

572M



WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

BRIAN C. McNEIL  
EXECUTIVE SECRETARY

RECEIVED

ARIZONA CORPORATION COMMISSION  
DEC 13 P 3:22

Via hand delivery

December 13, 2002

Arizona Corporation Commission

DOCKETED

DEC 13 2002

The Honorable Janet Napolitano  
Attorney General of the State of Arizona  
1275 West Washington  
Phoenix, AZ 85007-2926

DOCKETED BY *CAF*

Re: Slamming and Cramming Rules  
A.A.C. R14-2-1901 through 1914 and A.A.C. R14-2-2001 through 2012  
ACC Docket No. RT-00000J-99-0034

Dear Attorney General Napolitano:

The Arizona Corporation Commission ("Commission") is pleased to hereby submit its slamming and cramming rulemaking packet for your review under A.R.S. § 41-1044. Enclosed for your review are:

- (1) Commission Decision No. 65452 (authorizing filing of Notice of Final Rulemaking);
- (2) Notice of Final Rulemaking;
- (3) Agency Certificate;
- (4) Agency Receipt; and
- (5) Attorney General's Approval Form.

Knowing the great importance placed on the issues of slamming and cramming by both your office and the Commission, the Commission is confident that your office will expeditiously complete its review of this important rulemaking package.

Decision No. 65452 was issued after an extensive, four year rulemaking process. The Commission's staff issued drafts of the rules for public comment on May 22, 2001, July 2, 2001, and August 22, 2001. Voluminous comments were received concerning each of these drafts, and public workshops were held on June 13, 2001 and August 30, 2001. The Commission's staff filed its final draft and a proposed order authorizing the issuance of a Notice of Proposed Rulemaking ("NOPR") on November 9, 2001 and parties filed formal exceptions. The Commission considered the issuance of the NOPR at an Open Meeting on November 27, 2001, and again at a day-long Special Open Meeting on May 16, 2002. Thereafter, the Commission issued its Decision 64800, which authorized the filing of a NOPR.

The Honorable Janet Napolitano

December 13, 2002

Page 2

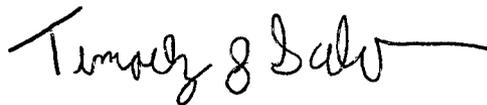
Formal written comments were then submitted by various parties, and a formal hearing was held before a Commission Administrative Law Judge on July 8, 2002, after which the ALJ issued a Recommended Opinion and Order. Formal exceptions were filed to the Recommended Opinion and Order, and the Commission adopted the Recommended Opinion and Order at its Special Open Meeting on December 9, 2002.

A courtesy copy of the NOPR was sent to Mark D. Wilson, Esq. of your office on May 30, 2002, and updates were sent June 27, 2002, and July 16, 2002.

The Commission's full rulemaking docket for this matter is available from the Commission's Docket Control Center, and I would be happy to forward any items of interest to your office. Some materials relating to the Commission's rulemaking process in this matter are also available on the Commission's website (click Divisions, then Utilities, then Industry-Specific Information, then Proposed Slamming and Cramming Rules).

We encourage you or your staff to meet with us if there are any concerns or questions about this rulemaking package. If you anticipate or encounter delays in the review process, please have your staff contact the Commission as soon as possible.

Very truly yours,



Timothy J. Sabo  
Attorney, Legal Division  
(602) 542-6024

cc: Chairman William A. Mundell  
Commissioner Jim Irvin  
Commissioner Marc Spitzer

Mark D. Wilson, Esq.  
Unit Chief, Commercial Law Unit  
Administrative Law Section  
Office of the Attorney General

Docket Control (w/ 15 copies)

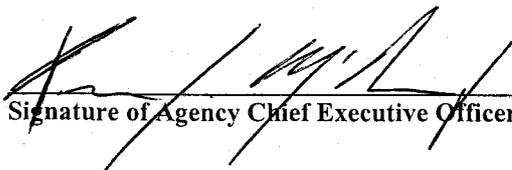
## AGENCY CERTIFICATE

1. **Agency name:** Arizona Corporation Commission
2. **Chapter heading:** Corporation Commission-Fixed Utilities
3. **Code citation for the Chapter:** 14 A.A.C. 2
4. **The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, listed in alphabetical and numerical order:**

**Subchapters, Articles, Parts, and Sections      Action:**  
**(in alphabetical and numerical order)**

Article 19	New article
R14-2-1901	New section
R14-2-1902	New section
R14-2-1903	New section
R14-2-1904	New section
R14-2-1905	New section
R14-2-1906	New section
R14-2-1907	New section
R14-2-1908	New section
R14-2-1909	New section
R14-2-1910	New section
R14-2-1911	New section
R14-2-1912	New section
R14-2-1913	New section
R14-2-1914	New section
Article 20	New article
R14-2-2001	New section
R14-2-2002	New section
R14-2-2003	New section
R14-2-2004	New section
R14-2-2005	New section
R14-2-2006	New section
R14-2-2007	New section
R14-2-2008	New section
R14-2-2009	New section
R14-2-2010	New section
R14-2-2011	New section
R14-2-2012	New section

5. **The rules contained in this package are true and correct as made.**

6.   
Signature of Agency Chief Executive Officer

Brian C. McNeil  
Printed or typed name of signer

12-13-02  
Date of signing

Executive Secretary  
Title of signer

**AGENCY RECEIPT**

**Notice of Final Rulemaking**

1. **Agency name:** Arizona Corporation Commission
2. **The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, listed in alphabetical and numerical order:**

<b><u>Subchapters, Articles, Parts, and Sections</u></b> <b>(in alphabetical and numerical order)</b>	<b><u>Action</u></b>
Article 19	
R14-2-1901	New section
R14-2-1902	New section
R14-2-1903	New section
R14-2-1904	New section
R14-2-1905	New section
R14-2-1906	New section
R14-2-1907	New section
R14-2-1908	New section
R14-2-1909	New section
R14-2-1910	New section
R14-2-1911	New section
R14-2-1912	New section
R14-2-1913	New section
R14-2-1914	New section
Article 20	
R14-2-2001	New section
R14-2-2002	New section
R14-2-2003	New section
R14-2-2004	New section
R14-2-2005	New section
R14-2-2006	New section

7. **No changes have been made to these rules since the Governor's Regulatory Review Council approved the rules.** (This statement is only to be included when the rules being submitted are final rules or summary rules approved by the Council.)

Pursuant to A.R.S. § 41-1057, rules of the Arizona Corporation Commission are exempt from Council review.

**Note: Under R1-1-105(E), the Agency Certificate accompanying a Notice of Exempt Rulemaking shall include a statement specifying why the rules are exempt from review along with a citation to the statutory or constitutional provision specifying the exemption.**

R14-2-2007

New section

R14-2-2008

New section

R14-2-2009

New section

R14-2-2010

New section

R14-2-2011

New section

R14-2-2012

New section

**ATTORNEY GENERAL APPROVAL OF FINAL RULES**

1. **Agency name:** Arizona Corporation Commission
2. **Chapter heading:** CORPORATION COMMISSION – FIXED UTILITIES
3. **Code citation for the Chapter:** 14 A.A.C. 2
4. **The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, listed in alphabetical and numerical order:**

<b><u>Subchapters, Articles, Parts, and Sections</u></b> <b>(in alphabetical and numerical order)</b>	<b><u>Action</u></b>
Article 19	
R14-2-1901	New section
R14-2-1902	New section
R14-2-1903	New section
R14-2-1904	New section
R14-2-1905	New section
R14-2-1906	New section
R14-2-1907	New section
R14-2-1908	New section
R14-2-1909	New section
R14-2-1910	New section
R14-2-1911	New section
R14-2-1912	New section
R14-2-1913	New section
R14-2-1914	New section
Article 20	
R14-2-2001	New section
R14-2-2002	New section
R14-2-2003	New section
R14-2-2004	New section

R14-2-2005	New section
R14-2-2006	New section
R14-2-2007	New section
R14-2-2008	New section
R14-2-2009	New section
R14-2-2010	New section
R14-2-2011	New section
R14-2-2012	New section

**5. The rules contained in this package are approved as final rules.**

**6.** \_\_\_\_\_

Attorney General

\_\_\_\_\_  
Date of signing

NOTICE OF FINAL RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;  
SECURITIES REGULATION

CHAPTER 2. CORPORATION COMMISSION – FIXED UTILITIES

PREAMBLE

<u>1. Sections Affected</u>	<u>Rulemaking Action</u>
R14-2-1901	New section
R14-2-1902	New section
R14-2-1903	New section
R14-2-1904	New section
R14-2-1905	New section
R14-2-1906	New section
R14-2-1907	New section
R14-2-1908	New section
R14-2-1909	New section
R14-2-1910	New section
R14-2-1911	New section
R14-2-1912	New section
R14-2-1913	New section
R14-2-1924	New section
R14-2-2001	New section
R14-2-2002	New section
R14-2-2003	New section
R14-2-2004	New section
R14-2-2005	New section
R14-2-2006	New section
R14-2-2007	New section

R14-2-2008	New section
R14-2-2009	New section
R14-2-2010	New section
R14-2-2011	New section
R14-2-2012	New section

**2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: Arizona Constitution Article XV § 3; A.R.S. §§ 40-202, 40-203, 40-321, 40-322, 44-1751, 44-1752, 44-1753, 44-1754.

Implementing statute: Arizona Constitution Article XV § 3; A.R.S. §§ 40-202, 40-203, 40-321, 40-322, 44-1751, 44-1752, 44-1753, 44-1754.

**3. The effective date of the rules:**

Sixty days after filing with the Secretary of State.

**4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 8 A.A.R. 2432, June 7, 2002

Notice of Proposed Rulemaking: 8 A.A.R. 2481, June 7, 2002

**5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Timothy J. Sabo, Esq. Attorney, Legal Division
Address:	Arizona Corporation Commission 1200 W. Washington Phoenix, AZ 85007
Telephone:	(602) 542-3402
Fax:	(602) 542-4870
E-mail:	Tsabo@cc.state.az.us

or

Name:	Ernest Johnson
-------	----------------

Director, Utilities Division  
Address: Arizona Corporation Commission  
1200 W. Washington  
Phoenix, AZ 85007  
Telephone: (602) 542-4251  
Fax: (602) 364-2129  
E-mail: EGJ@util.cc.state.az.us

**6. An explanation of the rule, including the agency's reason for initiating the rule:**

Unauthorized carrier changes and charges are commonly referred to as "slamming and cramming." Slamming" is changing a customer account from their authorized carrier to an unauthorized carrier, and "cramming" is adding charges for services on a customer's bill without proper authorization. Slamming and cramming are unacceptable business practices that enable Telecommunications Companies to benefit at the expense of consumers and competitors.

The proposed rules provide a framework for consumer protections in a competitive telecommunications market with guidelines for authorized carrier changes and charges. Procedures include documentation, verification, and notice to ensure all changes and charges to a customer are properly authorized.

The proposed rules establish procedures to remove profits, and establish liability for slamming and cramming. The rules will resolve unauthorized changes and charges through a process of refunds, credits, and absolution of charges. A Telecommunications Company that fails to perform in accordance with the proposed rules could face financial penalties, revocation of its certificate of convenience and necessity, and other actions provided by law.

The proposed rules require Telecommunications Companies to provide a notice of subscriber's rights. The proposed rules also establish an informal complaint resolution process. The proposed rules provide procedures for beginning and ending a customer account freeze, which prevents a change in a subscriber's intraLATA and interLATA Telecommunications Company selection until the subscriber gives consent.

The proposed rules provide that Telecommunications Companies shall provide under seal copies of "scripts" used by their or their agent's sales or customer service workers. The proposed rules provide for the

Commission to grant a waiver of the proposed rules when the Commission finds the waiver to be in the public interest.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

**8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not Applicable

**9. The summary of the economic, small business, and consumer impact:**

1. Identification of the proposed rulemaking.

The proposed rules provide a framework for consumer protections against unauthorized carrier changes and charges commonly referred to as "slamming" and "cramming." Slamming is changing a customer account from the authorized carrier to an unauthorized carrier. Cramming is adding charges for services on a customer's bill without proper authorization.

2. Persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking.

- a. Consumers of telecommunications services throughout the State of Arizona.
- b. Telecommunications companies in the State of Arizona over which the Commission has jurisdiction and that are public service corporations.
  - i. Interexchange carriers
  - ii. Local exchange carriers
  - iii. Wireless providers
  - iv. Cellular providers
  - v. Personal communications services providers
  - vi. Commercial mobile radio services providers

3. Cost-benefit analysis.

- a. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking.

Costs of the proposed rulemaking include costs related to new tasks at the Commission. For example, the Commission will need to: 1) respond to and review informal complaints by consumers notifying the Commission of unauthorized changes or charges, 2) make recommendations related to informal complaints, 3) review company scripts, 4) review company records related to subscriber's request for services or products, 5) review company records related to subscriber verification and unauthorized changes, 6) monitor compliance, 7) enforce penalties or sanctions, 8) coordinate enforcement efforts with Arizona Attorney General, and 9) review company requests for waivers.

Benefits of the proposed rulemaking may include a decrease in slamming and cramming consumer complaints being received at the Commission. Due to the imposition of penalties for slamming and cramming, less slamming and cramming may occur which would result in a decrease in complaints related to these issues being received at the Commission.

Benefits of the proposed rulemaking to the Arizona Attorney General are an increased level of coordination of efforts aimed at prosecution of fraudulent, misleading, deceptive, and anti-competitive business practices.

- b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

Implementation of the proposed rules should result in no increased costs to political subdivisions. However, to the extent that these political subdivisions contain consumers of telecommunications services, they may benefit by less slamming and cramming and an increase in competition in the area.

- c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditure of employers who are subject to the proposed rulemaking.

Costs to telecommunications companies would include: 1) obtaining subscriber authorization for changes and charges, 2) obtaining verification of that authorization, 3)

maintaining and preserving records of verification, 4) notifying subscribers of rights, 5) paying for costs to subscriber of unauthorized changes and charges 6) resolving slamming and cramming complaints, 7) submitting scripts to the Commission, 8) submitting of company records upon request of the Commission, and 9) applying for waivers.

Telecommunications companies can derive additional revenue from slamming and cramming practices. To the extent that these rules discourage this practice, these companies may refrain from slamming and cramming which would result in a decrease in revenue. Telecommunications companies can be assessed penalties for slamming or cramming. This would result in a decrease in income.

Sanctions can also be imposed under the proposed rulemaking, including: 1) revocation of the Certificate of Convenience and Necessity 2) prohibition from further solicitation of new customers for specified period of time; and 3) other penalties allowed by law, including monetary penalties.

Companies may need to hire additional staff to comply with the requirements of the proposed rulemaking. This would increase payroll expenditures. However, to the extent that these rules discourage slamming and cramming, employees hired to slam and cram subscribers, may be relieved of their positions, which may result in a decrease in payroll expenditures.

4. Probable impacts on private and public employment in business, agencies, and political subdivision of this state directly affected by the proposed rulemaking.

Employment could be enhanced since the reduction of slamming and cramming would bring about a more competitive telecommunications marketplace, which may increase employment in the telecommunications industry.

5. Probable impact of the proposed rulemaking on small business.

- a. Identification of the small businesses subject to the proposed rulemaking.

Businesses subject to the proposed rulemaking are small, intermediate, and large telecommunications providers. However, few telecommunications providers subject to this rule are small businesses as defined by A.R.S. § 41-1001.19.

- b. Administrative and other costs required for compliance with this proposed rulemaking.

Costs of the proposed rulemaking include costs related to new tasks at the Commission. For example, the Commission will need to: 1) respond to and review informal complaints by consumers notifying the Commission of unauthorized changes or charges, 2) make recommendations related to informal complaints, 3) review company scripts, 4) review company records related to subscriber's request for services or products, 5) review company records related to subscriber verification and unauthorized changes, 6) monitor compliance, 7) enforce penalties or sanctions, and 8) review company requests for waivers.

Costs to telecommunications companies would include: 1) obtaining subscriber authorization for changes and charges, 2) obtaining verification of that authorization, 3) maintaining and preserving records of verification, 4) notifying subscribers of rights, 5) resolving slamming and cramming complaints, 6) submitting scripts to the Commission, 7) submitting of company records upon request of the Commission, and 8) applying for waivers.

- c. A description of the methods that the agency may use to reduce the impact on small businesses.

The agency has tried to reduce the impact on small business by creating proposed rules that are a product of the collective efforts of the telecommunications industry to establish acceptable slamming and cramming rules. The rules also provide that the rules may be waived if in the public interest.

- d. The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

Consumers of telecommunications services would not experience a specific dollar cost related to the proposed rulemaking. However, the proposed rulemaking may increase the time that consumers spend to change carriers or add telecommunications services.

Benefits to consumers would include a reduction in slamming and cramming and potentially more cooperative telecommunications companies when slamming and cramming do occur.

Benefits may also include an increase in employment opportunities in the telecommunications industry due to a more competitive telecommunications marketplace.

Consumers may also benefit from increased fair competition by providers of

telecommunications services.

6. A statement of the probable effect on state revenues.

The proposed rulemaking may result in an increase in state revenues if penalties are imposed on telecommunications companies for slamming and cramming.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

One less intrusive and possibly less costly alternative method of achieving the purpose of the proposed rulemaking is to review consumer complaints of slamming and cramming on a case by case basis under the Commission's current authority. However, this method may be more costly since it does not contain the efficiencies of the proposed rulemaking. Also, the result may not be as effective since the Commission and consumers may not have access to the same level of information as they would under the proposed rulemaking.

Therefore, alternative methods of achieving the purpose of the proposed rulemaking may be less intrusive and costly, but may not adequately achieve the purpose of the proposed rulemaking. The proposed rulemaking is deemed to be the least intrusive and least costly alternative of achieving the whole purpose of the proposed rulemaking.

8. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms.

Adequate data are not available to comply with the requirements of subsection B. Therefore, the probable impacts are explained in qualitative terms.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

(See Section 11, *infra*.)

**11. A summary of the comments made regarding the rule and the agency response to them:**

**R14-4-1901 – Definitions**

**1901.C**

Issue: Qwest Corporation (“Qwest”) comments that the Commission should replace its proposed definition of “Customer” with the Federal Communication Commission’s (“FCC”) definition of “Subscriber” and eliminate the use of the term “Customer” throughout the rule. Qwest believes this will maintain consistency within this rule and between the FCC rules and this rule. Qwest asserts that use of the two definitions within the rule adds to confusion for consumers, telecommunications companies, and regulatory staff.

Staff comments that “Customer” and “Subscriber” are distinct defined terms of the rule and that using both terms in the rules clarifies a Telecommunications Company’s obligations to a Customer, while allowing the company to market and obtain authorization from the Subscriber, who is either the Customer, or its agent.

Analysis: We agree with Staff.

Resolution: No change required.

#### **1901.D**

Issue: Qwest comments that the term “Customer Account Freeze” should be replaced with either “Preferred Carrier Freeze,” which the FCC employs, or in the alternative, “Subscriber Freeze.” Qwest states that under the FCC rules, a freeze only limits a change in provider, but this section allows a Subscriber to authorize a stay on any change in services. Qwest also comments that the definition need not include the means of authorization, because the process is outlined in greater detail in section 1909.

Staff’s comments include a recommendation that this definition be deleted altogether, because the term “Customer Account Freeze” is more fully described in the text of section 1909.A.

Analysis: The defined term “Customer Account Freeze” is used only in section 1909. The term is described in section 1909.A. In addition, section 1909.D includes the authorization requirements for a Customer Account Freeze. The definition of Customer Account Freeze is therefore not required in this section, and it should be deleted.

Resolution: Delete this section and renumber accordingly.

#### **1901.F**

Issue: Qwest comments that the definition of “Letter of Agency” should also be eliminated from this section because the FCC found no reason to define Letter of Agency and because the definition lacks

clarity. Qwest states that the definition lacks clarity because it fails to explain that a Letter of Agency is a written authorization by a Subscriber empowering another person or entity to act on the Subscriber's behalf.

Staff comments that because section 1905.D requires an executing carrier to accept an internet Letter of Agency from a submitting carrier, that Qwest's proposed clarification is not necessary.

Analysis: We believe that for clarity, the rule requires a definition of this term, and that an expansion of the definition, to include an explanation that a Letter of Agency is a written authorization by a Subscriber authorizing a Telecommunications Company to act on the Subscriber's behalf to change the Subscriber's Telecommunications Company, would increase the clarity of the rule.

Resolution: Replace "from a Subscriber for a change in" with "by a Subscriber authorizing a Telecommunications Company to act on the Subscriber's behalf to change the Subscriber's".

#### **1901.G**

Issue: Cox Arizona Telecom, L.L.C. ("Cox") commented that the term "Subscriber" should be modified to exclude business customers who receive telecommunications services under a written contract, because the rules may not be appropriate in business service situations where there is a written contract between the Telecommunications Company and the business customer.

Staff points out that services provided to a business customer under contract are likely to already provide proper authorization under the rules, and recommended against adoption of Cox's proposal.

Analysis: We agree that contracts with business customers may include the authorization and verification that the rules require.

Resolution: No change required.

#### **R14-4-1902 – Purpose and Scope**

Issue: Qwest comments that this section should be eliminated entirely. Qwest states that to be valid, rules must incorporate more than a purpose statement. Qwest asserts that a purpose statement violates A.R.S. § 41-1001.17, which limits a rule to a statement that actually "interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency."

Staff comments that it disagrees with Qwest's legal analysis, and asserts that a statement of purpose and scope gives guidance as to how the subsequent rules are to be interpreted. Staff believes that

in this respect, section 1902 is more like a definition than the type of statement prohibited by A.R.S. § 41-1001.17. Staff stated that this section could be clarified by adding the phrase “shall be interpreted to” after “rule” at the beginning of each sentence.

Analysis: We believe that this section as proposed complies with A.R.S. § 41-1001.17 in that it is a Commission statement of general applicability that prescribes Commission policy. However, we also believe that this section would gain clarity by including certain of Staff’s recommended language.

Resolution: In the first sentence of this section, replace “are intended to” with “shall be interpreted to”. In the second sentence of this section, insert “shall be interpreted to” between “rules” and “promote”, and replace “by establishing” with “and to establish”. In the third sentence of this section, insert “shall be interpreted to” between “rules” and “establish”.

#### **R14-4-1904 – Authorized Telecommunications Company Change Procedures**

##### **1904.C**

Issue: Qwest comments that this section conflicts with FCC rules because it allows an executing carrier to contact a customer or otherwise verify a change submitted by a carrier.

Staff comments that the language of this section is clear that the executing carrier “shall not contact the Subscriber to verify the Subscriber’s selection . . .”

Analysis: We agree with Staff that this section prohibits an Executing Telecommunications Carrier from contacting the Subscriber to verify the Subscriber’s selection, and requires no clarification. We note, however, that this section refers to an Executing Telecommunications Company instead of the defined term “Executing Telecommunications Carrier.” This typographical error requires correction.

Resolution: Replace “Executing Telecommunications Company” with “Executing Telecommunications Carrier”. No further change required.

##### **1904.D**

Issue: AT&T comments that the final sentence of this section absolves an Executing Telecommunications Carrier of liability even in instances where the Executing Telecommunications Carrier caused, through its own error, the unauthorized change. AT&T states that such errors have occurred here locally, and that when they occur in the future, they should be remedied or paid for by the carrier executing

the change. AT&T comments that the FCC has reached this conclusion. AT&T requested that the final sentence of this section be removed.

Qwest comments that rather than delete the last sentence, that the Commission should instead clarify that the Executing Carrier is absolved of liability only when it receives an Unauthorized Change from another carrier. Qwest states that this will address AT&T's concerns with absolving a carrier of liability for an Unauthorized Change caused by its own error.

Staff comments that shielding the executing carrier is essential to the operation of the rules, and is consistent with the FCC rules. Staff states that the liability limitation in this section applies only when the executing carrier is "processing an Unauthorized Change," and that an executing carrier is not immune if it improperly processes an authorized change submitted by a submitting carrier. Staff believes that the rule should remain as proposed.

This section refers to an "Executing Telecommunications Company" instead of the defined term "Executing Telecommunications Carrier."

Analysis: We agree with Staff. The typographical error requires correction.

Resolution: Replace "Executing Telecommunications Company" with "Executing Telecommunications Carrier". No further change required.

#### **1904.E**

Issue: Qwest comments that this section is in conflict with FCC rules that require a company offering more than one type of service to obtain separate authorizations. Qwest asserts that by expressly permitting authorization on the same contact, this section implies that separate authorizations are not required.

Staff comments that separate authorizations may be given during a single contact, and that to require that a Subscriber go through multiple phone calls in order to change multiple services would be burdensome and unreasonable. In addition, Staff asserts that the FCC has clarified that its rule does not prohibit multiple authorizations in a single contact, and that accordingly, the proposed rules are consistent with the federal rules.

Analysis: For clarity, the word "authorization" should be changed to "authorizations."

Resolution: Replace "authorization" with "authorizations".

#### **R14-4-1905 – Verification of Orders for Telecommunications Service**

#### 1905.A.1

Issue: Qwest comments that the FCC allows electronic signature, but that this section “may be interpreted to mean that only an ‘internet enabled authorization with electronic signature’ is permitted.” Qwest asserts that this conflicts with both the Congressional requirements in the Electronic Signatures in Global and National Commerce Act, Section 104(e) and the FCC rules.

Analysis: This section states that the Subscriber’s written authorization includes internet enabled authorization with electronic signature. It clearly does not limit a written authorization to “internet enabled authorization with electronic signature.” Qwest’s comments seem to imply that because this language “may be interpreted” more narrowly than it is written, that it conflicts with the Electronic Signatures in Global and National Commerce Act and FCC rules. We do not agree.

Resolution: No change required.

#### 1905.C

Issue: Cox comments that this rule, which discusses a Letter of Agency combined with a marketing check and the required notice near the endorsement line on the check, should not include a requirement that the required notice be written in any other language which was used at any point in the sales transaction.

Cox states that the “other language” requirement is unnecessary in this context given that most such offers do not occur in face-to-face sales transactions.

Allegiance Telecom of Arizona, Inc. (“Allegiance”) comments that this section should be limited to residential customers and not be required in transactions with business customers, stating that the need for bilingual notices arises in the residential market, not the business market, and that the requirement to produce certain notices in both English and Spanish will require significant investment and expense on the part of smaller carriers such as Allegiance.

AT&T requests that carriers have the option of using the language the carrier has chosen to use in marketing to the customer, and recommends that the notice “that the Subscriber authorizes a Telecommunications Company change by signing the check” be required to be written “in both English and Spanish or in the language the carrier has chosen to use” in lieu of in “English and Spanish as well as in any other language which was used at any point in the sales transaction.” AT&T states that it cannot cost-effectively prepare marketing materials in all languages used by all customers.

Qwest concurs with AT&T and in addition, objects to the requirement that notice be written in any language used at any point in the sales transaction, stating that because many Subscribers specify one of the two languages as their language of choice, it is unnecessarily burdensome and costly to require bilingual notice for all Subscribers. Qwest comments that dual language notices may only confuse Subscribers who are unable to read the other language. Qwest believes carriers should have the option to provide notice in the Subscriber's language of choice, but that if the Commission does not modify this section, that it should clarify that only the material terms and conditions are subject to the dual language requirement. Qwest further comments that the requirement that notice be provided in any language used in the sales transaction will place a serious burden on companies, which can only lead to increased Subscriber costs. Qwest believes that under this section, companies must print notices in any language spoken by the Subscriber, even if the company never responded in that language. Qwest states that the fact that some Native American languages contain no written component also makes this requirement difficult.

Staff recommends against adoption of any proposal to limit the notice to either English, Spanish, or any language used during the transaction, stating that the proposed rule is written to ensure that the Subscriber retains the opportunity to read the notice in the language with which the Subscriber is most comfortable.

Analysis: Cox may be correct that most offers utilizing a Letter of Agency combined with a marketing check are not used in face-to-face transactions, but, as AT&T points out, it is conceivable that a Letter of Agency and a Marketing Check might be used in conjunction with marketing materials in a language other than English or Spanish. This section simply requires that the notice be provided in that same language, in addition to English and Spanish.

This section does not require marketing materials to be prepared in all languages used by all customers. It does, however, restrict a company's use of a Letter of Agency combined with a marketing check to those transactions in which no language not appearing on the marketing check notice is used, so that if a language not appearing on the marketing check notice is used in the transaction, the Letter of Agency combined with a marketing check may not be used. We do not believe that it is overly burdensome to require the marketing check notice, which is not lengthy, to appear in English, Spanish, and any other

language used in the sales transaction, and that any perceived burden is outweighed by the consumer protection this section provides to both residential and business customers.

We believe that this section clearly delineates the requirements for the use of a Letter of Agency with a marketing check, but in response to the comments, we believe it would gain additional clarity by the addition of specific qualifying language to that effect.

Resolution: Insert, at the end of the first sentence after “marketing check”, “subject to the following requirements”. Insert the following sentence at the end of this section: “If a Telecommunications Company cannot comply with the requirements of this section, it may not combine a Letter of Agency with a marketing check.”

#### **1905.D**

Issue: Qwest comments that specifying that written authorization includes a Letter of Agency is redundant because 1905.A.1 provides for internet enabled authorization with electronic signature.

Staff comments that this section was written to ensure that a reasonable reader understands that electronic authorization, including internet authorizations, are acceptable forms of verification.

Analysis: This section is necessary to clarify that a Letter of Agency is an acceptable form of verification.

Separately, we note that the numbering of this section contains a typographical formatting error requiring correction.

Resolution: Renumber 1905.D.1 as 1905.E. Renumber 1905.D.2 as 1905.E.1 and renumber accordingly.

#### **1905.F.2**

Issue: Qwest comments that this section’s prohibition on any financial incentive to “verify” the authorization conflicts with FCC rules, which prohibit a financial incentive to “confirm” a change. Qwest comments that under this section, merely paying the verifying entity appears to pose a problem, and thus conflicts with the FCC rules.

Staff comments that this section prohibits incentives to “verify that . . . change orders are authorized”, which prohibits payments based on the third party’s determination that an order is authorized, but does not prohibit payments that are neutral as to the determination made by the third party.

Analysis: Qwest's comments seem not to be based on the full text of this section, which clearly states: "The independent third party shall not have any financial incentive to verify that Telecommunications Company change orders are authorized." We fail to see how this section could be interpreted to conflict with the FCC rule, as described by Qwest, that "an independent verifying entity may not have a financial incentive to 'confirm' a change."

Resolution: No change required.

#### **R14-4-1906 – Notice of Change**

Issue: AT&T commented that this section should be eliminated because notice to subscribers regarding their telephone service provider is governed by federal Truth-in-Billing requirements. AT&T believes that the provision is confusing to carriers regarding what carrier is responsible for providing the notice, because only the Executing Telecommunications Carrier can make a change in a Subscriber's service. AT&T requests that if the section is retained, that it be modified to allow that the "notice of change be printed in both English and Spanish or in the language the carrier has chosen to use in marketing to the Subscriber."

Allegiance comments that this section should be limited to residential customers and not be required in transactions with business customers, stating that the need for bilingual notices arises in the residential market, not the business market, and that the requirement to produce certain notices in both English and Spanish will require significant investment and expense on the part of smaller carriers such as Allegiance.

Citizens Communications Company ("Citizens") comments that this section, which requires an authorized carrier or its billing agent to notify subscribers of changes of service provider in both English and Spanish, is impractical, unnecessary and expensive for its affiliate Navajo Communications, Inc., which has a predominately Native American customer base. Citizens requests that a telecommunications company that provides service in an area that is predominately Native American be required to provide notification in English and appropriate communication for the Native American, and not in Spanish. Citizens has located a call center on Navajo Tribal Lands, and states that it has done so in large part due to the availability of Navajo speakers.

Cox comments that this section should be clarified to expressly indicate that the notice be sent to the Subscriber. Staff concurred with Cox that "to the Subscriber" should be inserted in this rule after

“separate mailing”.

Analysis: Because of the large Spanish-speaking population in Arizona, we believe that the rule as drafted best serves the public interest, for both business and residential customers. Citizens raises a reasonable point, however, and may request a waiver of the applicability of the rule, based on its provision of notification appropriate to its customer base, when the rules become effective.

Given the definitions of Authorized Carrier and Executing Telecommunications Carrier in these rules, we do not believe that this provision will confuse carriers as to who sends the required notice of change in service provider. This section does not require an Executing Telecommunications Carrier to provide notification to a Subscriber.

We agree with Cox’s proposed language addition to clarify that the referenced “separate mailing” would be sent to the Subscriber. It is already clear that a bill or a bill insert would be sent to the Subscriber.

Response: Insert “to the Subscriber” after “separate mailing”. No further changes required.

#### **R14-4-1907 – Unauthorized Changes**

##### **1907.B**

Issue: Qwest recommends eliminating the five-business day requirement from this section, stating that it is unrealistic in many circumstances, because a reasonable response time will vary according to the circumstances.

Staff comments that it does not agree with Qwest, and that an Unauthorized Change is a fraud on the consumer that requires an immediate response by a Telecommunications Carrier.

Analysis: We agree with Staff. Given the circumstances under which compliance with this section would be required, we believe that the timeframe in this rule is very reasonable and fair to the Unauthorized Carrier, and that Telecommunications Carriers should be able to comply within five business days at most.

Resolution: No change required.

##### **1907.C**

Issue: Qwest comments that although this section requires the Telecommunications Company to remedy an unauthorized change, the Unauthorized Carrier is the responsible party for remedying unauthorized changes. Qwest requests that this section be modified to state: “the Unauthorized Carrier shall:”.

Staff agrees that this provision should be changed so that it is consistent.

Analysis: We agree with Qwest and Staff.

Resolution: Replace "the Telecommunications Company shall" with "the Unauthorized Carrier shall"

**1907.C.2**

Issue: Qwest comments that this section creates inconsistency with the federal rules by absolving subscribers of all unpaid charges for a period of ninety days following a slam, while the FCC rules absolve subscribers of unpaid charges associated with a slam for a period of only thirty days. Qwest believes that this conflict will create administrative problems for telecommunications companies and will lead to subscriber confusion, particularly when slamming complaints involve both interstate and intrastate calls.

Staff comments that consumers are better served with a 90-day absolution period as embodied in the Arizona statutes and this section.

Analysis: We agree with Staff, and believe that customers are generally aware of the difference between interstate and intrastate calls and that any differences in absolution periods due to such difference can be easily explained.

Resolution: No change required.

**1907.C.3**

Issue: Qwest comments that this provision departs significantly from the FCC rules, which it believes is prohibited by Arizona law, and creates subscriber confusion. Qwest states that the FCC permits the original carrier to rebill calls, protecting the original carrier against foregone services during the absolution period.

Staff comments that it does not agree and believes customers are better served with a 90-day absolution period during which the carrier cannot rebill the customer.

Analysis: This section prohibits the original Telecommunications Carrier from billing a Subscriber for charges incurred during the first 90 days of the Unauthorized Carrier's service, but does allow the original Telecommunications Company to rebill charges the Subscriber incurred to the Unauthorized Carrier, after the 90 day absolution period, at the original Telecommunications Company's rates. We believe that this is the fairest resolution possible to the unfair situation presented to Arizona consumers by an Unauthorized Change.

Resolution: No change required.

#### 1907.C.4

Issue: AT&T comments that as drafted, this section could allow the original Telecommunications Company to apply the 150 percent credit toward charges incurred during the 90-day absolution period, and that in contrast, section 1907.C.3 prohibits the original Telecommunications Company from billing for charges incurred during the absolution period. AT&T proposed a revision to clarify that any refund from the Unauthorized Carrier is to be applied after the absolution period ends.

Staff comments that it is concerned that on some occasions Subscribers may pay a bill before they discover a slam, and believes that if this occurs during the 90-day period, the 150 percent credit should still apply.

Analysis: This section requires 150 percent of any charges paid by a Subscriber to an Unauthorized Carrier to be applied as a credit to authorized charges by the Authorized Carrier. It does not contain a time limitation. Because section 1907.C.3 prohibits the original Telecommunications Carrier from billing for unauthorized charges incurred during the first 90 days of the Unauthorized Carrier's service, the 150 percent of charges paid to the Unauthorized Carrier would be applied as a credit to the Subscriber's authorized charges. We believe that reading these two sections together already makes it clear that any 150 percent refund from the Unauthorized Carrier is to be applied to the Subscriber's authorized charges.

Resolution: No change required.

#### 1907.D.2

Issue: Qwest comments that it believes that the Commission should not inject itself into credit reporting relationships, which are governed by federal law, and that this section creates conflict with federal agencies charged with administration of the Fair Credit Reporting Act.

Staff comments that it is imperative that Customers be protected from adverse credit reports until disputed charges related to an alleged slam are resolved, and that Qwest has not cited any specific provision that it claims conflicts with this requirement.

Analysis: We agree with Staff.

Resolution: No change required.

#### 1907.E

Issue: AT&T comments that as drafted, this section would allow a customer to persist in “disputing” a charge even after the Commission had determined that the provider change was properly verified under section 1905. AT&T believes that the customer’s obligation to pay should be enforceable (even if disputed by the customer), so long as the change is properly verified under section 1905.

Staff comments that this section provides that the Customer remains obligated to pay any charges that are not disputed, and that if the parties cannot resolve the dispute, they may resort to the procedures of section 1910.

Analysis: We agree with Staff.

Resolution: No change required.

#### **1907.F**

Issue: Citizens comments that this section, which requires telecommunications companies to maintain records of individual slamming complaints for 24 months, will require companies to enhance data and information systems, and stated that this is costly and time-intensive. Citizens states that its automated systems currently preserve records of individual customer service order activity and any related remarks of its customer service representatives for only a six-month period, and that to comply with this section, it must have an outside vendor enhance its system design and make and test program modifications. Citizens requests that the Commission delay the effective date for the rules’ applicability for one year to allow time for it to implement the system upgrades necessary to comply with this rule. Citizens orally stated that if a temporary waiver request would be the appropriate avenue for it to obtain relief, that it could make such a request.

Analysis: Citizens is not requesting a change to the rule. If it requires additional time to comply with this rule, Citizens should request a temporary waiver of the applicability of the rule, when the rules become effective.

Response: No change required.

#### **R14-4-1908 – Notice of Subscriber Rights**

##### **1908.B.3**

Issue: AT&T comments that this section requires a Telecommunications Company to provide to each of its Subscribers a notice that the Unauthorized Carrier must remove all charges, but that section 1907 does

not so require.

Staff comments in response that it is aware that the proposed Notice of Customer Rights has become inconsistent with other provisions of the proposed rules and accordingly recommends that corresponding revisions are made to ensure that customer notices accurately reflect the provisions of the remainder of proposed Article 19. Staff recommends that AT&T's recommendation for this section be adopted.

Analysis: We agree with AT&T and Staff.

Resolution: Delete this section and renumber accordingly.

#### **1908.B.6**

Issue: AT&T comments that this section requires a Telecommunications Company to provide to each of its Subscribers a notice that the Original Telecommunications Company may bill the Customer for service provided during the first 90 days of service with the Unauthorized Carrier at the Original Telecommunications Company's rates, but that section 1907 does not so allow.

Qwest also comments that this section directly conflicts with section 1907.C.3.

Staff comments that it is aware that the proposed Notice of Customer Rights has become inconsistent with other provisions of the proposed rules and accordingly recommends that corresponding revisions are made to ensure that customer notices accurately reflect the provisions of the remainder of proposed Article 19. Staff recommends that AT&T's recommendation for this section be adopted.

Analysis: We agree that this section should be made consistent with section 1907.C.3. This should be accomplished by adding the additional language appearing in section 1907.C.3.

Resolution: Replace the last sentence of this section with "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;"

#### **1908.B.7**

Issue: AT&T comments that this section requires clarification to make it consistent with its recommended modification of section 1907.C.4.

Staff recommends against AT&T's proposed change to section 1907.C.4, and accordingly

recommends against AT&T's proposed changes to this section.

Analysis: We believe that our change to section 1908.B.7 described above removes any need for clarification to this section.

Resolution: No change required.

#### **1908.B.11**

Issue: Cox comments that this rule requires a clarification that it applies only to intraLATA and interLATA toll service provider freezes.

Staff agrees with the suggested clarification, but recommends that the phrase "long distance" be used instead of the more technical language suggested by Cox.

Analysis: The clarification Cox proposed is helpful and should be made using the phrase "long distance".

Resolution: Insert "long distance" between "Customer's" and "telecommunications".

#### **1908.C.1**

Issue: Cox comments that this rule requires a clarification that a Telecommunications Company need only provide the Notice of Subscriber Rights to its own new Customers. Staff comments that it does not share Cox's concern.

Analysis: We believe that Cox's proposed clarification is helpful and should be adopted.

Resolution: Insert "its" between "to" and "new Customers".

#### **1908.C.2**

Issue: Qwest believes the language of this section should be broadened to either 1) impose a publication requirement on all telecommunications companies; or 2) require each company to contribute to the cost of a generic notice for all companies. Qwest believes that otherwise, those companies that publish a directory are penalized.

Staff comments that this proposal has already been rejected on a number of occasions.

Analysis: It is important for customers to have access to the information required by this section in the white pages of their telephone directories. We do not believe that provision of this information penalizes Telecommunications Companies that publish a telephone directory or contract for publication of a telephone directory.

Resolution: No change required.

### 1908.C.3

Issue: AT&T comments that this section's requirement that the notice required by section 1908 be posted on its website would be an onerous burden and would have limited value given that the information at issue here can be made generally available to Arizona consumers from numerous other sources. AT&T states that it does not typically maintain information applicable only to the residents of a specific state, province, or territory on a website because of the high cost of keeping information accurate and current.

Staff comments that it believes a notice advising Arizona subscribers of their Arizona-specific rights is appropriate.

Analysis: We do not believe that the burden of providing this information on a company's website outweighs the benefit of having a notice displayed there advising Arizona subscribers of their Arizona-specific rights.

Resolution: No change required.

### 1908.C.4

Issue: AT&T asks that the Commission allow the notice of Subscriber rights to be written "in both English and Spanish or in the language the carrier has chosen to use in marketing to the subscriber."

Citizens comments that this section, which requires telecommunications companies to notify customers of their slamming rights in both English and Spanish, is impractical, unnecessary and expensive for its affiliate Navajo Communications, Inc., which has a predominately Native American customer base. Citizens requests that a telecommunications company that provides service in an area that is predominately Native American be required to provide notification in English and appropriate communication for the Native American, and not in Spanish. Citizens has located a call center on Navajo Tribal Lands, and states that it has done so in large part due to the availability of Navajo speakers.

Analysis: Because of the large Spanish-speaking population in Arizona, we believe that this section as drafted best serves the public interest. However, this section does not prevent a company from providing notice written in a language other than English or Spanish that the carrier has chosen to use in marketing to the Subscriber.

Citizens raises a reasonable point. Citizens may request a waiver of the applicability of the rule to

its affiliate Navajo Communications, Inc., based on its provision of notification appropriate to its customer base, when the rules become effective. AT&T may also request such a waiver if it believes it appropriate.

Response: No change required.

#### **R14-4-1909 – Customer Account Freeze**

##### **1909.A**

Issue: Qwest comments that this section should be modified to apply to local service as well as intraLATA service and interLATA service. Qwest states that this article fails to provide any regulation of local service freezes, leaving carriers to implement them through tariffs.

In response to comments from Qwest and Staff, the definition of “Customer Account Freeze”, section 1901.D, has been deleted.

Analysis: While it may become necessary in the future to promulgate a rule governing local service freezes, it is not necessary at this time.

The deletion of the definition of “Customer Account Freeze” necessitates a conforming change to this section to reflect that it is no longer a defined term.

Resolution: Replace “Account Freeze” with “account freeze”. No further change required.

##### **1909.C**

Issue: Qwest comments that this section should be modified to apply to local service as well as intraLATA service and interLATA service. Qwest states that this article fails to provide any regulation of local service freezes, leaving carriers to implement them through tariffs.

Analysis: While it may become necessary in the future to promulgate a rule governing local service freezes, it is not necessary at this time.

Resolution: No change required.

##### **1909.D**

Issue: Qwest comments that this section’s requirement for a formal authorization to add or lift a freeze to long distance service conflicts with FCC rules that do not require formal authorization to add or lift a freeze on interLATA or intraLATA service, except for the three-way call verification for removing a freeze.

Staff comments that the additional protections this section offers are necessary to protect consumers and should be adopted.

WorldCom Inc. ("WorldCom") comments that two new sections should be added after this section to provide that electronic authorization may be used to lift a Customer account freeze.

Qwest comments that it opposes WorldCom's request for electronic authorization as a means of verification because without direct contact, a provider cannot ensure that the subscriber is not a victim of slamming, and allowing electronic authorization from third parties would likely increase slamming. Qwest maintains that any means of authorization must come directly from the Subscriber.

Analysis: We agree with Staff that the additional protections this section offers are necessary to protect consumers from slamming.

WorldCom's concerns are adequately addressed in sections 1904 and 1905.

Resolution: No change required.

#### **1909.F**

Issue: Citizens comments that this section, which requires telecommunications companies to maintain records of Customer Account Freeze authorizations and repeals for 24 months, will require companies to enhance data and information systems, and states that this is costly and time-intensive. Citizens states that its automated systems currently preserve records of individual customer service order activity and any related remarks of its customer service representatives for only a six-month period, and that to comply with this section, it must have an outside vendor enhance its system design and make and test program modifications. Citizens requests that the Commission delay the effective date for the rules' applicability for one year to allow time for it to implement the system upgrades necessary to comply with this section. Citizens orally stated that if a temporary waiver request would be the appropriate avenue for it to obtain relief, that it could make such a request.

In response to comments from Qwest and Staff, the definition of "Customer Account Freeze", section 1901.D, has been deleted.

Analysis: Citizens is not requesting a change to this section. If it requires additional time to comply with this rule, Citizens should request a temporary waiver of its applicability, when the rules become effective.

The deletion of the defined term "Customer Account Freeze" necessitates a conforming change to this section to reflect that it is no longer a defined term.

Response: Replace "Account Freeze" with "account freeze" where it occurs in this section.  
No further change required.

#### **R14-4-1910 – Informal Complaint Process**

##### **1910.B.3**

Issue: AT&T suggested that this section, which is nearly identical to section 2008.B.3, should be revised slightly to define precisely when the clock begins ticking on the 5-day response period.

Staff notes that in most cases, the alleged Unauthorized Carrier will receive notice the same day as the Commission because it will often be sent by telephone or electronic mail. Staff recommends adoption of the AT&T proposal to make this section correspond to section 2008.

Analysis: We agree with the clarification proposed by AT&T and Staff.

Resolution: Add "of receipt of notice from the Commission" after "within 5 business days".

##### **1910.B.4**

Issue: Qwest comments that this section raises due process concerns by presuming the existence of an unauthorized change when a company fails to provide supporting documentation within 10 days. Qwest asserts that in such circumstances, the Commission makes a binding decision under an informal complaint process.

Staff comments that it does not share the concerns of parties who believe that due process rights are violated by a requirement that the public service company promptly respond to a regulatory inquiry.

Analysis: We agree with Staff that a public service company should promptly respond to a regulatory inquiry. In the informal complaint process, it is reasonable for Staff to deem a failure to timely respond to an investigative inquiry as an admission and as a rule violation for purposes of Staff's non-binding written summary of findings pursuant to this rule.

This section clearly applies only to the informal complaint process, and only governs Staff's responsibility to inform a Telecommunications Company of how Staff must treat a failure to respond in its written summary, under this section. It does not address how the failure to respond would be treated in a hearing on a formal complaint.

Resolution: No change required.

##### **1910.B.6**

Issue: Qwest comments that this section should be eliminated, as it repeats the provision contained in 1910.C and the redundancy serves to confuse carriers and subscribers.

Analysis: We agree with Qwest.

Resolution: Delete this section and renumber accordingly.

**1910.B.7**

Issue: Qwest comments that this section should be eliminated, as it repeats the provision contained in 1910.D and the redundancy serves to confuse carriers and subscribers.

Analysis: We agree with Qwest.

Resolution: Delete this section and renumber accordingly.

**1910.B.8**

Issue: Cox comments that this section's requirement that a failure to provide information requested by Staff or a good faith response within 15 business days of a request will be deemed an admission of a violation of these rules amounts to a procedural denial of due process, particularly when the admitted violation will be made a part of the Staff's nonbinding summary of its review on the informal complaint. Cox comments that a failure to respond would more appropriately be considered, at most, a rebuttable presumption that could be disproved at hearing.

Qwest comments that it has serious due process concerns with the informal complaint process because it places the burden of proof on the responding company and establishes a presumption in favor of the Subscriber.

Staff comments that it does not share the concerns of parties who believe that due process rights are violated by a requirement that the public service company promptly respond to a regulatory inquiry.

Analysis: We agree with Staff that a public service company should promptly respond to a regulatory inquiry. In the informal complaint process, it is reasonable for Staff to deem a failure to timely respond to an investigative inquiry as an admission and as a rule violation for purposes of Staff's non-binding written summary of findings pursuant to this rule.

This section clearly applies only to the informal complaint process, and only governs Staff's responsibility to inform a Telecommunications Company of how Staff must treat a failure to respond in its

written summary, under this section. It does not address how the failure to respond would be treated in a hearing on a formal complaint.

Resolution: No change required.

#### **R14-4-1911 – Compliance and Enforcement**

Issue: Qwest comments that this section should be deleted, as it restates the penalty statutes contained in the Arizona Revised Statutes. Qwest further comments that the Commission should also adopt the FCC's approach, which considers the willfulness of carriers in assigning penalties, and that the severity of penalties should vary according to the level of carrier culpability.

Staff comments that it is appropriate to clarify the procedures for compliance and enforcement that apply to this article.

Analysis: We agree with Staff.

Resolution: No change required.

#### **R14-4-1914 – Script Submission**

Issue: Cox comments that this section should be clarified to limit submissions to scripts used to directly solicit new services from individual consumers in Arizona.

AT&T comments that a carrier should not be obliged to turn over all scripts, and that filing the scripts under seal does not resolve the problem of releasing valuable internal information from its control. AT&T stated its willingness to provide responsive proprietary scripts to the Commission if needed in a complaint proceeding. AT&T believes that this section's requirement as written is overbroad and includes no clear purpose for requiring submission of scripts. AT&T recommends that this section be eliminated.

WorldCom comments that scripts should be filed annually except if a new launch is initiated that causes the creation of a whole new set of scripts. WorldCom also commented that it would like clarification that while the Commission may review scripts so that it has notice of what and how telecommunications products are being sold, it will not mandate that a specific script be used and will not re-write, re-script or direct a company's marketing efforts as long as no fraudulent or misleading statements are stated or implied. WorldCom urges that the Commission set criteria for types of scripts that could cause punitive actions by the Commission.

Allegiance comments that this section should apply only to scripts provided to third party marketing agents. Allegiance further comments that this section should be clarified to require that script submissions only need to be made annually or after substantial amendment to the script, that the Commission is not seeking pre-approval rights for such scripts, and that scripts are not required.

Qwest comments that filing scripts under seal relieves few confidentiality concerns, because scripts remain subject to Staff review, and any problems the Commission finds upon reviewing the scripts will result in the scripts losing their confidential status. Qwest further comments that the filing of a script and the right of the Director of the Utilities Division to review it constitutes an unlawful prior restraint upon speech, and recommends elimination of this rule. Qwest comments that it supports the objections made by AT&T, WorldCom and Cox that this section is overbroad and recommends that the Commission require annual filings of only those scripts relating to marketing practices.

On July 12, 2002, following the public comment hearing on these rules, Staff filed Supplemental Comments in response to issues raised regarding the breadth of this section as originally proposed. Staff proposes that the language of this section be clarified to apply to sales or marketing scripts that involve proposing a change in Telecommunications Company or responding to an inquiry regarding a possible change in Telecommunications Company. Staff further proposes a clarification to this section that requires such scripts to be filed 90 days from the day the rules are published in a notice of final rulemaking in the Arizona Administrative Register, on April 15 of each year, whenever directed to do so by the Director of the Commission's Utilities Division, and whenever a material change to a script occurs or a new script is used that is materially different from a script on file.

On July 24, 2002, Cox and AT&T filed responses to Staff's Supplemental Comments on this section. Cox states that Staff's proposed revisions resolve some of the issues raised and are a significant improvement. AT&T continues to object to required submission of confidential and proprietary scripts where there is no allegation of wrongdoing or consumer confusion, stating that this section imposes costly and unnecessary compliance burdens on companies and that the Commission has authority to request script submission in the course of a complaint proceeding.

Analysis: This section puts in place a mechanism for monitoring Telecommunications Companies' scripts for fraudulent practices that are known to occur in the industry and are prohibited by this article, and

provides that Staff may initiate a formal complaint to review any script. This section does not require that scripts be pre-approved by the Commission or require that scripts be used at all.

The prevention of consumer fraud by public service corporations upon Arizona consumers constitutes a compelling state interest that outweighs the burdens of compliance referenced in the comments. The clarifications proposed by Staff in its Supplemental Comments reasonably address the comments regarding the breadth of this section. With the clarifications, the requirements of this section are narrowly tailored to apply only to those scripts that would be used in the types of customer contacts where misleading or improper marketing activities are known to have occurred.

Resolution: Insert the language proposed by Staff in its Supplemental Comments filed on July 12, 2002.

## **ARTICLE 20. CONSUMER PROTECTIONS FOR UNAUTHORIZED CARRIER CHARGES**

### **R14-4-2001 – Definitions**

#### **2001.A**

Issue: The Wireless Group recommends that the definition of “Authorized Carrier” be deleted from this section because it is not relevant to Article 20 and Article 20 does not make use of the term. Staff supports the Wireless Group’s recommendation.

Analysis: The definition of “Authorized Carrier” should be deleted from this section because it is not relevant to Article 20 and Article 20 does not make use of the term.

Resolution: Delete the definition of “Authorized Carrier” from this section and renumber accordingly.

#### **2001.D**

Issue: Cox comments that the term “Subscriber” should be modified to exclude business customers who receive telecommunications services under a written contract, because the rules may not be appropriate in business service situations where there is a written contract between the Telecommunications Company and the business customer.

Staff comments that all customers should be protected by the proposed rules.

Analysis: It is possible for Telecommunications Companies to obtain the authorization and verification that the rules require by contract with its business customers.

Resolution: No change required.

### **2001.F - Definition of Unauthorized Charge**

Issue: The Wireless Group states that it generally supports the exemption in this definition of “one-time pay-per-use charges or taxes and other surcharges that have been authorized by law to be passed through to the customer,” but that the Commission lacks authority to regulate wireless carrier rates and thus to determine whether a particular charge is “authorized by law to be passed through” to customers. The Wireless Group believes that the Commission should either exempt all surcharges that wireless carriers place on their bills from the definition of an Unauthorized Charge, or clarify that only surcharges prohibited by law should be included within the definition of Unauthorized Charge. The Wireless Group asserts that because the Commission does not have the authority to prohibit wireless carriers from passing through charges to their customers, it lacks authority to treat any surcharge as unauthorized.

Qwest joins the Wireless Group in recommending that the Commission clarify that only charges prohibited by law are incorporated in the definition of Unauthorized Charges. Qwest states that many legal charges, including charges by tariff, price list, and surcharges, are not expressly authorized, and are thus apparently included under the cramming rules, but that because these charges are not prohibited by law, they cannot be included within the scope of cramming regulations.

Staff states that because the Commission may not regulate the rates of wireless carriers, that any surcharge imposed by the wireless carrier would be authorized by law, and thus would fall under the current wording of the condition. Staff does not believe that a change is necessary.

Analysis: We agree with Staff.

Resolution: No change required.

### **2001.F - Delivery of Wireless Phones**

Issue: The Wireless Group comments that this section should be modified to specify that it applies only to unsolicited delivery of a wireless phone. Staff agrees and recommends that the rule should be clarified to apply to “the unsolicited delivery” of a wireless phone.

Analysis: We agree that the rule should be clarified to apply to “the unsolicited delivery” of a wireless phone.

Resolution: Replace “a wireless phone delivered” with “the unsolicited delivery of a wireless phone”.

### **R14-4-2002 – Purpose and Scope**

Issue: Qwest comments that this section should be eliminated entirely. Qwest states that rules are not intended to merely state a purpose. Qwest asserts that a purpose statement violates A.R.S. § 41-1001.17, which limits a rule to a statement that actually “interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency.” Qwest further comments that if the Commission chooses to adopt this rule, it should address unauthorized charges on bills imposed by all entities, rather than just telecommunications companies.

Staff comments that it disagrees with Qwest’s legal analysis, and asserts that a statement of purpose and scope gives guidance as to how the subsequent rules are to be interpreted. Staff believes that in this respect, this section is more like a definition than the type of statement prohibited by A.R.S. § 41-1001.17.

Analysis: We believe that this section as proposed complies with A.R.S. § 41-1001.17 in that it is a Commission statement of general applicability that prescribes Commission policy. However, we also believe that this section would gain clarity by replacing “are intended to” with “shall be interpreted to”.

Resolution: Replace “are intended to” with “shall be interpreted to”.

#### **R14-4-2005 – Authorization Requirements**

##### **2005.A.3**

Issue: The Wireless Group comments that most telecommunications customers are sophisticated enough to understand that when they purchase services, they will be required to pay for the service, and this rule is overbroad and unnecessary.

Qwest believes that it should be able to assume that the subscriber expects to see charges on the bill.

The Wireless Group and Qwest recommend deletion of the requirement of this rule that a Telecommunications Company obtain from the Subscriber explicit acknowledgement that the charges will be on the Customer’s bill.

Staff comments that it is important that Subscribers are informed of the effect that a new product or service will have on their bill, and does not support eliminating a requirement for customer acknowledgement of proposed charges. Staff notes that the explicit subscriber acknowledgement could be a simple statement during a phone contact with the company.

Analysis: We agree that a Telecommunications Company can easily obtain the acknowledgement that the charges will be billed, and that this acknowledgement should certainly be obtained. This requirement is necessary to achieve the objectives of these rules, is therefore not overbroad, and should not be deleted.

Resolution: No change necessary.

**2005.B**

Issue: The Wireless Group states that Telecommunications Companies should only be required to offer to Subscribers the information required by this rule upon request. Qwest comments that they should be obligated only to providing a clear, non-misleading description of the product or service, and that a description should only be required for those products or services requested. Qwest also recommends that the requirement that the company describe how the charge will appear on the Customer's bill be deleted, because the requirement will add unnecessary time to sales calls.

The Wireless Group asserts that many customers do not want to be inundated with information when they sign up for a service, but that they might find it useful to know that a Telecommunications Company has an obligation to provide more detailed information if they request it. Staff points out that the rule only applies to products and services offered during the course of the contact with the customer, and not to all of a company's products and services.

Analysis: Subscribers should understand how charges will appear on their bill prior to making a decision to order a product or service, and this understanding could lead to a reduction in the time companies might be required to spend remedying problems resulting from under-informed Subscribers. The text of this rule applies only to products offered to the Subscriber, and is necessary to achieve the objectives of the rules.

Resolution: No change required.

**2005.B.1**

Issue: Qwest comments that the obligation of the provider should be limited to providing a clear, non-misleading description of the product or service, and that although in many cases an explanation may be desirable or useful, requiring an explanation at the point of sale in every case is not appropriate. Qwest

comments that similarly, representatives should be providing a “statement” of applicable charges, not an “explanation.”

Analysis: Customers deserve an explanation of products or services offered in order to be able to make an informed decision whether to buy the product or service.

Resolution: No change required.

#### **2005.B.2**

Issue: Qwest suggests adding “for each product or service requested” at the end of this section, and that the representative should not be required to provide the charges of every service or product offered, only those that the subscriber requests or agrees to buy.

Analysis: An explanation of a product or service should include the charges for the service.

Resolution: No change required.

#### **2005.B.3**

Issue: Qwest comments that the requirement that representatives explain “how the charge will appear on the customer’s bill” should be deleted. Qwest believes that it is only critical that the subscriber receive a description of the service or product and a statement of the charges and that an explanation of how the charge will appear only adds unnecessary time to subscriber contact and increases hold times.

Analysis: Customers should be informed of how the charge will appear on their bill.

Resolution: No change required.

#### **2005.C**

Issue: This rule requires that authorizations shall be given in all languages used at any point in the sales transaction, and that the Telecommunications Company must offer to conduct the transaction in English or Spanish and must comply with the Customer’s choice. The Wireless Group believes that the requirement should be modified to require companies to communicate with customers in English or Spanish upon request, and that this rule should not apply to transactions that take place in retail stores because Spanish-speaking employees may not be available there. In addition, the Wireless Group believes the rule should be clarified to state that companies are not required to conduct transactions in any language, but only in the languages that the company uses to solicit business.

Qwest comments that Telecommunications Companies should only be required to provide notice

in the Subscriber's choice of language, and that requiring notice to be written in any language used at any point in the sales transaction will result in a significant cost increase.

Citizens comments that this rule is impractical, unnecessary and expensive for its affiliate Navajo Communications, Inc., which has a predominately Native American customer base. Citizens requests that a telecommunications company that provides service in an area that is predominately Native American be required to provide notification in English and appropriate communication for the Native American, and not in Spanish. Citizens has located a call center on Navajo Tribal Lands, and stated that it did so in large part due to the availability of Navajo speakers.

Allegiance comments that this section should be limited to residential customers and not be required in transactions with business customers, stating that the need for bilingual notices arises in the residential market, not the business market, and that the requirement to produce certain notices in both English and Spanish will require significant investment and expense on the part of smaller carriers such as Allegiance.

Cox comments that the rule appears to mandate that the Telecommunications Company have the ability to conduct a sales transaction in Spanish on the spot, and would place an unreasonable burden on the company's staffing requirements. Cox states that it would be more reasonable for a company to delay a sales transaction if it could not conduct that transaction in Spanish.

Staff comments that if a Subscriber were to contact a company employing a language not understood by the company's representatives, that the company's only obligation is not to complete the transaction since the company would not be able to comply with the rule's notice and authorization requirements.

Analysis: This section requires that if the Telecommunications Company employs any language in the sales transaction, that the required authorizations be given in that language. This is a valid consumer protection requirement for both residential and business customers, and the protections afforded by this requirement merit the expense of obtaining a valid authorization. We agree with the comments of Cox and Staff that that it would be more reasonable for a company to delay a sales transaction if it could not conduct that transaction in Spanish, or in any other language used in the course of the transaction, for that matter. We believe that a minor addition to this section may be required to clarify this point.

Citizens raises a reasonable point in relation to its affiliate Navajo Communications, Inc. Because of the large Spanish-speaking population in Arizona, we believe that the rule as drafted best serves the public interest, but that when the rules become effective, Citizens may request a waiver of the applicability of the rule for its affiliate Navajo Communications, Inc., based on the fact that it will provide the required notification in a language appropriate to the affiliate's customer base.

Resolution: Insert "or shall not complete the transaction" after "must comply with the Customer's choice".

#### **2005.D**

Issue: Qwest comments that this provision should only apply when carriers attempt to sell a line product or service. Cox comments that this section should be deleted to avoid the potential difficulties and burdens that would be imposed by this section's requirement that companies inform a Subscriber of the cost of "basic local exchange telephone service" as the term is defined in A.A.C. R14-2-1201.6. Cox comments that alternatively, the concerns addressed by this section would still be met by deleting the first sentence of this section. AT&T urges the Commission to eliminate the first sentence of this section, and that if this section is retained, that it not apply to business customers.

In its Supplemental Comments filed on July 12, 2002, Staff proposes changes to the first sentence of this section to make this rule applicable only to contacts in which a Telecommunications Company offers to establish service or during which a person requests the establishment of service. Cox comments in response that it would still prefer the elimination of the first sentence of the section. AT&T comments in response to Staff's proposed clarification that the first paragraph of this section should be further clarified to include the word "residential" immediately before "service" in both places it appears.

Analysis: This section addresses the Commission's concern that persons requesting or being offered residential service be informed of the lowest-cost telephone service available. Staff's proposed modification to this section provides clarity and should be adopted. AT&T's proposed modification also provides clarity. A.A.C. R14-2-1201.6, which is referenced in the first sentence of this section, refers to "1-party residential service with a voice grade line." Therefore, the addition of the word "residential" as clarification to the first sentence of this section as recommended by AT&T would be helpful. The remaining sentences of this section apply to companies' descriptions of any product, service, or plan, and

the Commission does not intend them to be limited to descriptions of residential products, services, or plans.

Resolution: Replace “during which” with “in which”. Replace “sell a product or service” with “establish residential service”. Replace “a Subscriber requests to buy a product or service” with “a person requests the establishment of residential service”.

#### **2005.E**

Issue: Citizens comments that this section, which requires telecommunications companies to maintain records of individual subscriber service authorizations for 24 months, will require companies to enhance data and information systems, and states that this is costly and time-intensive. Citizens states that its automated systems currently preserve records of individual customer service order activity and any related remarks of its customer service representatives for only a six-month period, and that to comply with this section, it must have an outside vendor enhance its system design and make and test program modifications. Citizens requested that the Commission delay the effective date for the rules’ applicability for one year to allow time for it to implement the system upgrades necessary to comply with this rule. Citizens orally stated that if a temporary waiver request would be the appropriate avenue for it to obtain relief, that it could make such a request.

Analysis: Citizens is not requesting a change to the rule. If it requires additional time to comply with this rule, Citizens should request a temporary waiver of the applicability of the rule, when the rules become effective.

Response: No change required.

#### **R14-4-2006 – Unauthorized Charges**

##### **2006.A.5**

Issue: Citizens comments that this section, which requires telecommunications companies to maintain records of unauthorized charges for 24 months, will require companies to enhance data and information systems, and stated that this is costly and time-intensive. Citizens states that its automated systems currently preserve records of individual customer service order activity and any related remarks of its customer service representatives for only a six-month period, and that to comply with this section, it must have an outside vendor enhance its system design and make and test program modifications. Citizens

requested that the Commission delay the effective date for the rules' applicability for one year to allow time for it to implement the system upgrades necessary to comply with this rule. Citizens orally stated that if a temporary waiver request would be the appropriate avenue for it to obtain relief, that it could make such a request.

Qwest comments that its current practice is to record information regarding a complaint on the individual Subscriber's record, where all information pertaining to the Subscriber's account is currently maintained, and that this is the most efficient and reasonable means to record such information. Qwest's comment does not request a change to this section.

Analysis: If it requires additional time to comply with this rule, Citizens should request a temporary waiver of the applicability of the rule when the rules become effective.

Response: No change required.

#### **2006.C.1**

Issue: AT&T comments that this section is very similar to section 1907.D.1, which allows a Telecommunications Company to disconnect service if "requested by the Subscriber," and believes that this section should be made consistent with section 1907.D.1.

Analysis: We agree with AT&T.

Resolution: Insert "unless requested by the Subscriber" after "alleged Unauthorized Charge".

#### **2006.C.2**

Issue: Qwest comments that it believes that the Commission should not inject itself into credit reporting relationships, which are governed by federal law, and that this section creates conflict with federal agencies charged with administration of the Fair Credit Reporting Act. Qwest asserts that this section should be deleted.

Analysis: It is imperative that Customers be protected from adverse credit reports until disputed charges related to an alleged Unauthorized Charge are resolved. Qwest has not cited any specific provision that it claims conflicts with this requirement.

Resolution: No change required.

#### **R14-4-2007 – Notice of Subscriber Rights**

#### **2007.C.1**

Issue: The Wireless Group states that the requirements of this rule to include name, address, and telephone number of the Telecommunications Company is burdensome and unnecessary in light of federal requirements. Qwest comments that a toll-free number should be sufficient and that providing its address is burdensome, unnecessarily costly and should be eliminated from the rule.

Analysis: Any burden of providing this information is outweighed by the need for Arizona consumers to have this information.

Resolution: No change required.

#### **2007.C.5**

Issue: Qwest comments that this section's allowance of 15 days to complete the process of investigating unauthorized charges, resolving the complaint, and refunding or crediting the charge, directly conflicts with proposed R14-2-2006.A.3, which provides two billing periods to refund or credit an unauthorized charge. Qwest recommends that to maintain consistency, this section should be modified to allow two billing periods for refund or credit.

AT&T provides similar comments, stating that 15 days is not sufficient to investigate a complaint, communicate with necessary witnesses, obtain resolution and provide a refund or credit to the customer.

Analysis: This section should be made consistent with section 2006.A.3.

Resolution: Replace "Unauthorized Charges as promptly as reasonable business practices permit, but no later than 15 days from the Subscriber's notification" with "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".

#### **2007.D**

Issue: The Wireless Group comments that many customers do not keep materials that are provided to them at the time service is initiated, and that it is questionable whether customers would have the notice of subscriber rights at the time they have a complaint. The Wireless Group proposes that this rule be modified to permit Telecommunications Companies to place an abbreviated form of the notice of subscriber rights in periodic bill messages instead of providing the notice at the time service is initiated. The Wireless Group believes that its recommended change to the rule would allow companies to avoid the cost and burden of

producing Arizona-specific printed material for new customers while at the same time increasing the likelihood that all customers will have the information when they need it.

Allegiance comments that this section should be limited to residential customers and not be required in transactions with business customers, stating that the need for bilingual notices arises in the residential market, not the business market, and that the requirement to produce certain notices in both English and Spanish will require significant investment and expense on the part of smaller carriers such as Allegiance.

Staff comments that the costs associated with providing Arizona consumers information on their legal rights in Arizona is a prudent cost for an Arizona public service company.

Analysis: We agree with Staff that the costs associated with providing Arizona consumers, including businesses, information on their legal rights in Arizona is a prudent cost for an Arizona public service company. The information required by this section should be provided at the time service is initiated.

Resolution: No change required.

#### **2006.D.2**

Issue: Qwest believes the language of this section should be broadened to either 1) impose a publication requirement on all telecommunications companies; or 2) require each company to contribute to the cost of a generic notice for all companies. Qwest believes that otherwise, those companies that publish a directory are penalized.

Analysis: It is important for customers to have access to the information required by this section in the white pages of their telephone directories. We do not believe that provision of this information penalizes Telecommunications Companies that publish a telephone directory or contract for publication of a telephone directory.

Resolution: No change required.

#### **2007.D.3**

Issue: AT&T comments that this section's requirement that the notice required by section 2007 be posted on its website would be an onerous burden and would have limited value given that the information at issue here can be made generally available to Arizona consumers from numerous other sources. AT&T states

that it does not typically maintain information applicable only to the residents of a specific state, province, or territory on a website because of the high cost of keeping information accurate and current.

Analysis: We do not believe that the burden of providing this information on a company's website outweighs the benefit of having a notice displayed there advising Arizona subscribers of their Arizona-specific rights.

Resolution: No change required.

#### **2007.D.4**

Issue: Citizens comments that this rule, which requires telecommunications companies to notify customers of their cramming rights in both English and Spanish, is impractical, unnecessary and expensive for its affiliate Navajo Communications, Inc., which has a predominately Native American customer base. Citizens requests that a telecommunications company that provides service in an area that is predominately Native American be required to provide notification in English and appropriate communication for the Native American, and not in Spanish. Citizens has located a call center on Navajo Tribal Lands, and stated that it has done so in large part due to the availability of Navajo speakers.

Analysis: Citizens raises a reasonable point. Because of the large Spanish-speaking population in Arizona, we believe that the rule as drafted best serves the public interest, but that Citizens may request a waiver of the applicability of the rule, based on its provision of notification appropriate to its customer base, when the rules become effective.

Response: No change required.

#### **R14-4-2008 – Informal Complaint Process**

##### **2008**

Issue: Qwest comments that it has serious due process concerns with the informal complaint process because it places the burden of proof on the responding company and establishes a presumption in favor of the Subscriber.

Staff comments that it does not share the concerns of parties who believe that due process rights are violated by a requirement that the public service company promptly respond to a regulatory inquiry.

Analysis: We agree with Staff that a public service company should promptly respond to a regulatory inquiry. In the informal complaint process, it is reasonable for Staff to deem a failure to timely

respond to an investigative inquiry as an admission and as a rule violation for purposes of Staff's non-binding written summary of findings pursuant to this rule.

This section clearly applies only to the informal complaint process, and only governs Staff's responsibility to inform a Telecommunications Company of how Staff must treat a failure to respond in its written summary, under this rule. The rule does not address how the failure to respond would be treated in a hearing on a formal complaint.

Resolution: No change required.

### **2008.B.3**

Issue: The Wireless Group comments that the Commission should provide Telecommunications Companies with sufficient time to research and resolve complaints once they are filed with the Commission. The Wireless Group proposes that the timeframe in this rule be changed from 5 days to 10 days.

Analysis: We believe that the rule as proposed allows a reasonable timeframe for a prompt response to a regulatory inquiry.

Resolution: No change required.

### **2008.B.4**

Issue: The Wireless Group states that the Commission should provide Telecommunications Companies with sufficient time to research and resolve complaints once they are filed with the Commission. The Wireless Group proposes that the timeframe in this rule be changed from 10 business days to 20 business days.

Analysis: We believe that the rule as proposed allows a reasonable timeframe for a prompt response to a regulatory inquiry.

Resolution: No change required.

### **2008.B.5**

Issue: The Wireless Group states that the Commission should provide Telecommunications Companies with sufficient time to research and resolve complaints once they are filed with the Commission. The Wireless Group proposes that the timeframe in this rule be changed from 10 business days to 20 business days.

Analysis: We believe that the rule as proposed allows a reasonable timeframe for a prompt response to a regulatory inquiry.

Resolution: No change required.

**2008.B.6**

Issue: This section repeats the provision contained in 2008.C.

Analysis: This redundancy may confuse carriers and subscribers.

Resolution: Delete this section and renumber accordingly.

**2008.B.7**

Issue: This section repeats the provision contained in 2008.D.

Analysis: This redundancy may confuse carriers and subscribers.

Resolution: Delete this section and renumber accordingly.

**2008.B.8**

Issue: The Wireless Group comments that the Commission should provide Telecommunications Companies with sufficient time to research and resolve complaints once they are filed with the Commission. The Wireless Group proposes that the timeframe in this section be changed from 15 business days to 25 business days.

Cox comments that this section's requirement that a failure to provide information requested by Staff or a good faith response within 15 business days of a request will be deemed an admission of a violation of these rules amounts to a procedural denial of due process, particularly when the admitted violation will be made a part of the Staff's nonbinding summary of its review on the informal complaint. Cox comments that a failure to respond would more appropriately be considered, at most, a rebuttable presumption that could be disproved at hearing.

Staff does not share the concerns of parties who believe that due process rights are violated by a requirement that the public service company promptly respond to a regulatory inquiry.

Analysis: We agree with Staff that a public service company should promptly respond to a regulatory inquiry. We believe that the rule as proposed allows a reasonable timeframe for a prompt response to a regulatory inquiry. In the informal complaint process, it is reasonable for Staff to deem a

failure to timely respond to an investigative inquiry as an admission and as a rule violation for purposes of Staff's non-binding written summary of findings pursuant to this rule.

This rule section clearly applies only to the informal complaint process, and only governs Staff's responsibility to inform a Telecommunications Company of how Staff must treat a failure to respond in its written summary, under this section. It does not address how the failure to respond would be treated in a hearing on a formal complaint.

Resolution: No change required.

#### **2008.C**

Issue: The Wireless Group proposes that the timeframe in this rule be changed from 30 days to 30 business days. The Wireless Group states that the Commission should provide Telecommunications Companies with sufficient time to research and resolve complaints once they are filed with the Commission.

Analysis: We believe that the rule as proposed allows a reasonable timeframe for a prompt response to a regulatory inquiry.

Resolution: No change required.

#### **R14-4-2009 – Compliance and Enforcement**

Issue: Qwest comments that this section essentially restates the penalty statutes contained in the Arizona Revised Statutes, that it is therefore redundant, and should be eliminated.

Staff commented that it believes it is appropriate to clarify the procedures for compliance and enforcement that apply to this article.

Analysis: We agree with Staff.

Resolution: No change required.

#### **2009.A**

Issue: The Wireless Group recommends that this provision should be made effective only when Staff is reviewing a specific complaint.

Analysis: The Wireless Group believes that this provision could be overbroad if it is applicable when Staff is not reviewing a specific complaint. We do not believe that this requirement, which applies to informal investigations conducted by Staff, is overbroad.

Resolution: No change required.

**R14-4-2012 – Script Submission**

Issue: The Wireless Group comments that the obligation for all Telecommunications Companies to file a copy of all of their scripts is highly burdensome and unnecessary, and should be eliminated, or alternatively should be restricted to scripts involving a solicitation of business such as outbound telemarketing and only if it is necessary to resolve a specific complaint. The Wireless Group believes that this requirement would be burdensome both to companies and to the Commission, and argued that some of the information contained in scripts used by competitors in an extremely competitive marketplace, such as wireless carriers, is confidential and proprietary, requiring filing of the majority of scripts under seal.

Cox comments that this section should be clarified to limit submissions to scripts used to directly solicit new services from individual consumers in Arizona.

AT&T stated its willingness to provide responsive proprietary scripts to the Commission if needed in a complaint proceeding. AT&T believes that this section's requirement as written is overbroad and includes no clear purpose for requiring submission of scripts. AT&T recommends that this section be eliminated.

WorldCom commented that scripts should be filed annually except if a new launch is initiated that causes the creation of a whole new set of scripts. WorldCom also comments that it would like clarification that while the Commission may review scripts so that it has notice of what and how telecommunications products are being sold, but that it will not mandate that a specific script be used and will not re-write, re-script or direct a company's marketing efforts as long as no fraudulent or misleading statements are stated or implied. WorldCom urges that the Commission set criteria for types of scripts that could cause punitive actions by the Commission.

Allegiance comments that this section should apply only to scripts provided to third party marketing agents. Allegiance further comments that this section should be clarified to require that script submissions only need to be made annually or after substantial amendment to the script, that the Commission is not seeking pre-approval rights for such scripts, and that scripts are not required.

Qwest comments that production of these scripts raises confidentiality issues. Qwest states that any problems found by the Commission upon reviewing the scripts will require the Commission to use the

confidential information, and in addition, the filing of a script and the right of the Director of the Utilities Division to review it constitutes an unlawful, prior, restraint upon speech. Qwest therefore recommends elimination of this section. Qwest comments that it supports the objections made by AT&T, WorldCom and Cox that this section is overbroad, and recommends that the Commission require annual filings of only those scripts relating to marketing practices.

On July 12, 2002, following the public comment hearing on these rules, Staff filed Supplemental Comments in response to issues regarding this section. Staff proposes that the language of this rule be clarified to apply to sales or marketing scripts that involve an offer to sell a product or service, including all scripts for unrelated matters that include a prompt for workers to offer to sell a product or service. Staff further proposes a clarification to this section that requires such scripts to be filed 90 days from the day the rules are published in a notice of final rulemaking in the Arizona Administrative Register, on April 15 of each year, whenever directed to do so by the Director of the Commission's Utilities Division, and whenever a material change to a script occurs or a new script is used that is materially different from a script on file.

On July 24, 2002, Cox, the Wireless Group and AT&T filed responses to Staff's Supplemental Comments on this section. Cox states that Staff's proposed revisions resolve some of the issues raised and are a significant improvement. AT&T continues to object to required submission of confidential and proprietary scripts where there is no allegation of wrongdoing or consumer confusion, stating that this section imposes costly and unnecessary compliance burdens on companies and that the Commission has authority to request script submission in the course of a complaint proceeding. The Wireless Group still believes that this section, even with the proposed clarifications, would be unduly burdensome, and that the wireless industry sales practices are already subject to consumer protection laws. The Wireless Group believes that a requirement that scripts be provided to Staff in connection with actual complaints or in response to a specific request for review from the Commission is a more appropriate balancing of benefit against burden than is the annual submission of marketing scripts.

Analysis: This section puts in place a mechanism for monitoring Telecommunications Companies' scripts for fraudulent practices that are known to occur in the industry and are prohibited by this article, and

provides that Staff may initiate a formal complaint to review any script. This section does not require that scripts be pre-approved by the Commission, or require that scripts be used at all.

The prevention of consumer fraud by public service corporations upon Arizona consumers constitutes a compelling state interest that outweighs the burdens of compliance referenced in the comments. The clarifications proposed by Staff in its Supplemental Comments reasonably address the comments regarding the breadth of this section. With the clarifications, the requirements of this section are narrowly tailored to apply only to those scripts that would be used in the types of customer contacts where misleading or improper marketing activities are known to have occurred.

Resolution: Insert the clarification language proposed by Staff in its Supplemental Comments filed on July 12, 2002. No further change required.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable.

**13. Incorporations by reference and their location in the rules:**

None

**14. Was this rule previously made as an emergency rule?**

No

**15. The full text of the rules follows:**

**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
R14-2-1914.	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
- R14-2-2012. 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 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 Unauthorized Carrier that the change was unauthorized, the 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 has been notified that an Unauthorized Change has occurred and the Telecommunications Company cannot verify within five business days that the change was authorized pursuant to R14-2-1905, the ~~Telecommunications Company~~ 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 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 Unauthorized Carrier if a Subscriber has not paid charges to the 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 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% of any Unauthorized Carrier's charges that a

Subscriber paid to the Unauthorized Carrier. The original Telecommunications Company shall apply the credit of 150% to the Subscriber's authorized charges.

- D. Until the Telecommunications Company 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 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% of the charges to the original Telecommunications Company and the original Telecommunications Company shall apply the 150% 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).
- 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 Charge;
  - 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; and
  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.

**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**

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**

~~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 R14-2-1914.(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 A.A.C. 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" 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~~ the unsolicited delivery of a wireless phone 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 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 or credit to the Customer all money paid by the Customer at the Customer's option for any 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.

**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**

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**

~~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 R14-2-2012(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 A.C.C. 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.