

199—22.9(476) Unauthorized changes in telecommunications service.

22.9(1) Definitions. As used in this rule, unless the context otherwise requires:

“*Change in service*” means the designation of a new provider of a telecommunications service to a customer, 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 customer account.

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

“*Cramming*” means the addition or deletion of a product or service for which a separate charge is made to a telecommunications service customer’s account without the verified consent of the affected customer. “Cramming” does not include the addition of extended area service to a customer account pursuant to commission rules, even if an additional charge is made. “Cramming” does not include telecommunications services that are initiated or requested by the customer, including dial-around services such as “10-10-XXX,” directory assistance, operator-assisted calls, acceptance of collect calls, and other casual calling by the customer.

“*Customer*” means the person other than a service provider whose name appears on the account and others authorized by that named person to make changes to the account.

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

“*Jamming*” means the addition of a preferred telecommunications service provider freeze to a customer’s account without the verified consent of the customer.

“*Letter of agency*” means a written document complying with the requirements of paragraph 22.9(2) “b.”

“*Preferred telecommunications service provider freeze*” means the limitation of a customer’s preferred telecommunications service provider choices so as to prevent any change in preferred telecommunications service provider for one or more services unless the customer gives the telecommunications service provider from which the freeze was requested the customer’s express consent.

“*Service provider*” means a telecommunications service provider providing telecommunications service, not including commercial mobile radio service.

“*Slamming*” means the designation of a new telecommunications service provider to a customer, including the initial selection of a telecommunications service provider, without the verified consent of the customer. “Slamming” does not include the designation of a new provider of a telecommunications service to a customer made pursuant to the sale or transfer of another telecommunications service provider’s customer base, provided that the designation meets the requirements of paragraph 22.9(2) “e.”

“*Soft slam*” means an unauthorized change in service by a telecommunications service provider that uses the telecommunications service provider identification code of another telecommunications service provider, typically through the purchase of wholesale services for resale.

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

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

“*Verified consent*” means verification of a customer’s authorization for a change in service.

22.9(2) Prohibition of unauthorized changes in telecommunications service. Unauthorized changes in telecommunications service, including but not limited to cramming and slamming, are prohibited. Telecommunications service providers shall comply with Federal Communications Commission requirements regarding verification of customer authentication of a change in service and change in service provider as provided for in 47 CFR 64.1120 and 47 CFR 64.2401.

a. Verification required.

(1) No service provider shall submit a preferred telecommunications service provider change order or other change in service order to another service provider unless and until the change has first been confirmed in accordance with one of the following procedures:

1. The service provider has obtained the customer’s written authorization in a form that meets the requirements of this rule; or

2. The service provider has obtained the customer's electronic authorization to submit the preferred telecommunications service provider change order. Such authorization must be placed from the telephone number(s) on which the preferred telecommunications service provider is to be changed and must confirm the information required in numbered paragraph 22.9(2) "a"(1)"1" above. Service providers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit or to a similar mechanism that records the required information regarding the preferred telecommunications service provider change, including automatically recording the originating automatic numbering identification; or

3. An appropriately qualified independent third party has obtained the customer's oral authorization to submit the preferred telecommunications service provider change order that confirms and includes appropriate verification data. The independent third party must not be owned, managed, controlled, or directed by the service provider or the service provider's marketing agent; must not have any financial incentive to confirm preferred telecommunications service provider change orders for the service provider or the service provider's marketing agent; and must operate in a location physically separate from the service provider or the service provider's marketing agent. The content of the verification must include clear and conspicuous confirmation that the customer has authorized a preferred telecommunications service provider change; or

4. The local service provider may change the preferred service provider, for customer-originated changes to existing accounts only, through maintenance of sufficient internal records to establish a valid customer request for the change in service. At a minimum, any such internal records must include the date and time of the customer's request and adequate verification of the identification of the person requesting the change in service. The burden will be on the local service provider to show that its internal records are adequate to verify the customer's request for the change in service.

All verifications shall be maintained for at least two years from the date the change in service is implemented, and all complaints regarding a change in preferred service provider must be brought within two years of the date the change in service is implemented. Verification of service freezes shall be maintained for as long as the preferred telecommunications service provider freeze is in effect.

(2) For other changes in service resulting in additional charges to existing accounts only, a service provider shall establish a valid customer request for the change in service through maintenance of sufficient internal records. At a minimum, any such internal records must include the date and time of the customer's request and adequate verification under the circumstances of the identification of the person requesting the change in service. Any of the three verification methods in numbered paragraphs 22.9(2) "a"(1)"1" to "3" are also acceptable. The burden will be on the telecommunications service provider to show that its internal records are adequate to verify the customer's request for the change in service. Where the additional charge is for one or more specific telephone calls, examples of internal records a telecommunications service provider may submit include call records showing the origin, date, time, destination, and duration of the calls, and any other data the telecommunications service provider relies on to show the calls were made or accepted by the customer, along with an explanation of the records and data.

b. Letter of agency form and content.

(1) A service provider may use a letter of agency to obtain written authorization or verification of a customer's request to change the customer's preferred service provider selection. A letter of agency that does not conform with this subrule is invalid for purposes of this rule.

(2) The letter of agency shall be a separate document (or an easily separable document) or located on a separate screen or web page and contain only the authorizing language described in subparagraph 22.9(2) "b"(5) having the sole purpose of authorizing a service provider to initiate a preferred service provider change. The letter of agency must be signed and dated by the customer to the telephone line(s) requesting the preferred service provider change. A local exchange telecommunications service provider may use a written or electronically signed letter of agency to obtain authorization or verification of a customer's request to change service.

(3) The letter of agency shall not be combined on the same document, screen, or web page with inducements of any kind.

(4) Notwithstanding subparagraphs 22.9(2) “b”(2) and (3), the letter of agency may be combined with checks that contain only the required letter of agency language as prescribed in subparagraph 22.9(2) “b”(5) and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain, in easily readable, boldface type on the front of the check, a notice that the customer is authorizing a preferred service provider change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

(5) At a minimum, the letter of agency must be printed in a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

1. The customer’s billing name and address and each telephone number to be covered by the preferred service provider change order;

2. The decision to change the preferred service provider from the current service provider to the soliciting service provider;

3. That the customer designates [insert the name of the submitting service provider] to act as the customer’s agent for the preferred service provider change;

4. That the customer understands that only one service provider may be designated as the customer’s interstate or interLATA preferred interexchange service provider for any one telephone number. To the extent that a jurisdiction allows the selection of additional preferred service providers (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, or international interexchange), the letter of agency must contain separate statements regarding those choices, although a separate letter of agency for each choice is not necessary; and

5. That the customer understands that any preferred service provider selection the customer chooses may involve a charge to the customer for changing the customer’s preferred service provider.

(6) Any service provider designated in a letter of agency as a preferred service provider must be the service provider directly setting the rates for the customer.

(7) Letters of agency shall not suggest or require that a customer take some action in order to retain the customer’s current service provider.

(8) If any portion of a letter of agency is translated into another language, then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

c. Customer notification. Every change in service shall be followed by a written notification to the affected customer to inform the customer of the change. Such notice shall be provided within 30 days of the effective date of the change. Such notice may include, but is not limited to, a conspicuous written statement on the customer’s bill, a separate mailing to the customer’s billing address, or a separate written statement included with the customer’s bill. Each such statement shall clearly and conspicuously identify the change in service, any associated charges or fees, the name of the service provider associated with the change, and a toll-free number by which the customer may inquire about or dispute any provision in the statement.

d. Preferred telecommunications service provider freezes.

(1) A preferred telecommunications service provider freeze (or “freeze”) prevents a change in a customer’s preferred service provider selection unless the customer gives the service provider from whom the freeze was requested express consent. All local exchange service providers who offer preferred telecommunications service provider freezes must comply with the provisions of this subrule.

(2) All local exchange service providers who offer preferred telecommunications service provider freezes shall offer freezes on a nondiscriminatory basis to all customers, regardless of the customers’ service provider selections.

(3) Preferred telecommunications service provider freeze procedures, including any solicitation, must clearly distinguish among telecommunications services (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) subject to a preferred telecommunications service provider freeze. The service provider offering the freeze must obtain separate authorization for each service for which a preferred telecommunications service provider freeze is requested.

(4) Solicitation and imposition of preferred telecommunications service provider freezes.

1. All solicitation and other materials provided by a service provider regarding preferred telecommunications service provider freezes must include:

- An explanation, in clear and neutral language, of what a preferred telecommunications service provider freeze is and what services may be subject to a freeze;
- A description of the specific procedures necessary to lift a preferred telecommunications service provider freeze; an explanation that these steps are in addition to the verification requirements in this rule for changing a customer's preferred service provider selections; and an explanation that the customer will be unable to make a change in service provider selection unless the freeze is lifted; and
- An explanation of any charges associated with the preferred telecommunications service provider freeze.

2. No local exchange telecommunications service provider shall implement a preferred telecommunications service provider freeze unless the customer's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

- The local exchange telecommunications service provider has obtained the customer's written or electronically signed authorization in a form that meets the requirements of this rule; or
- The local exchange telecommunications service provider has obtained the customer's electronic authorization, placed from the telephone number(s) on which the preferred telecommunications service provider freeze is to be imposed, to impose a preferred telecommunications service provider freeze. The electronic authorization shall confirm appropriate verification data. Service providers electing to confirm preferred telecommunications service provider freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit or to a similar mechanism that records the required information regarding the preferred telecommunications service provider freeze request, including automatically recording the originating automatic numbering identification; or
- An appropriately qualified independent third party has obtained the customer's oral authorization to submit the preferred telecommunications service provider freeze and confirmed the appropriate verification data and the information required in this rule. The independent third party must not be owned, managed, or directly controlled by the service provider or the service provider's marketing agent; must not have any financial incentive to confirm preferred telecommunications service provider freeze requests for the service provider or the service provider's marketing agent; and must operate in a location physically separate from the service provider or the service provider's marketing agent. The content of the verification must include clear and conspicuous confirmation that the customer has authorized a preferred telecommunications service provider freeze.

3. A local exchange service provider may accept a written and signed authorization to impose a freeze on the customer's preferred service provider selection. Written authorization that does not conform with this subrule is invalid and may not be used to impose a preferred telecommunications service provider freeze.

- The written authorization shall comply with this rule concerning the form and content for letters of agency.
- At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:
 - The customer's billing name and address and the telephone number(s) to be covered by the preferred telecommunications service provider freeze;
 - The decision to place a preferred telecommunications service provider freeze on the telephone number(s) and particular service(s). To the extent that a jurisdiction allows the imposition of preferred telecommunications service provider freezes on additional preferred service provider selections (e.g., for local exchange, intraLATA/intrastate toll, interLATA/interstate toll service, and international toll), the authorization must contain separate statements regarding the particular selections to be frozen;
 - That the customer understands that the customer will be unable to make a change in telecommunications service provider selection unless the preferred telecommunications service provider freeze is lifted; and

- That the customer understands that any preferred telecommunications service provider freeze may involve a charge to the customer.

(5) All local exchange telecommunications service providers that offer preferred telecommunications service provider freezes must, at a minimum, offer customers the following procedures for lifting a preferred telecommunications service provider freeze:

1. A local exchange service provider administering a preferred telecommunications service provider freeze must accept a customer's written or electronically signed authorization stating the intention to lift a preferred telecommunications service provider freeze; and

2. A local exchange service provider administering a preferred telecommunications service provider freeze must accept a customer's oral authorization stating the intention to lift a preferred telecommunications service provider freeze and must offer a mechanism that allows a submitting service provider to conduct a three-way conference call with the service provider administering the freeze and the customer in order to lift a freeze. When engaged in oral authorization to lift a preferred telecommunications service provider freeze, the service provider administering the freeze shall confirm appropriate verification data and the customer's intent to lift the particular freeze.

e. Procedures in the event of sale or transfer of customer base. A telecommunications service provider may acquire, through a sale or transfer, either part or all of another telecommunications service provider's customer base without obtaining each customer's authorization if the acquiring telecommunications service provider complies with the following procedures. A telecommunications service provider may not use these procedures for any fraudulent purpose, including any attempt to avoid liability for violations under this rule.

- (1) No later than 30 days before the planned transfer of the affected customers from the selling or transferring telecommunications service provider to the acquiring telecommunications service provider, the acquiring telecommunications service provider shall file with the commission a letter notifying the commission of the transfer and providing the names of the parties to the transaction, the types of telecommunications services to be provided to the affected customers, and the date of the transfer of the customer base to the acquiring telecommunications service provider. In the letter, the acquiring telecommunications service provider also shall certify compliance with the requirement to provide advance customer notice in accordance with this rule and with the obligations specified in that notice. In addition, the acquiring telecommunications service provider shall attach a copy of the notice sent to the affected customers.

- (2) If, subsequent to the filing of the letter of notification with the commission any changes to the required information develop, the acquiring telecommunications service provider shall file written notification of these changes with the commission no more than ten days after the transfer date announced in the prior notification. The commission may require the acquiring telecommunications service provider to send an additional notice to the affected customers regarding such material changes.

- (3) Not later than 30 days before the transfer of the affected customers from the selling or transferring telecommunications service provider to the acquiring telecommunications service provider, the acquiring telecommunications service provider shall provide written notice to each affected customer. The acquiring telecommunications service provider must fulfill the obligations set forth in the written notice. The written notice must inform the customer of the following:

1. The date on which the acquiring telecommunications service provider will become the customer's new telecommunications service provider;

2. The rates, terms, and conditions of the service(s) to be provided by the acquiring telecommunications service provider upon the customer's transfer to the acquiring telecommunications service provider, and the means by which the acquiring telecommunications service provider will notify the customer of any change(s) to these rates, terms, and conditions;

3. The acquiring telecommunications service provider will be responsible for any telecommunications service provider change charges associated with the transfer;

4. The customer's right to select a different preferred telecommunications service provider for the telecommunications service(s) at issue, if an alternative telecommunications service provider is available;

5. All customers receiving the notice, even those who have arranged preferred telecommunications service provider freezes through their local service providers on the service(s) involved in the transfer, will be transferred to the acquiring telecommunications service provider unless the customers select a different telecommunications service provider before the transfer date; existing preferred telecommunications service provider freezes on the service(s) involved in the transfer will be lifted; and the customers must contact their local service providers to arrange a new freeze;

6. Whether the acquiring telecommunications service provider will be responsible for handling any complaints filed, or otherwise raised, prior to or during the transfer against the selling or transferring telecommunications service provider; and

7. The toll-free customer service telephone number of the acquiring telecommunications service provider.

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