

**476.103 Unauthorized change in service — civil penalty.**

1. Notwithstanding the deregulation of a communications service or facility under section 476.1D, the board may adopt rules to protect consumers from unauthorized changes in telecommunications service. Such rules shall not impose undue restrictions upon competition in telecommunications markets.

2. As used in this section, unless the context otherwise requires:

a. “*Change in service*” means the designation of a new provider of a telecommunications service to a consumer, including the initial selection of a service provider, and includes the addition or deletion of a telecommunications service for which a separate charge is made to a consumer account.

b. “*Consumer*” means a person other than a service provider who uses a telecommunications service.

c. “*Executing service provider*” means, with respect to any change in telecommunications service, a service provider who executes an order for a change in service received from another service provider.

d. “*Service provider*” means a person providing a telecommunications service.

e. “*Submitting service provider*” means a service provider who requests another service provider to execute a change in service.

f. “*Telecommunications service*” means a local exchange or long distance telephone service other than commercial mobile radio service.

3. The board shall adopt rules prohibiting an unauthorized change in telecommunications service. The rules shall be consistent with federal communications commission regulations regarding procedures for verification of customer authorization of a change in service. The rules, at a minimum, shall provide for all of the following:

a. (1) A submitting service provider shall obtain verification of customer authorization of a change in service before submitting such change in service.

(2) Verification appropriate under the circumstances for all other changes in service.

(3) The verification may be in written, oral, or electronic form and may be performed by a qualified third party.

(4) The reasonable time period during which the verification is to be retained, as determined by the board.

b. A customer shall be notified of any change in service.

c. Appropriate compensation for a customer affected by an unauthorized change in service.

d. Board determination of potential liability, including assessment of damages, for unauthorized changes in service among the customer, previous service provider, executing service provider, and submitting service provider.

e. A provision encouraging service providers to resolve customer complaints without involvement of the board.

f. The prompt reversal of unauthorized changes in service.

g. Procedures for a customer, service provider, or the consumer advocate to submit to the board complaints of unauthorized changes in service.

4. a. In addition to any applicable civil penalty set out in section 476.51, a service provider who violates a provision of this section, a rule adopted pursuant to this section, or an order lawfully issued by the board pursuant to this section, is subject to a civil penalty, which, after notice and opportunity for hearing, may be levied by the board, of not more than ten thousand dollars per violation. Each violation is a separate offense.

b. A civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in a compromise, the board may consider the size of the service provider, the gravity of the violation, any history of prior violations by the service provider, remedial actions taken by the service provider, the nature of the conduct of the service provider, and any other relevant factors.

c. A civil penalty collected pursuant to this subsection shall be forwarded by the executive secretary of the board to the treasurer of state to be credited to the department of commerce revolving fund created in section 546.12 and to be used only for consumer education programs administered by the board.

d. A penalty paid by a rate-of-return regulated utility pursuant to this section shall be excluded from the utility's costs when determining the utility's revenue requirement, and shall not be included either directly or indirectly in the utility's rates or charges to its customers.

e. The board shall not commence an administrative proceeding to impose a civil penalty under this section for acts subject to a civil enforcement action pending in court under section 714D.7.

5. If the board determines, after notice and opportunity for hearing, that a service provider has shown a pattern of violations of the rules adopted pursuant to this section, the board may by order do any of the following:

a. Prohibit any other service provider from billing charges to residents of Iowa on behalf of the service provider determined to have engaged in such a pattern of violations.

b. Prohibit certificated local exchange service providers from providing exchange access services to the service provider.

c. Limit the billing or access services prohibition under paragraph "a" or "b" to a period of time. Such prohibition may be withdrawn upon a showing of good cause.

d. Revoke the certificate of public convenience and necessity of a local exchange service provider.

6. The board has primary jurisdiction over a complaint pursuant to this section initiated by a service provider.

7. Subsection 6 does not preclude proceedings before the federal communications commission to enforce applicable federal law. However, a service provider or a consumer, for the same alleged acts, shall not pursue a complaint both before the federal communications commission and pursuant to this section.

8. The board shall adopt competitively neutral rules establishing procedures for the solicitation, imposition, and lifting of preferred carrier freezes. A valid preferred carrier freeze prevents a change in service unless the subscriber gives the service provider from whom the freeze was requested the subscriber's express consent.

99 Acts, ch 16, §1; 2009 Acts, ch 181, §51

Referred to in §714D.6