company's rates;~~ 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;
 - 7.6. If a Subscriber has paid charges to the Unauthorized Carrier, the Unauthorized Carrier must pay ~~150%~~ 100% of the charges to the original Telecommunications Company and the original Telecommunications Company shall apply the ~~150%~~ 100% as credit to the Customer's authorized charges;

~~8-7.~~ A Subscriber who has been slammed can contact the Unauthorized Carrier to request the service be changed back in accordance with R14-2-1907;

~~9-8.~~ A Subscriber who has been slammed can report the Unauthorized Change to the Arizona Corporation Commission;

~~10-9.~~ The name, address, web site, and toll free consumer services telephone number of the Arizona Corporation Commission; and

~~11-10.~~ 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 its 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.

R14-2-1909. Customer Account Freeze

- A. A Customer ~~Account Freeze~~ 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(e)(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.

- 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~~ account freeze or at least 24 months following the cancellation of the Customer ~~Account Freeze~~ account freeze or discontinuance of service provided to that account.

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 5 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;~~
 6. ~~Conduct a review of the complaint and related materials to determine if an Unauthorized Change has occurred;~~
 7. ~~Inform the Subscriber, Executing Telecommunications Company, alleged Unauthorized Carrier, and original Telecommunications Company of Staff's findings upon conclusion of its review; and~~
 - 8-6. 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.

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.

~~R14-2-1912. — Waivers~~

~~A. — The Commission may waive compliance with any of the provisions of this Article upon a finding that such a waiver is in the public interest.~~

~~B. — A Telecommunications Company may petition the Commission for a waiver of any provision of this Article by filing an application setting forth with specificity the waiver being sought, and the circumstances showing that a waiver is in the public interest.~~

~~R14-2-1913. — Severability~~

~~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.~~

~~R14-2-1914. — Script Submission~~

~~R14-2-1913. Script Submission~~

~~Each Telecommunications Company shall file under seal in a docket designated by the Director of the Utilities Division a copy of all scripts used by its (or its agent's) sales or customer service workers. The Director of the Utilities Division may request further information or clarification on any script, and the Telecommunications Company shall respond to the Director's request within 10 days. The Director of the Utilities Division 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.~~

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 different 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.

ARTICLE 20. CONSUMER PROTECTIONS FOR UNAUTHORIZED CARRIER CHARGES

R14-2-2001. 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.A.~~ "Commission" means the Arizona Corporation Commission.
- ~~C.B.~~ "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.C.** “Subscriber” means the Customer identified in the account records of a Telecommunications Company; 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.
- E.D.** “Telecommunications Company” means a public service corporation, as defined in the Arizona Constitution, Article 15, § 2, that provides telecommunications services within the state of Arizona and over which the Commission has jurisdiction. The phrase “Telecommunications Company” does not include ~~includes all~~ providers of wireless, cellular, personal communications services, or commercial mobile radio services.
- F.E.** “Unauthorized Charge” (“cramming”) means any recurring charge on a Customer’s telephone bill that was not authorized or verified in compliance with R14-2-2005. This does not include one-time pay-per-use charges or taxes and other surcharges that have been authorized by law to be passed through to the Customer. ~~However, any charge related to a wireless phone delivered to a customer without the charge being expressly authorized and verified in accordance with R14-2-2005 is an Unauthorized Charge regardless of whether the charge is one-time or recurring.~~

R14-2-2002. Purpose and Scope

The provisions of this Article ~~are intended~~ shall be interpreted to ensure all Customers in this state are protected from Unauthorized Charges on their bill from a Telecommunications Company.

R14-2-2003. Application

This Article applies to each Telecommunications Company.

R14-2-2004. Requirements for Submitting Authorized Charges

- A. A Telecommunications Company shall provide its billing agent with its name, telephone number, and a list with detailed descriptions of the products and services it intends to charge on a Customer’s bill so that the billing agent may accurately identify the product or service on the Customer’s bill.
- B. A Telecommunications Company or its billing agent shall specify the product or service being billed and all associated charges.
- C. A Telecommunications Company or its billing agent shall provide the Subscriber with a toll-free telephone number the Subscriber may call for billing inquiries.

R14-2-2005. Authorization Requirements

- A. A Telecommunications Company shall record the date of a service request and shall obtain from the Subscriber requesting a product or service the following:
1. ~~The~~ The name and telephone number of the Customer,
 2. Verification that Subscriber is authorized to order the product or service, and
 3. Explicit Subscriber acknowledgement that the charges will be assessed on the Customer's bill.
- B. A Telecommunications Company shall communicate the following information to a Subscriber requesting a product or service:
1. An explanation of each product or service offered,
 2. An explanation of all applicable charges,
 3. A description of how the charge will appear on the Customer's bill,
 4. An explanation of how a product or service can be cancelled, and
 5. A toll-free telephone number for Subscriber inquiries.
- C. The authorization required by R14-2-2005(A) and the communications required by R14-2-2005(B) shall be given in all languages used at any point in the sales transaction. At the beginning of any sales transaction, the Telecommunications Company must offer to conduct the transaction in English or Spanish and must comply with the Customer's choice or shall not complete the transaction.
- D. During each contact during in which the Telecommunications Company offers to ~~sell a product or service~~ establish residential service or during in which ~~a subscriber requests to buy a product or service~~ a person requests the establishment of residential service, the Telecommunications Company shall inform the subscriber of the cost of "basic local exchange telephone service" as defined in R14-2-1201(6), if provided. A Telecommunications Company shall not use the term basic or any other misleading language in describing any product or service. The term "basic" can only be used for a plan that includes only basic local exchange telephone service.
- E. The individual Subscriber authorization record shall be maintained by the Telecommunications Company for 24 months.

R14-2-2006. Unauthorized Charges

- A. Upon discovery of an Unauthorized Charge, or upon notification by a Subscriber of an Unauthorized

Charge, the billing Telecommunications Company shall:

1. Immediately cease charging the Customer for the unauthorized product or service;
2. Remove the Unauthorized Charge from the Customer's bill within 45 days;
3. ~~Refund~~ Refund or credit to the Customer all money paid by the Customer at the Customer's option for any Unauthorized Charge. If any Unauthorized Charge is not refunded or credited within two billing cycles, the Telecommunications Company shall pay interest on the amount of any Unauthorized Charges at an annual rate established by the Commission until the Unauthorized Charge is refunded or credited;
4. Provide the Subscriber all billing records under the control of the Telecommunications Company related to any Unauthorized Charge. The billing records shall be provided within 15 business days of the Subscriber's notification; and
5. Maintain a record of each Unauthorized Charge of every Customer who has experienced any Unauthorized Charge for 24 months. The record shall include:
 - a. The name of the Telecommunications Company,
 - b. Each affected telephone number,
 - c. The date the Subscriber requested the Unauthorized Charge be removed from the Customer's bill, and
 - d. The date the Customer was refunded or credited the amount that the Customer paid for any Unauthorized Charge.

B. After a charge is removed from the Customer's bill, the Telecommunications Company shall not rebill the charge unless one of the following occurs:

1. The Subscriber and the Telecommunications Company agree the customer was accurately billed.
2. The Telecommunications Company certifies with supporting documentation to the Subscriber that the charge was authorized pursuant to R14-2-2005.
3. A determination is made pursuant to R14-2-2008 that the charge was authorized.

C. Until a charge is reinstated pursuant to subsection B, a Telecommunications Company shall not:

1. Suspend, disconnect, or terminate telecommunications service to a Subscriber who disputes any billing charge pursuant to this Article or for nonpayment of an alleged Unauthorized Charge

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.
- D. The Customer shall remain obligated to pay any charges that are not disputed.
- E. Each occurrence of cramming an individual account shall constitute a separate violation of this Article, subject to individual enforcement actions and penalties as prescribed herein.

R14-2-2007. Notice of Subscriber Rights

- A. A Telecommunications Company shall provide to each of its Subscribers a notice of the Subscriber's rights regarding Unauthorized Charges.
- B. The notice may be combined with the notice required by R14-2-1908.
- C. The notice shall include the following:
 1. The name, address and telephone number where a Subscriber can contact the Telecommunications Company;
 2. A statement that a Telecommunications Company is prohibited from adding products and services to a Customer's account without the Subscriber's authorization;
 3. A statement that the Telecommunications Company is required to return the service to its original service provisions if an Unauthorized Charge is added to a Customer's account;
 4. A statement that the Telecommunications Company shall not charge for returning the Customer to their original service provisions;
 5. A statement that the Telecommunications Company must refund or credit, at the Customer's option, to the Customer any amount paid for ~~Unauthorized Charges as promptly as reasonable business practices permit, but no later than 15 days from the Subscriber's notification~~ any Unauthorized Charge. If any Unauthorized Charge is not refunded or credited within two billing cycles, the Telecommunications Company shall pay interest on the amount of any Unauthorized Charges at an annual rate established by the Commission until the Unauthorized Charge is refunded or credited;
 6. A statement that a Customer who has been crammed can report the Unauthorized Charge to the Arizona Corporation Commission; and

7. The name, address, web site, and toll-free consumer services telephone number of the Arizona Corporation Commission.

D. 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 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.

R14-2-2008. 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 name of the Telecommunications Company that submitted the alleged Unauthorized Charge;
3. The approximate date of the alleged Unauthorized Charge;
4. A statement of facts, and documentation, to support the complainant's allegation;
5. The amount of any disputed charges including the amount already paid; and
6. The specific relief sought.

B. The Commission Staff shall:

1. Assist the parties in resolving the complaint;
2. Notify the Telecommunications Company of the alleged Unauthorized Charge;
3. Require the Telecommunications Company to provide an initial response within five business days of receipt of notice from the Commission;

4. Require the Telecommunications Company to provide documentation of the Subscriber's new service or product request. If such information is not provided to the Staff within 10 business days of the initial Staff notification, Staff shall presume that an Unauthorized Charge occurred;
 5. ~~Advise the Telecommunications Company that it shall provide Staff any additional information requested within 10 business days of Staff's request; and~~
 6. ~~Conduct a review of the complaint and related materials to determine if an Unauthorized Charge occurred;~~
 7. ~~Inform the Subscriber and the Telecommunications Company of Staff's findings upon conclusion of its review; and~~
 - 8.6. 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 Charge has occurred, which review shall be completed within 30 days of the Staff's receipt of the informal complaint.
- D. Upon conclusion of 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.

R14-2-2009. Compliance and Enforcement

- A. A Telecommunications Company shall provide a copy of records related to a Subscriber's request for services or products 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 company may be subject to 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.

~~R14-2-2010.~~ **Waivers**

~~A. The Commission may waive compliance with any provision of this Article upon a finding that such a waiver is in the public interest.~~

~~B. A Telecommunications Company may petition the Commission for a waiver of any provision of this Article by filing an application for waiver setting forth with specificity the waiver being sought and the circumstances showing that a waiver is in the public interest.~~

~~R14-2-2011.~~ **Severability**

R14-2-2010. **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.

~~R14-2-2012.~~ **Script Submission**

R14-2-2011 **Script Submission**

~~Each Telecommunications Company shall file under seal in a docket designated by the Director of the Utilities Division a copy of all scripts used by its (or its agent's) sales or customer service workers. The Director of the Utilities Division may request further information or clarification on any script, and the Telecommunications Company shall respond to the Director's request within 10 days. The Director of the Utilities Division 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.~~

- 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 Purposes of this rule, "sales or marketing scripts" means all scripts that involve an offer to sell a product or service or a response to a request for a product or service, including all

scripts for unrelated matters that include a prompt for the sales or customer service workers to offer to sell a product or service.

B. A Telecommunications Company shall make the filing described in R14-2-2011.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 different 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.