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Arizona Corporation Commission

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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

Gentlemen:

Thank you for the opportunity to respond to the concerns raised by the Arizona Wireless Carriers Group. The Commission's response is presented in the attached Memorandum of Law. In their letter, the wireless carriers restate various arguments raised in their Application for Rehearing of Decision 65452, and they incorporate the Application by reference. Accordingly, the Memorandum of Law addresses, point-by-point, each contention raised in the Application for Rehearing. As you will see, the contentions of the Wireless Carriers should each be rejected, and the Attorney General's Office should conclude that the proposed rules were enacted within the Commission's lawful authority.

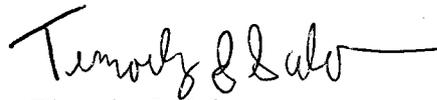
In preparing this response to the Wireless Carriers, I noticed a typographical error in the summary of comments. Specifically, the summary contains an incorrect chapter number, so that it refers to R14-4-XXXX instead of R14-2-XXXX. The summary is Exhibit B to Decision 65452 and Section 11 of the Notice of Final Rulemaking. Revised paper and electronic copies of both of these documents are attached. I apologize for any inconvenience. The Commission has granted its Staff the authority to make "non-substantive changes", and these corrections are made pursuant to that authority. See Decision 65452 at p. 9 lines 1-5.

We remain hopeful that the Attorney General's Office can speedily complete its review of this important rulemaking package. If you anticipate or encounter delays in the review process, please contact me as soon as possible at (602) 542-3402.

Bob Zumoff, Esq.
and
Mark D. Wilson, Esq.
February 5, 2003
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We remain committed to assisting your office in your review of these rules. Accordingly, if we can be of any assistance, please do not hesitate to let me know.

Very truly yours,



Timothy J. Sabo
Attorney, Legal Division

Enclosures

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ACC Docket Control (w/15 copies)

**ARIZONA CORPORATION COMMISSION'S MEMORANDUM OF LAW TO THE
ATTORNEY GENERAL'S OFFICE CONCERNING WIRELESS ISSUES
RELATING TO THE COMMISSION'S SLAMMING AND CRAMMING RULES**

I. Background and Introduction.

The Arizona Corporation Commission's ("Commission" or "ACC") Slamming and Cramming Rules (the "Rules") were submitted to the Attorney General's Office on December 13, 2002 for review pursuant to A.R.S. § 41-1044. The Rules address slamming (an unauthorized change in service provider) and cramming (adding unauthorized charges to a customer's bill). Slamming and cramming are among the most important telecommunications consumer protection issues before the Commission. Accordingly, the Commission developed a comprehensive set of rules to address this important problem. The Rules are the result of an extensive rulemaking process that included comprehensive and voluminous public comment from industry and other groups. The Rules have been reviewed, as to form and legality, by the Commission's Legal Division, by a Commission Administrative Law Judge, and by the Commission itself in its rulemaking order, Decision 65452.

This memorandum addresses points raised by the Arizona Wireless Carriers Group in their letter to the Attorney General, which incorporates their Application for Rehearing to the Commission. This letter, and the Application for Rehearing, addressed only the Cramming Rules. *See* Wireless Carriers' letter dated 1/17/03 at p.1 fn 1. ("this letter is addressed only to the Cramming Rules.") Accordingly, this memorandum only addresses issues relating to the Cramming Rules. The principal arguments of the Wireless Carriers concern the authority of the Commission to issue the rules under state law, despite the long-established, broad authority of the Commission over public service corporations. The Wireless Carriers also assert that 47 U.S.C. § 332(c)(3)(A) preempts state regulation of slamming and cramming,

despite the statute's language, legislative history, FCC orders and the holdings of most courts to consider the issue that § 332(c)(3)(A) does not preempt state consumer protection measures. Lastly, the Wireless Carriers raise a grab-bag of "kitchen-sink" arguments that they did not raise until the very last minute.

II. The Commission has ample authority under Arizona law to enact the Rules.

A. The Cramming Rules were not enacted under A.R.S. § 44-1571 *et seq.*

The Wireless Carriers first argue that the Commission relied on A.R.S. § 44-1571 *et seq.* in enacting the Cramming Rules against wireless carriers. This is flatly incorrect. The Commission's Decision No. 65452 states that "Pursuant to Article XV of the Arizona Constitution, §§ 40-202, 40-203, 40-321, and 40-322, Title 40 generally, and A.R.S. §§ 44-1572 *et seq.* the Commission has jurisdiction to enact [the Slamming and Cramming Rules]." Decision 65452 at p.8, Conclusion of Law No. 1. As indicated in Conclusion of Law No. 1, the Rules are wide-ranging, and rest on various sources of authority. The Commission never indicated that it thought that the application of the Cramming Rules to wireless carriers was based upon A.R.S. §§ 44-1572 *et seq.* Indeed, A.R.S. §§ 44-1572 *et seq.* (hereinafter, the "Slamming Statute") does not mention cramming at all, but instead refers only to slamming. Instead, the Commission relied on various provisions of Title 40, as well as its constitutional authority, in enacting the Cramming Rules. This is clear in the rulemaking record.¹ Accordingly, the Wireless Carrier's argument that the Commission relied on the Slamming Statute in enacting the Cramming Rules as to wireless carriers is without merit.

¹ See the Reply Comments of the Commission's Staff, dated June 26, 2002, which is attached as Exhibit 1 hereto. Exhibit B to the Reply Comments is the Commission's Staff's legal memorandum to the Commission concerning jurisdiction over wireless carriers dated December 10, 2001.

B. The Commission has authority to enact the Cramming Rules under various provisions of Title 40.

The Commission has wide-ranging and well-established power over public service corporations under Title 40, and this is the source of the Commission's authority to enact the Cramming Rules. The Wireless Carriers claim that the Slamming Statute is the more specific statute, that it excludes wireless carriers, and that accordingly the Slamming Statute trumps the Commission's pre-existing powers under Title 40. This argument must fail for two reasons. First, the Slamming Statute applies to slamming, not cramming, and is therefore not the most specific statute. Secondly, even if the Slamming Statute did apply to cramming, on balance the canons of construction indicate that the Slamming Statute should not be interpreted as an implied repeal of the Commission's long-standing authority under Title 40.

1. The Slamming Statute is not the most specific statute concerning cramming.

The Slamming Statute does exempt wireless carriers from its provisions. *See* A.R.S. § 44-1571(3), (4). However, the statute does not contain a prohibition on the Commission regulating wireless carriers. *Id.* The Wireless Carriers point to the canon of construction that the more specific statute controls when two statutes conflict. *See e.g. Pima County v. Heinfeld*, 134 Ariz. 133 (1982). But the Slamming Statute does not concern cramming, and therefore, it cannot be the "specific statute" for any matters relating to cramming. Indeed, the Wireless Carriers concede this in their Application for Rehearing, stating (p. 2 fn. 1) that as "a general matter, the statute does not provide authority for the Commission to adopt cramming rules." Because the Wireless Carriers admit that the Slamming Statute does not pertain to cramming, the Wireless Carrier's argument is self-defeating. The rule of *Pima County v. Heinfeld* quite simply does not apply.

But even if the Slamming Statute was the most specific statute on point, the Wireless Carriers' argument would still fail because a number of the canons of construction indicate that the Commission's long-standing powers under Title 40 remain undisturbed. First, the statutes do not conflict, so the rule of *Pima County v. Heinfeld* does not apply. And even if the statutes did conflict, the law strongly disfavors implied repeals. Moreover, statutes are to be "liberally construed to effect their objects and to promote justice." A.R.S. § 1-211(B). Lastly, statutes should be construed to avoid constitutional problems, and interpreting the Slamming Statute in the manner suggested by the Wireless Carriers would raise a serious constitutional issue.

2. The Slamming Statute is not in conflict with Title 40.

The Slamming Statute does not conflict with the Commission's existing authority under Title 40. Of course, as noted above, the Slamming Statute does not address cramming in the first place. But even if it did, there is no conflict. The Slamming Statute contains a specific authorization for the Commission to conduct a rulemaking for slamming. See A.R.S. §§ 44-1572(L) and 44-1573(K). But a specific authorization to conduct a rulemaking on one topic is not a prohibition on enacting rules on other topics. Nowhere in the Slamming Statute is there a prohibition on enacting cramming rules - with regard to wireless carriers or anyone else. There is simply no conflict here.

3. The Slamming Statute is not an implied repeal of Title 40.

Implied repeals of statutes are strongly disfavored. Whenever possible, the Arizona courts interpret two apparently conflicting statutes in a way that harmonizes them and gives rational meaning to both. See *State v. Tarango*, 185 Ariz. 208, 210; 914 P.2d 1300, 1302 (1996); *Walters v. Maricopa County*, 195 Ariz. 476, 481; 990 P. 2d 677, 682 (App. 1999). An implied repeal will only be found if the language of the newer statute clearly shows that

the legislature intended the newer statute to override the older statute. *Curtis v. Morris*, 184 Ariz. 393, 397; 909 P.2d 460, 464 (App. 1995) *decision approved* 186 Ariz. 534, 535, 925 P.2d 259 (1996). There is nothing in the language of the Slamming Statute indicating legislative intent to repeal the Commission's authority over public service corporations, including wireless carriers. Instead, the Slamming Statute should be read as a prompt for the Commission to act under its existing authority. In this way, the statutes can be read so that they harmonize with each other. Because the statutes can be read consistently, the Attorney General should reject a reading of the Slamming Statute that would amount to an implied repeal of the Commission's authority under Title 40.

4. The Slamming Statute must be liberally construed to promote justice.

In the Slamming Statute, the legislature intended to protect consumers from slamming - an unjust practice by telecommunications carriers. The protection of consumers is a common goal shared by the legislature, the Commission, and the Attorney General. Statutes should be "liberally construed to effect their objects and to promote justice." A.R.S. § 1-211(B). Because applying the Cramming Rules to wireless furthers the goal of the statute - protection of consumers - the Attorney General should not adopt a reading of the statute that thwarts the ultimate goal of the Slamming Statute, the protection of consumers.

5. The Slamming Statute must be construed in accordance with the Arizona Constitution.

The Arizona Constitution vests in the Commission the power to "make and enforce reasonable rules, regulations, and orders for the convenience [and] comfort" of the customers of public service corporations and to "make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction of business within this state."

Ariz. Const. Art. 15 § 3. However, the Arizona Supreme Court has found that the Commission's powers under Article 15 § 3 are limited to ratemaking. *Corp. Comm'n v. Pacific Greyhound Lines*, 54 Ariz. 159, 94 P.2d 443 (1939). Recognizing the conflict between the plain language of the Constitution and *Pacific Greyhound*, the Arizona Supreme Court has noted that *Pacific Greyhound* "undercut the framers' vision of the Commission's role as set forth in the text of the constitution, as described by the framers, and in earlier case law." *Arizona Corp. Comm'n v. State ex rel. Woods*, 171 Ariz. 286, 293, 830 P.2d 807, 814 (1992). This language calls into substantial doubt *Pacific Greyhound* and indicates that there are still significant unresolved questions regarding the scope of the Commission's § 3 authority. Legislation should be read, if at all possible, in a way that is consistent with the constitution. *Arizona Corp. Comm'n v. Superior Court*, 105 Ariz. 56, 62, 459 P. 2d 489, 495 (1969); *Stillman v. Marston*, 107 Ariz. 208, 209, 484 P.2d 628 (1971). Because reading the Slamming Statute as a prohibition on Commission regulation of cramming by wireless carriers would raise a significant question of whether the statute, so construed, conflicts with § 3, the Attorney General should not read the Slamming Statute as a prohibition.

6. The provisions of Title 40 grant the Commission broad powers, including the power to enact the Cramming Rules.

There is no doubt that wireless carriers are "public service corporations". The Wireless Carriers have not contested their status as public service corporations. And the plain language of the Arizona Constitution makes their status clear. The Arizona Constitution provides that "All corporations other than municipal engaged in... transmitting messages or furnishing public telegraph or telephone service... shall be deemed public service corporations." Ariz. Const. Art. XV § 2. Unquestionably, wireless carriers provide "telephone service" to the "public". Moreover, the Commission has consistently interpreted

Art. XV § 2 as applying to wireless carriers. *See Advanced Mobile Phone Service, Inc.*, 56 P.U.R.4th 175, Decision No. 53740 (ACC 1983) at Conclusion of Law No. 1 ("Advanced Mobile Phone Service, Inc. is a public service corporation within the meaning of Art XV of the Arizona constitution..."); *Metro Mobile CTS of Phoenix, Inc.*, Decision No. 58339 (ACC 1994) at Conclusion of Law No. 1 ("Metro Mobile is an Arizona public service corporation within the meaning of Article XV, Section 2 of the Arizona Constitution.").

Title 40 affirms the Commission extensive authority over public service corporations. For example, A.R.S. § 40-202(A) grants the Commission the authority to "supervise and regulate every public service corporation in the state and do all things, whether specifically designated in this title or in addition thereto, necessary and convenient in the exercise of that power and jurisdiction." It is difficult to conceive of a broader grant of authority than this. If this was not enough, A.R.S. § 40-202(C) goes on to state that in "supervising and regulating public service corporations, the commission's authority is confirmed to adopt rules to... [p]rotect the public against deceptive, unfair and abusive business practices...." It can scarcely be doubted that cramming is a "deceptive, unfair and abusive business practice". Moreover, the Commission has the authority to prescribe just "practices and contracts" when it finds that the "practices and contracts" of a public service corporation are "unjust". A.R.S. § 40-203. And the Commission has the power to determine when the "service" of a public service corporation is "unjust" or "unreasonable" and to then "determine what is just, reasonable... and shall enforce its determination by order or regulation." A.R.S. § 40-321(A). Additionally, the Commission has the power to "Ascertain and set just and reasonable standards, classifications, regulations, practices, measurements, or service to be furnished and followed by public service corporations...." A.R.S. § 40-322(A)(1). With regard to the filing of scripts, the Commission has the power to "at any time, inspect the

accounts, books, papers and documents of any public service corporation." A.R.S. § 40-241
see also § 40-242 (production of out of state records).

C. In the alternative, the Commission has the constitutional authority to enact the Cramming Rules.

As noted above, the Attorney General should interpret the Slamming Statute in a way that avoids raising issues about the unresolved extent of the Commission's Article XV § 3 power. But if the Attorney General does adopt the Wireless Carriers' interpretation of the Slamming Statute, the Attorney General should find that the Slamming Statute, so construed, violates the Arizona Constitution by infringing on the constitutional power of the Commission. As described above, the plain language of § 3 grants the Commission broad constitutionally-based rulemaking power, which is not limited to ratemaking. What the Constitution grants, the legislature may not take away. The Attorney General should interpret § 3 in light of *Woods*.

III. The Cramming Rules are not preempted by 47 U.S.C. § 332(c)(3)(a).

The Wireless Carriers next claim that the application of the Cramming Rules to wireless carriers is preempted by 47 U.S.C. § 332(c)(3)(a). This provision of federal law provides that:

... no State or local government shall have any authority to regulate the entry of or rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.

47 U.S.C. § 332(c)(3)(a)(emphasis added). Under this provision, States are prohibited from regulating wireless carriers as to rates and market entry. The Wireless Carriers try to contort both of these categories to fit the Cramming Rules - but the Cramming Rules relate to consumer protection, not rates or market entry. Reading 47 U.S.C. § 332(c)(3)(a) in the way

suggested by the Wireless Carriers would make "rates" and "market entry" so broad as to eviscerate the savings provision of the statute.

A. The legislative history of 47 U.S.C. § 332(c)(3)(a) clearly indicates that the Cramming Rules are not preempted.

The House Report clarifies what Congress meant by "other terms and conditions" in the savings clause of 47 U.S.C. § 332(c)(3)(a):

It is the intent of the Committee that the states would be able to regulate the terms and conditions of these services. By "terms and conditions," the Committee intends to include such matters as customer billing information and practices and billing disputes and other consumer protection matters; facilities siting issues (e.g. zoning); transfers of control; the bundling of services and equipment; and the requirement that the carriers make capacity available on a wholesale basis or such other matters as fall within a state's lawful authority. This list is intended to be illustrative only and not meant to preclude other matters generally understood to fall under "terms and conditions."

House Report No. 103-111, *reprinted in* 1993 U.S.C.A.A.N at p. 588 (emphasis added). This language makes clear that the terms "rates" and "market entry" are to be given a narrow reading, and that the scope of state authority remains large. Indeed, the report specifically mentions "billing information and practices and billing disputes and other consumer protection matters" - the very subject matter of the Cramming Rules. Accordingly, the Attorney General should conclude that the Cramming Rules fall squarely within the savings clause of 47 U.S.C. § 332(c)(3)(a).

B. The FCC's statements concerning the scope of 47 U.S.C. § 332(c)(3)(a) support the conclusion that the Cramming Rules are not preempted.

The FCC - the federal agency charged with implementing 47 U.S.C. § 332(c)(3)(a) - has concluded that matters such as the Cramming Rules are not preempted. Because this

conclusion of the FCC is a reasonable interpretation of the statute, it will be accorded, as a matter of federal law, *Chevron* deference. The FCC has stated that:

We do not agree, however, that state contract or consumer fraud laws relating to the disclosure of rates and rate practices have generally been preempted with respect to CMRS. Such preemption by Section 332(c)(3)(a) is not supported by its language or legislative history. As discussed above, the legislative history of Section 332 clarifies that billing information, practices and disputes -- all of which might be regulated by state contract or consumer fraud laws -- fall within "other terms and conditions" which states are allowed to regulate. Thus, state law claims stemming from state contract or consumer fraud laws governing disclosure of rates and rate practices are not generally preempted under Section 332.

Southwestern Bell Mobil Systems, Inc., 14 F.C.C.R. 19898 at ¶ 23, 1999 WL 1062835, FCC 99-356 (rel. 11/24/1999)(emphasis added). And the FCC has indicated that state power is not limited to "consumer protection and promotion of competition" - thus implying that measures like the Cramming Rules are not even near the limits of state power. *Pittencrieff Communications*, 13 F.C.C.R. 1735 at ¶ 18, 1997 WL 606233, FCC 97-343 (rel. 10/2/1997). And the FCC has also stated that States can award monetary damages to customers in consumer protection cases, even though this would involve an inquiry into the pricing of the services at issue. *Wireless Consumers Alliance*, 15 F.C.C.R. 17021, 2000 WL 1140570, FCC 00-292 (rel. 8/14/2000). It is therefore clear that, under the FCC's analysis, the Cramming Rules are not preempted. Moreover, other state administrative agencies have also concluded that consumer protection measures are not preempted. *See Cingular Wireless*, 2002 WL 31470000 at * 6-7, CPUC Decision 02-10-061 (California PUC 10/24/2002)).

C. The cases interpreting 47 U.S.C. § 332(c)(3)(a) also indicated that the Cramming Rules are not preempted.

Interpreting 47 U.S.C. § 332(c)(3)(a) in the manner suggested by the Wireless Carriers would result in nothing being saved by the savings clause. But the existence of a

savings clause indicates that Congress intended to save a "significant" amount of territory for the state to regulate. See *In re Wireless Telephone Radio Frequency Emissions Product Liability Litigation*, 216 F.Supp.2d 474, 498 (D.Md. 2002)(citing *Geier v. American Honda Motor Co.*, 529 U.S. 861, 868 (2000)). For this reason, courts have narrowly construed the terms "rates" and "market entry", so that consumer protection measures are not preempted. As the Oregon Court of Appeals has recently noted, "[t]o read the statute as AT&T Wireless suggests would convert language of exception into an implicit creation of a third category of preemption, so that... the statute effectively would preempt: (1) entry; (2) rates; and (3) everything else. That is simply not what the statute says." *AT&T Communications of the Pacific Northwest, Inc. v. City of Eugene*, 35 P.3d 1029, 1050 (Ore. App. 2001). Therefore, courts have recently found state-law cases regarding deceptive claims regarding quality of service², failure to disclose "rounding-up" billing practices³, and improper late fees⁴ not preempted.

The DC Circuit's decision in *Cellular Telecommunications Industry Assoc. v. FCC* ("*CTIA*") is the leading case regarding the scope of 47 U.S.C. § 332(c)(3)(a) preemption. In *CTIA*, the DC Circuit affirmed the FCC's narrow reading of the terms "rates" and "market entry". *Cellular Telecommunications Industry Assoc. v. FCC*, 168 F.3d 1332 (D.C. Cir 1999). The court specifically mentioned consumer protection measures as being not preempted, relying on the legislative history discussed above. *Id.* Indeed, the court upheld Texas's requirement that wireless providers contribute to the Texas Universal Service Fund - a requirement that (because it represents a charge passed on to consumers) is much closer to

² *Spielholz v. Superior Court*, 104 Cal.Rptr. 197, 1374-76 (App. 2001); *Union Ink Co. v. AT&T Corp.*, 801 A.2d 361 (NJ Super. A.D. 2002) *pet. for cert. den.* 810 A.2d 66.

³ *Tenore v. AT&T Wireless Services*, 962 P.2d 104, 115 (Wash. 1998).

⁴ *Brown v. Washington/Baltimore Cellular, Inc.*, 109 F.Supp.2d 421, 423 (D.Md. 2000).

rates than are the Cramming Rules. *See Id.*; *see also Sprint Spectrum, L.P. v. State Corp. Comm'n of the State of Kansas*, 149 F.3d 1058, 1062 (10th Cir. 1998)(upholding Kansas USF assessments of wireless carriers).

Indeed, a number of cases approve state regulation that is substantially closer to "rates" or "market entry" than the Cramming Rules. For example, the Supreme Court of Ohio recently affirmed the decision of the Ohio Public Utilities Commission, which ruled against a wireless wholesaler who discriminated in favor of its own affiliate as to "rates, terms & conditions". *See New Par (nka Verizon) v. Public Utilities Comm'n of Ohio*, 2002-Ohio-7245 ¶¶ 6-9, 2002 WL 31906119 (December 30, 2002). And the Supreme Court of Utah has held that rate conditions attached to an ETC designation order for a wireless carrier are not preempted. *WWC Holding Co. v. Public Service Comm'n of Utah*, 2001 UT 23 ¶¶ 27-30, 2002 WL 337869 (March 5, 2002). Having considered the relevant statutory language, legislative history, FCC orders, and cases, we can now turn to the Wireless Carriers' specific claims.

D. The Cramming Rules do not regulate market entry.

The Wireless Carriers assert that the Cramming Rules are an impermissible regulation of market entry, and thus preempted under § 332. But the Cramming Rules do not "effectively preclude... CMRS entry" as claimed by the Wireless Carriers. The Cramming Rules do not limit which wireless carriers may enter the market, and they apply equally to all providers of telecommunications services. As discussed above, regulation of billing matters falls squarely within the savings clause in § 332. The prohibition on market entry regulation is clearly aimed at requiring wireless carriers to obtain Certificates of Convenience and Necessity ("CC&N"). As the FCC stated in *Pittencrieff Communications*, regulations which

have only an indirect effect on market entry are not preempted even though they may make "it more difficult for some carriers to offer service" noting that "this is true of many of the requirements that Congress intended to included within 'other terms and conditions' of service." *Pittencrieff Communications*, 13 F.C.C.R. 1735 at ¶ 22, 1997 WL 606233, FCC 97-343 (rel. 10/2/1997).

E. The Cramming Rules do not regulate the rates of wireless service.

The Wireless Carriers next allege that the Cramming Rules amount to rate regulation of wireless carriers. This is just not so. Nothing in the Cramming Rules tells wireless carriers what they can or cannot charge for their services. The Cramming Rules simply require that wireless carriers adequately inform their customers about their charges and obtain appropriate consent from their customers for their charges. The Wireless Carriers cite *Central Office Telephone* and *Bastien*. In *Central Office Telephone*, the Supreme Court established the principle that under traditional tariff-based rate regulation, a claim for inadequate service is an attack on rates. See *American Telephone and Telegraph Company v. Central Office Telephone, Inc.*, 524 U.S. 214, 222-223 (1998). And *Bastien* (erroneously) extended this principle to wireless carriers. See *Bastien v. AT&T Wireless Services, Inc.*, 205 F.3d 983, 988 (7th Cir. 2000)(applying *Central Office Telephone*). *Central Office Telephone* marked an expansion of the historic "filed rate doctrine" (also called the "filed tariff doctrine"), which posits that when rates and related practices are controlled by agency-approved tariffs, these rates and practices may not be challenged in court. See *Central Office Telephone*, 524 U.S. at 222. But wireless rates are not governed by filed rate tariffs, and thus applying the filed rate doctrine and *Central Office Telephone* to wireless carriers makes little sense.

For this reason, *Bastien* has been almost universally rejected outside the 7th Circuit.

For example, the Supreme Court of Washington has stated that:

Because there is no tariff filing requirement, the reasonableness of rates charged by commercial mobile radio service (CMRS) providers is not determined by the FCC. Accordingly, not only are there no tariffs on file, but the two purposes behind the "filed rate" doctrine -- preserving an agency's primary jurisdiction to determine the reasonableness of rates and insuring that only those rates approved are charged -- do not apply in this case.

Tenore v. AT&T Wireless Services, Inc., 962 P.2d 104, 110 (Wash. 1998). The court in *Union Ink*, after an exhaustive review of the applicable cases, specifically rejected *Bastien*, finding that the filed rate doctrine was not applicable to wireless carriers. *Union Ink Co. v. AT&T Corp.*, 801 A.2d 361, 377 (N.J. Super. A.D. 2002). Likewise, the California Court of Appeals noted that the "purposes served by the filed rate doctrine, to preserve the FCC's role in the ratemaking process and to ensure uniformity, would serve no purpose in an industry with no uniform, filed rates approved by the FCC" and therefore rejected *Bastien*. *Spielholz v. Superior Court*, 104 Cal.Rptr. 197, 206-208 (App. 2001). And the FCC, the very agency whose interests *Bastien* supposedly protects, has concluded that the filed rate doctrine is inapplicable to wireless carriers, citing *Tenore* with approval. *Wireless Consumers Alliance*, 15 F.C.C.R. 17021, ¶¶ 9,18-22, 29, 2000 WL 1140570, FCC 00-292 (rel. 8/14/2000).

However, even if *Bastien* were persuasive, the Wireless Carriers would still not prevail. *Bastien* involved a claim of insufficient service (excessive "dropped calls") and found that state regulation of quality of service was preempted. *See Bastien*, 205 F.3d at 988-89. But the Cramming Rules do not regulate quality of service -- they regulate billing practices. Cramming is indisputably a form of fraud. And *Bastien* specifically recognizes state authority over consumer fraud. *See Id.* *Bastien* cited a 6th Circuit case involving long distance rates (which at the time were fully governed by tariffs), and which found that state

claims based on fraudulent non-disclosure of billing practices were not preempted. *See In re Long Distance Telecommunications Litigation*, 831 F.2d 627, 634 (6th Cir. 1987). Therefore, even if wireless services were fully rate regulated by the FCC, the Cramming Rules would not be preempted. *See Gilmore v. Southwestern Bell Mobile Systems, Inc.*, 156 F.Supp.2d 916, 924 (N.D. Ill. 2001)(applying *Bastien* and finding that state law fraud claims based on non-disclosure are not preempted).

The Wireless Carriers also assert, with little analysis, that a number of the individual Cramming Rules amount to rate regulation. Rules 2004 and 2005 involve the authorization of charges. Again, this is not a regulation of the amount charged, only a requirement that the charge be authorized. Rule 2006 does include provisions concerning refunds and interest. But the FCC has found that monetary compensation for consumer fraud is not preempted by § 332. *See Wireless Consumers Alliance, supra*. And Rule 2007 requires a Notice of Subscriber Rights - a measure that merely requires every telecommunications company to provide notice to their customers of the customer's rights under law. None of these measures comes even close to being a regulation of rates.

IV. The Wireless Carriers miscellaneous arguments must be rejected.

The Wireless Carriers, in their Application for Rehearing, raise a "grab-bag" of miscellaneous arguments, most likely simply to avoid waiving them. *See* A.R.S. §§ 40-253, 40-254. These arguments were not raised in the Wireless Carriers' formal comments, nor in their exceptions to the Recommended Opinion and Order. Therefore, these arguments may well be waived. Nevertheless, the Commission will briefly address these arguments.

A. The Cramming Rules do not unduly burden interstate commerce.

The Wireless Carriers claim that the Cramming Rules represent a burden on interstate commerce, citing cases about the interstate movement of trains and trucks. But the

Cramming Rules only regulate wireless service when the customer account is located in the State of Arizona - they do not apply, for example, to wireless phones passing through the State of Arizona. So there is no burden on those "passing through", unlike the cases cited by the Wireless Carriers. Moreover, Congress has plenary power over interstate commerce, and Congress's intent in this area is made clear in the savings clause of § 332, as discussed above.

Nor, despite the protestations of the Wireless Carriers, are the requirements of the Cramming Rules onerous. For example, the Wireless Carriers object to the authorization requirements of Rules 2004 and 2005. The heart of these provisions is Rule 2005(B), which requires that:

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 the applicable charges,
3. A description of how the charge will appear on the Customer's bill,
4. An explanation of how the product or service can be cancelled, and
5. A toll-free telephone number for Subscriber inquiries.

These provisions simply require a company to tell a consumer what the consumer is getting into, so that the customer can make an informed decision. Responsible businesses likely do much or all of this already. Quite simply, there is no constitutional right for a large corporation to bury confusing charges in fine print, without having to tell the customer about the charges.

B. The Cramming Rules do not violate commercial free speech.

The Wireless Carriers also claim that the Cramming Rules violate their commercial free speech rights. The Wireless Carriers have at least latched on to a trendy area of law. But this is not the place for an exhaustive review of commercial free speech doctrine.

Central Hudson articulated a four part test:

- (1) At the onset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading.
- (2) Next, we ask whether the asserted governmental interest is substantial.
- (3) If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted,
- (4) and whether it is not more extensive than is necessary to serve that interest.

Central Hudson Gas & Elec. Corp. v. Public Service Comm'n of New York, 447 U.S. 557, 566 (1980)(emphasis added). The Wireless Carriers conveniently omit the first prong of the *Central Hudson*. But it can hardly be doubted that cramming is misleading speech. Therefore, it falls outside of constitutional protection, and the remainder of the test is not relevant. But even if the remaining three prongs applied, they are satisfied.

Although the Wireless Carriers attack the substantial interest prong, the State's interest in combating cramming - a form of fraud - is clearly substantial (note that the standard is the lesser "substantial" standard, not "compelling governmental interest" standard used elsewhere in First Amendment law). And the Commission's authorization and notice requirements directly advance this interest, by letting consumers know the terms of the contracts they are entering. In addressing the directly advancing prong, rule-makers may rely on "commonsense judgment" rather than formal evidence. See *United States v. Edge Broadcasting Co.*, 509 U.S. 418, 428 (1993). And agencies may enact "prophylactic rule[s]" rather than having to show that the "state interests supporting the rule actually were advanced by applying the rule in... [a] particular case." *Id.*, 509 U.S. at 431.

The wireless carriers challenge the fourth prong as well. They mention "least restrictive requirements", but the "not more extensive than is necessary" prong is substantially easier to meet than the "least restrictive means" test used elsewhere in First Amendment Law. See *Trans Union Corp. v. Federal Trade Comm'n*, 245 F.3d 809, 819 (D.C. Cir. 2001). The Wireless Carriers object again to Rules 2005 and 2007. But requiring

explanation of charges and services, and notice of subscriber rights, are both measures reasonably necessary to combat cramming. The Wireless Carriers point out that they proposed, in place of Rule 2007, an abbreviated notice on the customer's first bill. But the Commission found that it was more appropriate for this information to be communicated "at the time service is initiated" because the customer should know this information before committing to a service contract. *See* Appendix B to Decision 65452 at p. 42. The Wireless Carriers also point out that they suggested that scripts be submitted only when there is an actual, pending complaint before the Commission. But the monitoring of scripts may reveal instances of cramming unknown to the individual consumers involved, and the realization the scripts will be monitored may deter carriers from engaging in fraudulent behavior. Accordingly, these provisions are reasonably necessary to combat cramming, and therefore they are "not more extensive than is necessary".

C. The Cramming Rules do not impermissibly regulate interstate service.

The Wireless Carriers also claim that the Cramming Rules constitute an invalid regulation of interstate service. Wireless carriers provide bundled service that combines local exchange service, intrastate inter-exchange service and interstate inter-exchange service. Of these the first two are fully subject to the Commission's authority, while that last is subject to the FCC. Most likely, the first two services, on average, predominate. But even if the wireless carriers provided only interstate inter-exchange service, the Cramming Rules would still be valid, because they protect against consumer fraud, not unreasonable rates. *See In re Long Distance Telecommunications Litigation, supra.*

D. The Cramming Rules do not violate due process.

Lastly, the Wireless Carriers object to Rules 2008 and 2009 on the ground that they violate due process. Rule 2008 provides for an informal dispute resolution process

conducted by the Commission's Staff. Under Rule 2008(B)(3), if a telecommunications company does not respond within 10 days, there is a presumption that a violation has occurred, and under Rule 2008(B)(6), if the company does not respond within 15 days, Staff will treat the Company's silence as an admission. Both these provisions are located in the subsection (B), which refers to the informal dispute resolution process conducted by Staff. Accordingly, the presumption and admission described in 2008(B) only apply to Staff's informal dispute resolution process. Therefore, the Wireless Carriers' assertion that formal penalties may be imposed on a company under 2009(B) based on a presumption or admission under 2008(B) is incorrect. Rule 2008(D) expressly provides for Staff to conclude its informal dispute resolution process by preparing a written report, but "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." Accordingly, before any penalties are imposed by the Commission against an unwilling company, the Company will have numerous procedural rights:

- (1) a formal hearing (A.A.C. R14-3-109) (formal hearing);
- (2) a right to file exceptions to recommended opinion and order (R14-3-110) ;
- (3) an opportunity to address the Commission at the Commission's meeting under the open meeting law;
- (4) an right to file for rehearing (A.R.S. § 40-253)
- (5) a right to seek judicial review in Superior Court (A.R.S. § 40-254)
- (6) a right to appeal from the Superior Court.

This is not the absence of due process -- it is an abundance of process.

V. Conclusion

The Cramming Rules are (a) within the Commission's broad authority under Title 40, (b) not preempted by 47 U.S.C. § 332, (c) and are not invalidated by any of the Wireless Carriers' miscellaneous arguments. The Cramming Rules are an important consumer

protection measure, and the Attorney General's Office should promptly certify the rules so that the consumers of this state can be protected from this fraudulent practice.

RESPECTFULLY SUBMITTED this 5th day of February, 2003



Timothy J. Sabo
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*Attorney for the Arizona Corporation
Commission*

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:**

R14-2-1901 – 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.

R14-2-1902 – 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”.

R14-2-1904 – 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".

R14-2-1905 – 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.

R14-2-1906 – 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.

R14-2-1907 – 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.

R14-2-1908 – 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.

R14-2-1909 – 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.

R14-2-1910 – 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.

R14-2-1911 – 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.

R14-2-1914 – 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

R14-2-2001 – 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”.

R14-2-2002 – 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”.

R14-2-2005 – 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.

R14-2-2006 – 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.

R14-2-2007 – 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.

R14-2-2008 – 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.

R14-2-2009 – 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.

R14-2-2012 – 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

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- 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.
- ~~H.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.

Appendix B**SUMMARY OF THE COMMENTS MADE REGARDING THE RULE AND THE AGENCY
RESPONSE TO THEM****ARTICLE 19. CONSUMER PROTECTIONS FOR UNAUTHORIZED CHANGES****R14-2-1901 – 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

1 definition need not include the means of authorization, because the process is outlined in greater
2 detail in section 1909.

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

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

9
10 **Resolution:** Delete this section and renumber accordingly.

11 **1901.F**

12 **Issue:** Qwest comments that the definition of "Letter of Agency" should also be eliminated
13 from this section because the FCC found no reason to define Letter of Agency and because the
14 definition lacks clarity. Qwest states that the definition lacks clarity because it fails to explain that a
15 Letter of Agency is a written authorization by a Subscriber empowering another person or entity to
16 act on the Subscriber's behalf.
17

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

21 **Analysis:** We believe that for clarity, the rule requires a definition of this term, and that an
22 expansion of the definition, to include an explanation that a Letter of Agency is a written
23 authorization by a Subscriber authorizing a Telecommunications Company to act on the Subscriber's
24 behalf to change the Subscriber's Telecommunications Company, would increase the clarity of the
25 rule.
26
27
28

1 **Resolution:** Replace “from a Subscriber for a change in” with “by a Subscriber authorizing a
2 Telecommunications Company to act on the Subscriber’s behalf to change the Subscriber’s”.

3 **1901.G**

4 **Issue:** Cox Arizona Telecom, L.L.C. (“Cox”) commented that the term “Subscriber” should
5 be modified to exclude business customers who receive telecommunications services under a written
6 contract, because the rules may not be appropriate in business service situations where there is a
7 written contract between the Telecommunications Company and the business customer.
8

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

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

14 **Resolution:** No change required.

15 **R14-2-1902 – Purpose and Scope**

16 **Issue:** Qwest comments that this section should be eliminated entirely. Qwest states that to
17 be valid, rules must incorporate more than a purpose statement. Qwest asserts that a purpose
18 statement violates A.R.S. § 41-1001.17, which limits a rule to a statement that actually “interprets or
19 prescribes law or policy, or describes the procedure or practice requirements of an agency.”
20

21 Staff comments that it disagrees with Qwest’s legal analysis, and asserts that a
22 statement of purpose and scope gives guidance as to how the subsequent rules are to be interpreted.
23 Staff believes that in this respect, section 1902 is more like a definition than the type of statement
24 prohibited by A.R.S. § 41-1001.17. Staff stated that this section could be clarified by adding the
25 phrase “shall be interpreted to” after “rule” at the beginning of each sentence.
26
27
28

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

5 **Resolution:** In the first sentence of this section, replace "are intended to" with "shall be interpreted
 6 to". In the second sentence of this section, insert "shall be interpreted to" between "rules" and
 7 "promote", and replace "by establishing" with "and to establish". In the third sentence of this
 8 section, insert "shall be interpreted to" between "rules" and "establish".
 9

10 **R14-2-1904 – Authorized Telecommunications Company Change Procedures**

11 **1904.C**

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

14 Staff comments that the language of this section is clear that the executing carrier
 15 "shall not contact the Subscriber to verify the Subscriber's selection . . ."
 16

17 **Analysis:** We agree with Staff that this section prohibits an Executing Telecommunications
 18 Carrier from contacting the Subscriber to verify the Subscriber's selection, and requires no
 19 clarification. We note, however, that this section refers to an Executing Telecommunications
 20 Company instead of the defined term "Executing Telecommunications Carrier." This typographical
 21 error requires correction.

22 **Resolution:** Replace "Executing Telecommunications Company" with "Executing
 23 Telecommunications Carrier". No further change required.
 24
 25
 26
 27
 28

1 **1904.D**

2 **Issue:** AT&T comments that the final sentence of this section absolves an Executing
3 Telecommunications Carrier of liability even in instances where the Executing Telecommunications
4 Carrier caused, through its own error, the unauthorized change. AT&T states that such errors have
5 occurred here locally, and that when they occur in the future, they should be remedied or paid for by
6 the carrier executing the change. AT&T comments that the FCC has reached this conclusion. AT&T
7 requested that the final sentence of this section be removed.
8

9 Qwest comments that rather than delete the last sentence, that the Commission should
10 instead clarify that the Executing Carrier is absolved of liability only when it receives an
11 Unauthorized Change from another carrier. Qwest states that this will address AT&T's concerns
12 with absolving a carrier of liability for an Unauthorized Change caused by its own error.
13

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

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

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

22 **Resolution:** Replace "Executing Telecommunications Company" with "Executing
23 Telecommunications Carrier". No further change required.
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1904.E

1
2 **Issue:** Qwest comments that this section is in conflict with FCC rules that require a company
3 offering more than one type of service to obtain separate authorizations. Qwest asserts that by
4 expressly permitting authorization on the same contact, this section implies that separate
5 authorizations are not required.

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

11
12 **Analysis:** For clarity, the word "authorization" should be changed to "authorizations."

13 **Resolution:** Replace "authorization" with "authorizations".

R14-2-1905 – Verification of Orders for Telecommunications Service**1905.A.1**

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

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

26
27 **Resolution:** No change required.

1 **1905.C**

2 **Issue:** Cox comments that this rule, which discusses a Letter of Agency combined with a
3 marketing check and the required notice near the endorsement line on the check, should not include a
4 requirement that the required notice be written in any other language which was used at any point in
5 the sales transaction. Cox states that the "other language" requirement is unnecessary in this context
6 given that most such offers do not occur in face-to-face sales transactions.

7
8 Allegiance Telecom of Arizona, Inc. ("Allegiance") comments that this section should
9 be limited to residential customers and not be required in transactions with business customers,
10 stating that the need for bilingual notices arises in the residential market, not the business market, and
11 that the requirement to produce certain notices in both English and Spanish will require significant
12 investment and expense on the part of smaller carriers such as Allegiance.

13 AT&T requests that carriers have the option of using the language the carrier has
14 chosen to use in marketing to the customer, and recommends that the notice "that the Subscriber
15 authorizes a Telecommunications Company change by signing the check" be required to be written
16 "in both English and Spanish or in the language the carrier has chosen to use" in lieu of in "English
17 and Spanish as well as in any other language which was used at any point in the sales transaction."
18 AT&T states that it cannot cost-effectively prepare marketing materials in all languages used by all
19 customers.
20

21 Qwest concurs with AT&T and in addition, objects to the requirement that notice be
22 written in any language used at any point in the sales transaction, stating that because many
23 Subscribers specify one of the two languages as their language of choice, it is unnecessarily
24 burdensome and costly to require bilingual notice for all Subscribers. Qwest comments that dual
25 language notices may only confuse Subscribers who are unable to read the other language. Qwest
26 believes carriers should have the option to provide notice in the Subscriber's language of choice, but
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1 that if the Commission does not modify this section, that it should clarify that only the material terms
2 and conditions are subject to the dual language requirement. Qwest further comments that the
3 requirement that notice be provided in any language used in the sales transaction will place a serious
4 burden on companies, which can only lead to increased Subscriber costs. Qwest believes that under
5 this section, companies must print notices in any language spoken by the Subscriber, even if the
6 company never responded in that language. Qwest states that the fact that some Native American
7 languages contain no written component also makes this requirement difficult.
8

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

13 **Analysis:** Cox may be correct that most offers utilizing a Letter of Agency combined with a
14 marketing check are not used in face-to-face transactions, but, as AT&T points out, it is conceivable
15 that a Letter of Agency and a Marketing Check might be used in conjunction with marketing
16 materials in a language other than English or Spanish. This section simply requires that the notice be
17 provided in that same language, in addition to English and Spanish.
18

19 This section does not require marketing materials to be prepared in all languages used
20 by all customers. It does, however, restrict a company's use of a Letter of Agency combined with a
21 marketing check to those transactions in which no language not appearing on the marketing check
22 notice is used, so that if a language not appearing on the marketing check notice is used in the
23 transaction, the Letter of Agency combined with a marketing check may not be used. We do not
24 believe that it is overly burdensome to require the marketing check notice, which is not lengthy, to
25 appear in English, Spanish, and any other language used in the sales transaction, and that any
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1 perceived burden is outweighed by the consumer protection this section provides to both residential
2 and business customers.

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

6 **Resolution:** Insert, at the end of the first sentence after “marketing check”, “subject to the
7 following requirements”. Insert the following sentence at the end of this section: “If a
8 Telecommunications Company cannot comply with the requirements of this section, it may not
9 combine a Letter of Agency with a marketing check.”
10

11 1905.D

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

15 Staff comments that this section was written to ensure that a reasonable reader
16 understands that electronic authorization, including internet authorizations, are acceptable forms of
17 verification.
18

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

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

23 **Resolution:** Renumber 1905.D.1 as 1905.E. Renumber 1905.D.2 as 1905.E.1 and renumber
24 accordingly.
25

1905.F.2

1
2 **Issue:** Qwest comments that this section's prohibition on any financial incentive to "verify"
3 the authorization conflicts with FCC rules, which prohibit a financial incentive to "confirm" a
4 change. Qwest comments that under this section, merely paying the verifying entity appears to pose
5 a problem, and thus conflicts with the FCC rules.

6 Staff comments that this section prohibits incentives to "verify that . . . change orders
7 are authorized", which prohibits payments based on the third party's determination that an order is
8 authorized, but does not prohibit payments that are neutral as to the determination made by the third
9 party.
10

11 **Analysis:** Qwest's comments seem not to be based on the full text of this section, which clearly
12 states: "The independent third party shall not have any financial incentive to verify that
13 Telecommunications Company change orders are authorized." We fail to see how this section could
14 be interpreted to conflict with the FCC rule, as described by Qwest, that "an independent verifying
15 entity may not have a financial incentive to 'confirm' a change."
16

17 **Resolution:** No change required.

R14-2-1906 – Notice of Change

19 **Issue:** AT&T commented that this section should be eliminated because notice to subscribers
20 regarding their telephone service provider is governed by federal Truth-in-Billing requirements.
21 AT&T believes that the provision is confusing to carriers regarding what carrier is responsible for
22 providing the notice, because only the Executing Telecommunications Carrier can make a change in a
23 Subscriber's service. AT&T requests that if the section is retained, that it be modified to allow that
24 the "notice of change be printed in both English and Spanish or in the language the carrier has chosen
25 to use in marketing to the Subscriber."
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1 Allegiance comments that this section should be limited to residential customers and
2 not be required in transactions with business customers, stating that the need for bilingual notices
3 arises in the residential market, not the business market, and that the requirement to produce certain
4 notices in both English and Spanish will require significant investment and expense on the part of
5 smaller carriers such as Allegiance.

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

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

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

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

1 We agree with Cox's proposed language addition to clarify that the referenced
 2 "separate mailing" would be sent to the Subscriber. It is already clear that a bill or a bill insert would
 3 be sent to the Subscriber.

4 **Response:** Insert "to the Subscriber" after "separate mailing". No further changes required.

5 **R14-2-1907 – Unauthorized Changes**

6 **1907.B**

7 **Issue:** Qwest recommends eliminating the five-business day requirement from this section,
 8 stating that it is unrealistic in many circumstances, because a reasonable response time will vary
 9 according to the circumstances.
 10

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

13 **Analysis:** We agree with Staff. Given the circumstances under which compliance with this
 14 section would be required, we believe that the timeframe in this rule is very reasonable and fair to the
 15 Unauthorized Carrier, and that Telecommunications Carriers should be able to comply within five
 16 business days at most.
 17

18 **Resolution:** No change required.

19 **1907.C**

20 **Issue:** Qwest comments that although this section requires the Telecommunications
 21 Company to remedy an unauthorized change, the Unauthorized Carrier is the responsible party for
 22 remedying unauthorized changes. Qwest requests that this section be modified to state: "the
 23 Unauthorized Carrier shall:".
 24

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

26 **Analysis:** We agree with Qwest and Staff.
 27
 28

1 **Resolution:** Replace "the Telecommunications Company shall" with "the Unauthorized Carrier
2 shall"

3 **1907.C.2**

4 **Issue:** Qwest comments that this section creates inconsistency with the federal rules by
5 absolving subscribers of all unpaid charges for a period of ninety days following a slam, while the
6 FCC rules absolve subscribers of unpaid charges associated with a slam for a period of only thirty
7 days. Qwest believes that this conflict will create administrative problems for telecommunications
8 companies and will lead to subscriber confusion, particularly when slamming complaints involve
9 both interstate and intrastate calls.
10

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

13 **Analysis:** We agree with Staff, and believe that customers are generally aware of the difference
14 between interstate and intrastate calls and that any differences in absolution periods due to such
15 difference can be easily explained.
16

17 **Resolution:** No change required.

18 **1907.C.3**

19 **Issue:** Qwest comments that this provision departs significantly from the FCC rules, which it
20 believes is prohibited by Arizona law, and creates subscriber confusion. Qwest states that the FCC
21 permits the original carrier to rebill calls, protecting the original carrier against foregone services
22 during the absolution period.
23

24 Staff comments that it does not agree and believes customers are better served with a
25 90-day absolution period during which the carrier cannot rebill the customer.

26 **Analysis:** This section prohibits the original Telecommunications Carrier from billing a
27 Subscriber for charges incurred during the first 90 days of the Unauthorized Carrier's service, but
28

1 does allow the original Telecommunications Company to rebill charges the Subscriber incurred to the
2 Unauthorized Carrier, after the 90 day absolution period, at the original Telecommunications
3 Company's rates. We believe that this is the fairest resolution possible to the unfair situation
4 presented to Arizona consumers by an Unauthorized Change.

5 **Resolution:** No change required.

6 **1907.C.4**

7 **Issue:** AT&T comments that as drafted, this section could allow the original
8 Telecommunications Company to apply the 150 percent credit toward charges incurred during the 90-
9 day absolution period, and that in contrast, section 1907.C.3 prohibits the original
10 Telecommunications Company from billing for charges incurred during the absolution period.
11 AT&T proposed a revision to clarify that any refund from the Unauthorized Carrier is to be applied
12 after the absolution period ends.
13

14 Staff comments that it is concerned that on some occasions Subscribers may pay a bill
15 before they discover a slam, and believes that if this occurs during the 90-day period, the 150 percent
16 credit should still apply.
17

18 **Analysis:** This section requires 150 percent of any charges paid by a Subscriber to an
19 Unauthorized Carrier to be applied as a credit to authorized charges by the Authorized Carrier. It
20 does not contain a time limitation. Because section 1907.C.3 prohibits the original
21 Telecommunications Carrier from billing for unauthorized charges incurred during the first 90 days
22 of the Unauthorized Carrier's service, the 150 percent of charges paid to the Unauthorized Carrier
23 would be applied as a credit to the Subscriber's authorized charges. We believe that reading these
24 two sections together already makes it clear that any 150 percent refund from the Unauthorized
25 Carrier is to be applied to the Subscriber's authorized charges.
26

27 **Resolution:** No change required.
28

1907.D.2

1
2 **Issue:** Qwest comments that it believes that the Commission should not inject itself into
3 credit reporting relationships, which are governed by federal law, and that this section creates conflict
4 with federal agencies charged with administration of the Fair Credit Reporting Act.

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

8
9 **Analysis:** We agree with Staff.

10 **Resolution:** No change required.

1907.E

11
12 **Issue:** AT&T comments that as drafted, this section would allow a customer to persist in
13 "disputing" a charge even after the Commission had determined that the provider change was
14 properly verified under section 1905. AT&T believes that the customer's obligation to pay should be
15 enforceable (even if disputed by the customer), so long as the change is properly verified under
16 section 1905.

17
18 Staff comments that this section provides that the Customer remains obligated to pay
19 any charges that are not disputed, and that if the parties cannot resolve the dispute, they may resort to
20 the procedures of section 1910.

21 **Analysis:** We agree with Staff.

22 **Resolution:** No change required.
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1 **1907.F**

2 **Issue:** Citizens comments that this section, which requires telecommunications companies to
3 maintain records of individual slamming complaints for 24 months, will require companies to
4 enhance data and information systems, and stated that this is costly and time-intensive. Citizens states
5 that its automated systems currently preserve records of individual customer service order activity
6 and any related remarks of its customer service representatives for only a six-month period, and that
7 to comply with this section, it must have an outside vendor enhance its system design and make and
8 test program modifications. Citizens requests that the Commission delay the effective date for the
9 rules' applicability for one year to allow time for it to implement the system upgrades necessary to
10 comply with this rule. Citizens orally stated that if a temporary waiver request would be the
11 appropriate avenue for it to obtain relief, that it could make such a request.
12

13 **Analysis:** Citizens is not requesting a change to the rule. If it requires additional time to comply
14 with this rule, Citizens should request a temporary waiver of the applicability of the rule, when the
15 rules become effective.
16

17 **Response:** No change required.
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1 **R14-2-1908 – Notice of Subscriber Rights**

2 **1908.B.3**

3 **Issue:** AT&T comments that this section requires a Telecommunications Company to
4 provide to each of its Subscribers a notice that the Unauthorized Carrier must remove all charges, but
5 that section 1907 does not so require.

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

11 **Analysis:** We agree with AT&T and Staff.

12 **Resolution:** Delete this section and renumber accordingly.

13 **1908.B.6**

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

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

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

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

3 **Resolution:** Replace the last sentence of this section with "The original Telecommunications
4 Company may not bill the Subscriber for unauthorized service charges during the first 90 days of the
5 Unauthorized Carrier's service but may thereafter bill the Subscriber at the original
6 Telecommunications Company's rates;"

7
8 **1908.B.7**

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

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

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

15 **Resolution:** No change required.

16
17 **1908.B.11**

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

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

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

24 **Resolution:** Insert "long distance" between "Customer's" and "telecommunications".
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1908.C.1

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

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

6 **Resolution:** Insert "its" between "to" and "new Customers".
7

1908.C.2

8
9 **Issue:** Qwest believes the language of this section should be broadened to either 1) impose a
10 publication requirement on all telecommunications companies; or 2) require each company to
11 contribute to the cost of a generic notice for all companies. Qwest believes that otherwise, those
12 companies that publish a directory are penalized.

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

14 **Analysis:** It is important for customers to have access to the information required by this section
15 in the white pages of their telephone directories. We do not believe that provision of this information
16 penalizes Telecommunications Companies that publish a telephone directory or contract for
17 publication of a telephone directory.
18

19 **Resolution:** No change required.

1908.C.3

20
21 **Issue:** AT&T comments that this section's requirement that the notice required by section
22 1908 be posted on its website would be an onerous burden and would have limited value given that
23 the information at issue here can be made generally available to Arizona consumers from numerous
24 other sources. AT&T states that it does not typically maintain information applicable only to the
25 residents of a specific state, province, or territory on a website because of the high cost of keeping
26 information accurate and current.
27
28

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

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

6 **Resolution:** No change required.

7
8 **1908.C.4**

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

12 Citizens comments that this section, which requires telecommunications companies to
13 notify customers of their slamming rights in both English and Spanish, is impractical, unnecessary
14 and expensive for its affiliate Navajo Communications, Inc., which has a predominately Native
15 American customer base. Citizens requests that a telecommunications company that provides service
16 in an area that is predominately Native American be required to provide notification in English and
17 appropriate communication for the Native American, and not in Spanish. Citizens has located a call
18 center on Navajo Tribal Lands, and states that it has done so in large part due to the availability of
19 Navajo speakers.
20

21 **Analysis:** Because of the large Spanish-speaking population in Arizona, we believe that this
22 section as drafted best serves the public interest. However, this section does not prevent a company
23 from providing notice written in a language other than English or Spanish that the carrier has chosen
24 to use in marketing to the Subscriber.
25

26 Citizens raises a reasonable point. Citizens may request a waiver of the applicability
27 of the rule to its affiliate Navajo Communications, Inc., based on its provision of notification
28

1 appropriate to its customer base, when the rules become effective. AT&T may also request such a
2 waiver if it believes it appropriate.

3 **Response:** No change required.

4 **R14-2-1909 – Customer Account Freeze**

5 **1909.A**

6 **Issue:** Qwest comments that this section should be modified to apply to local service as well
7 as intraLATA service and interLATA service. Qwest states that this article fails to provide any
8 regulation of local service freezes, leaving carriers to implement them through tariffs.
9

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

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

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

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

17 **1909.C**

18 **Issue:** Qwest comments that this section should be modified to apply to local service as well
19 as intraLATA service and interLATA service. Qwest states that this article fails to provide any
20 regulation of local service freezes, leaving carriers to implement them through tariffs.
21

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

24 **Resolution:** No change required.
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1909.D

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

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

8 WorldCom Inc. ("WorldCom") comments that two new sections should be added after
9 this section to provide that electronic authorization may be used to lift a Customer account freeze.
10

11 Qwest comments that it opposes WorldCom's request for electronic authorization as a
12 means of verification because without direct contact, a provider cannot ensure that the subscriber is
13 not a victim of slamming, and allowing electronic authorization from third parties would likely
14 increase slamming. Qwest maintains that any means of authorization must come directly from the
15 Subscriber.
16

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

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

20 **Resolution:** No change required.
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1909.F

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2 **Issue:** Citizens comments that this section, which requires telecommunications companies to
3 maintain records of Customer Account Freeze authorizations and repeals for 24 months, will require
4 companies to enhance data and information systems, and states that this is costly and time-intensive.
5 Citizens states that its automated systems currently preserve records of individual customer service
6 order activity and any related remarks of its customer service representatives for only a six-month
7 period, and that to comply with this section, it must have an outside vendor enhance its system design
8 and make and test program modifications. Citizens requests that the Commission delay the effective
9 date for the rules' applicability for one year to allow time for it to implement the system upgrades
10 necessary to comply with this section. Citizens orally stated that if a temporary waiver request would
11 be the appropriate avenue for it to obtain relief, that it could make such a request.
12

13 In response to comments from Qwest and Staff, the definition of "Customer Account
14 Freeze", section 1901.D, has been deleted.
15

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

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

21 **Response:** Replace "Account Freeze" with "account freeze" where it occurs in this section. No
22 further change required.
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1 **R14-2-1910 – Informal Complaint Process**

2 **1910.B.3**

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

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

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

10 **Resolution:** Add “of receipt of notice from the Commission” after “within 5 business days”.

11 **1910.B.4**

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

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

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

23 This section clearly applies only to the informal complaint process, and only governs
24 Staff’s responsibility to inform a Telecommunications Company of how Staff must treat a failure to
25

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

3 **Resolution:** No change required.

4 **1910.B.6**

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

7 **Analysis:** We agree with Qwest.

8 **Resolution:** Delete this section and renumber accordingly.

9 **1910.B.7**

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

12 **Analysis:** We agree with Qwest.

13 **Resolution:** Delete this section and renumber accordingly.

14 **1910.B.8**

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

21 Qwest comments that it has serious due process concerns with the informal complaint
22 process because it places the burden of proof on the responding company and establishes a
23 presumption in favor of the Subscriber.
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1 Staff comments that it does not share the concerns of parties who believe that due
2 process rights are violated by a requirement that the public service company promptly respond to a
3 regulatory inquiry.

4 **Analysis:** We agree with Staff that a public service company should promptly respond to a
5 regulatory inquiry. In the informal complaint process, it is reasonable for Staff to deem a failure to
6 timely respond to an investigative inquiry as an admission and as a rule violation for purposes of
7 Staff's non-binding written summary of findings pursuant to this rule.
8

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

13 **Resolution:** No change required.

14 **R14-2-1911 – Compliance and Enforcement**

15 **Issue:** Qwest comments that this section should be deleted, as it restates the penalty statutes
16 contained in the Arizona Revised Statutes. Qwest further comments that the Commission should also
17 adopt the FCC's approach, which considers the willfulness of carriers in assigning penalties, and that
18 the severity of penalties should vary according to the level of carrier culpability.
19

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

22 **Analysis:** We agree with Staff.

23 **Resolution:** No change required.
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R14-2-1914 – Script Submission

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

4 AT&T comments that a carrier should not be obliged to turn over all scripts, and that
5 filing the scripts under seal does not resolve the problem of releasing valuable internal information
6 from its control. AT&T stated its willingness to provide responsive proprietary scripts to the
7 Commission if needed in a complaint proceeding. AT&T believes that this section's requirement as
8 written is overbroad and includes no clear purpose for requiring submission of scripts. AT&T
9 recommends that this section be eliminated.
10

11 WorldCom comments that scripts should be filed annually except if a new launch is
12 initiated that causes the creation of a whole new set of scripts. WorldCom also commented that it
13 would like clarification that while the Commission may review scripts so that it has notice of what
14 and how telecommunications products are being sold, it will not mandate that a specific script be
15 used and will not re-write, re-script or direct a company's marketing efforts as long as no fraudulent
16 or misleading statements are stated or implied. WorldCom urges that the Commission set criteria for
17 types of scripts that could cause punitive actions by the Commission.
18

19 Allegiance comments that this section should apply only to scripts provided to third
20 party marketing agents. Allegiance further comments that this section should be clarified to require
21 that script submissions only need to be made annually or after substantial amendment to the script,
22 that the Commission is not seeking pre-approval rights for such scripts, and that scripts are not
23 required.
24

25 Qwest comments that filing scripts under seal relieves few confidentiality concerns,
26 because scripts remain subject to Staff review, and any problems the Commission finds upon
27 reviewing the scripts will result in the scripts losing their confidential status. Qwest further comments
28

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

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

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

22 **Analysis:** This section puts in place a mechanism for monitoring Telecommunications
23 Companies' scripts for fraudulent practices that are known to occur in the industry and are prohibited
24 by this article, and provides that Staff may initiate a formal complaint to review any script. This
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1 section does not require that scripts be pre-approved by the Commission or require that scripts be
2 used at all.

3 The prevention of consumer fraud by public service corporations upon Arizona
4 consumers constitutes a compelling state interest that outweighs the burdens of compliance
5 referenced in the comments. The clarifications proposed by Staff in its Supplemental Comments
6 reasonably address the comments regarding the breadth of this section. With the clarifications, the
7 requirements of this section are narrowly tailored to apply only to those scripts that would be used in
8 the types of customer contacts where misleading or improper marketing activities are known to have
9 occurred.
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11 **Resolution:** Insert the language proposed by Staff in its Supplemental Comments filed on July 12,
12 2002.

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ARTICLE 20. CONSUMER PROTECTIONS FOR UNAUTHORIZED CARRIER

CHARGES

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R14-2-2001 – 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”.

R14-2-2002 – 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”.

1 **R14-2-2005 – Authorization Requirements**

2 **2005.A.3**

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

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

8
9 The Wireless Group and Qwest recommend deletion of the requirement of this rule
10 that a Telecommunications Company obtain from the Subscriber explicit acknowledgement that the
11 charges will be on the Customer's bill.

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

16
17 **Analysis:** We agree that a Telecommunications Company can easily obtain the
18 acknowledgement that the charges will be billed, and that this acknowledgement should certainly be
19 obtained. This requirement is necessary to achieve the objectives of these rules, is therefore not
20 overbroad, and should not be deleted.

21 **Resolution:** No change necessary.
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2005.B

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2 **Issue:** The Wireless Group states that Telecommunications Companies should only be
3 required to offer to Subscribers the information required by this rule upon request. Qwest comments
4 that they should be obligated only to providing a clear, non-misleading description of the product or
5 service, and that a description should only be required for those products or services requested.
6 Qwest also recommends that the requirement that the company describe how the charge will appear
7 on the Customer's bill be deleted, because the requirement will add unnecessary time to sales calls.
8

9 The Wireless Group asserts that many customers do not want to be inundated with
10 information when they sign up for a service, but that they might find it useful to know that a
11 Telecommunications Company has an obligation to provide more detailed information if they request
12 it. Staff points out that the rule only applies to products and services offered during the course of the
13 contact with the customer, and not to all of a company's products and services.
14

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

20 **Resolution:** No change required.
21

2005.B.1

22 **Issue:** Qwest comments that the obligation of the provider should be limited to providing a
23 clear, non-misleading description of the product or service, and that although in many cases an
24 explanation may be desirable or useful, requiring an explanation at the point of sale in every case is
25 not appropriate. Qwest comments that similarly, representatives should be providing a "statement" of
26 applicable charges, not an "explanation."
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1 **Analysis:** Customers deserve an explanation of products or services offered in order to be able to
2 make an informed decision whether to buy the product or service.

3 **Resolution:** No change required.

4 **2005.B.2**

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

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

9 **Resolution:** No change required.

10 **2005.B.3**

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

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

17 **Resolution:** No change required.

18 **2005.C**

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

4 Qwest comments that Telecommunications Companies should only be required to
5 provide notice in the Subscriber's choice of language, and that requiring notice to be written in any
6 language used at any point in the sales transaction will result in a significant cost increase.

7 Citizens comments that this rule is impractical, unnecessary and expensive for its
8 affiliate Navajo Communications, Inc., which has a predominately Native American customer base.
9 Citizens requests that a telecommunications company that provides service in an area that is
10 predominately Native American be required to provide notification in English and appropriate
11 communication for the Native American, and not in Spanish. Citizens has located a call center on
12 Navajo Tribal Lands, and stated that it did so in large part due to the availability of Navajo speakers.
13

14 Allegiance comments that this section should be limited to residential customers and
15 not be required in transactions with business customers, stating that the need for bilingual notices
16 arises in the residential market, not the business market, and that the requirement to produce certain
17 notices in both English and Spanish will require significant investment and expense on the part of
18 smaller carriers such as Allegiance.
19

20 Cox comments that the rule appears to mandate that the Telecommunications
21 Company have the ability to conduct a sales transaction in Spanish on the spot, and would place an
22 unreasonable burden on the company's staffing requirements. Cox states that it would be more
23 reasonable for a company to delay a sales transaction if it could not conduct that transaction in
24 Spanish.
25

26 Staff comments that if a Subscriber were to contact a company employing a language
27 not understood by the company's representatives, that the company's only obligation is not to
28

1 complete the transaction since the company would not be able to comply with the rule's notice and
2 authorization requirements.

3 **Analysis:** This section requires that if the Telecommunications Company employs any language
4 in the sales transaction, that the required authorizations be given in that language. This is a valid
5 consumer protection requirement for both residential and business customers, and the protections
6 afforded by this requirement merit the expense of obtaining a valid authorization. We agree with the
7 comments of Cox and Staff that that it would be more reasonable for a company to delay a sales
8 transaction if it could not conduct that transaction in Spanish, or in any other language used in the
9 course of the transaction, for that matter. We believe that a minor addition to this section may be
10 required to clarify this point.
11

12 Citizens raises a reasonable point in relation to its affiliate Navajo Communications,
13 Inc. Because of the large Spanish-speaking population in Arizona, we believe that the rule as drafted
14 best serves the public interest, but that when the rules become effective, Citizens may request a
15 waiver of the applicability of the rule for its affiliate Navajo Communications, Inc., based on the fact
16 that it will provide the required notification in a language appropriate to the affiliate's customer base.
17

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

20 **2005.D**

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

3 In its Supplemental Comments filed on July 12, 2002, Staff proposes changes to the
4 first sentence of this section to make this rule applicable only to contacts in which a
5 Telecommunications Company offers to establish service or during which a person requests the
6 establishment of service. Cox comments in response that it would still prefer the elimination of the
7 first sentence of the section. AT&T comments in response to Staff's proposed clarification that the
8 first paragraph of this section should be further clarified to include the word "residential"
9 immediately before "service" in both places it appears.
10

11 **Analysis:** This section addresses the Commission's concern that persons requesting or being
12 offered residential service be informed of the lowest-cost telephone service available. Staff's
13 proposed modification to this section provides clarity and should be adopted. AT&T's proposed
14 modification also provides clarity. A.A.C. R14-2-1201.6, which is referenced in the first sentence of
15 this section, refers to "1-party residential service with a voice grade line." Therefore, the addition of
16 the word "residential" as clarification to the first sentence of this section as recommended by AT&T
17 would be helpful. The remaining sentences of this section apply to companies' descriptions of any
18 product, service, or plan, and the Commission does not intend them to be limited to descriptions of
19 residential products, services, or plans.
20

21 **Resolution:** Replace "during which" with "in which". Replace "sell a product or service" with
22 "establish residential service". Replace "a Subscriber requests to buy a product or service" with "a
23 person requests the establishment of residential service".
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2005.E

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2 **Issue:** Citizens comments that this section, which requires telecommunications companies to
3 maintain records of individual subscriber service authorizations for 24 months, will require
4 companies to enhance data and information systems, and states that this is costly and time-intensive.
5 Citizens states that its automated systems currently preserve records of individual customer service
6 order activity and any related remarks of its customer service representatives for only a six-month
7 period, and that to comply with this section, it must have an outside vendor enhance its system design
8 and make and test program modifications. Citizens requested that the Commission delay the effective
9 date for the rules' applicability for one year to allow time for it to implement the system upgrades
10 necessary to comply with this rule. Citizens orally stated that if a temporary waiver request would be
11 the appropriate avenue for it to obtain relief, that it could make such a request.
12

13 **Analysis:** Citizens is not requesting a change to the rule. If it requires additional time to comply
14 with this rule, Citizens should request a temporary waiver of the applicability of the rule, when the
15 rules become effective.
16

17 **Response:** No change required.

R14-2-2006 – Unauthorized Charges**2006.A.5**

19
20 **Issue:** Citizens comments that this section, which requires telecommunications companies to
21 maintain records of unauthorized charges for 24 months, will require companies to enhance data and
22 information systems, and stated that this is costly and time-intensive. Citizens states that its
23 automated systems currently preserve records of individual customer service order activity and any
24 related remarks of its customer service representatives for only a six-month period, and that to
25 comply with this section, it must have an outside vendor enhance its system design and make and test
26 program modifications. Citizens requested that the Commission delay the effective date for the rules'
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1 applicability for one year to allow time for it to implement the system upgrades necessary to comply
2 with this rule. Citizens orally stated that if a temporary waiver request would be the appropriate
3 avenue for it to obtain relief, that it could make such a request.

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

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

10 **Response:** No change required.

11 **2006.C.1**

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

15 **Analysis:** We agree with AT&T.

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

17 **2006.C.2**

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

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

1 **Resolution:** No change required.

2 **R14-2-2007 – Notice of Subscriber Rights**

3 **2007.C.1**

4 **Issue:** The Wireless Group states that the requirements of this rule to include name, address,
5 and telephone number of the Telecommunications Company is burdensome and unnecessary in light
6 of federal requirements. Qwest comments that a toll-free number should be sufficient and that
7 providing its address is burdensome, unnecessarily costly and should be eliminated from the rule.
8

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

11 **Resolution:** No change required.

12 **2007.C.5**

13 **Issue:** Qwest comments that this section's allowance of 15 days to complete the process of
14 investigating unauthorized charges, resolving the complaint, and refunding or crediting the charge,
15 directly conflicts with proposed R14-2-2006.A.3, which provides two billing periods to refund or
16 credit an unauthorized charge. Qwest recommends that to maintain consistency, this section should
17 be modified to allow two billing periods for refund or credit.
18

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

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

23 **Resolution:** Replace "Unauthorized Charges as promptly as reasonable business practices permit,
24 but no later than 15 days from the Subscriber's notification" with "any Unauthorized Charge. If any
25 Unauthorized Charge is not refunded or credited within two billing cycles, the Telecommunications
26

1 Company shall pay interest on the amount of any Unauthorized Charges at an annual rate established
2 by the Commission until the Unauthorized Charge is refunded or credited”.

3 **2007.D**

4 **Issue:** The Wireless Group comments that many customers do not keep materials that are
5 provided to them at the time service is initiated, and that it is questionable whether customers would
6 have the notice of subscriber rights at the time they have a complaint. The Wireless Group proposes
7 that this rule be modified to permit Telecommunications Companies to place an abbreviated form of
8 the notice of subscriber rights in periodic bill messages instead of providing the notice at the time
9 service is initiated. The Wireless Group believes that its recommended change to the rule would
10 allow companies to avoid the cost and burden of producing Arizona-specific printed material for new
11 customers while at the same time increasing the likelihood that all customers will have the
12 information when they need it.
13

14 Allegiance comments that this section should be limited to residential customers and
15 not be required in transactions with business customers, stating that the need for bilingual notices
16 arises in the residential market, not the business market, and that the requirement to produce certain
17 notices in both English and Spanish will require significant investment and expense on the part of
18 smaller carriers such as Allegiance.
19

20 Staff comments that the costs associated with providing Arizona consumers
21 information on their legal rights in Arizona is a prudent cost for an Arizona public service company.
22

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

27 **Resolution:** No change required.
28

2006.D.2

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

6 **Analysis:** It is important for customers to have access to the information required by this section
7 in the white pages of their telephone directories. We do not believe that provision of this information
8 penalizes Telecommunications Companies that publish a telephone directory or contract for
9 publication of a telephone directory.
10

11 **Resolution:** No change required.

2007.D.3

12
13 **Issue:** AT&T comments that this section's requirement that the notice required by section
14 2007 be posted on its website would be an onerous burden and would have limited value given that
15 the information at issue here can be made generally available to Arizona consumers from numerous
16 other sources. AT&T states that it does not typically maintain information applicable only to the
17 residents of a specific state, province, or territory on a website because of the high cost of keeping
18 information accurate and current.
19

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

23 **Resolution:** No change required.
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2007.D.4

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2 **Issue:** Citizens comments that this rule, which requires telecommunications companies to
3 notify customers of their cramming rights in both English and Spanish, is impractical, unnecessary
4 and expensive for its affiliate Navajo Communications, Inc., which has a predominately Native
5 American customer base. Citizens requests that a telecommunications company that provides service
6 in an area that is predominately Native American be required to provide notification in English and
7 appropriate communication for the Native American, and not in Spanish. Citizens has located a call
8 center on Navajo Tribal Lands, and stated that it has done so in large part due to the availability of
9 Navajo speakers.
10

11 **Analysis:** Citizens raises a reasonable point. Because of the large Spanish-speaking population
12 in Arizona, we believe that the rule as drafted best serves the public interest, but that Citizens may
13 request a waiver of the applicability of the rule, based on its provision of notification appropriate to
14 its customer base, when the rules become effective.
15

16 **Response:** No change required.

R14-2-2008 – Informal Complaint Process**2008**

19 **Issue:** Qwest comments that it has serious due process concerns with the informal complaint
20 process because it places the burden of proof on the responding company and establishes a
21 presumption in favor of the Subscriber.
22

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

26 **Analysis:** We agree with Staff that a public service company should promptly respond to a
27 regulatory inquiry. In the informal complaint process, it is reasonable for Staff to deem a failure to
28

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

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

7 **Resolution:** No change required.

8
9 **2008.B.3**

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

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

16 **Resolution:** No change required.

17
18 **2008.B.4**

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

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

25 **Resolution:** No change required.
26
27
28

1 **2008.B.5**

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

6 **Analysis:** We believe that the rule as proposed allows a reasonable timeframe for a prompt
7 response to a regulatory inquiry.
8

9 **Resolution:** No change required.

10 **2008.B.6**

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

12 **Analysis:** This redundancy may confuse carriers and subscribers.

13 **Resolution:** Delete this section and renumber accordingly.
14

15 **2008.B.7**

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

17 **Analysis:** This redundancy may confuse carriers and subscribers.

18 **Resolution:** Delete this section and renumber accordingly.
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2008.B.8

1
2 **Issue:** The Wireless Group comments that the Commission should provide
3 Telecommunications Companies with sufficient time to research and resolve complaints once they
4 are filed with the Commission. The Wireless Group proposes that the timeframe in this section be
5 changed from 15 business days to 25 business days.

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

12 Staff does not share the concerns of parties who believe that due process rights are
13 violated by a requirement that the public service company promptly respond to a regulatory inquiry.
14

15 **Analysis:** We agree with Staff that a public service company should promptly respond to a
16 regulatory inquiry. We believe that the rule as proposed allows a reasonable timeframe for a prompt
17 response to a regulatory inquiry. In the informal complaint process, it is reasonable for Staff to deem
18 a failure to timely respond to an investigative inquiry as an admission and as a rule violation for
19 purposes of Staff's non-binding written summary of findings pursuant to this rule.
20

21 This rule section clearly applies only to the informal complaint process, and only
22 governs Staff's responsibility to inform a Telecommunications Company of how Staff must treat a
23 failure to respond in its written summary, under this section. It does not address how the failure to
24 respond would be treated in a hearing on a formal complaint.
25

26 **Resolution:** No change required.
27
28

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.

R14-2-2009 – 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.

R14-2-2012 – Script Submission

1
2 **Issue:** The Wireless Group comments that the obligation for all Telecommunications
3 Companies to file a copy of all of their scripts is highly burdensome and unnecessary, and should be
4 eliminated, or alternatively should be restricted to scripts involving a solicitation of business such as
5 outbound telemarketing and only if it is necessary to resolve a specific complaint. The Wireless
6 Group believes that this requirement would be burdensome both to companies and to the
7 Commission, and argued that some of the information contained in scripts used by competitors in an
8 extremely competitive marketplace, such as wireless carriers, is confidential and proprietary,
9 requiring filing of the majority of scripts under seal.
10

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

13 AT&T stated its willingness to provide responsive proprietary scripts to the
14 Commission if needed in a complaint proceeding. AT&T believes that this section's requirement as
15 written is overbroad and includes no clear purpose for requiring submission of scripts. AT&T
16 recommends that this section be eliminated.
17

18 WorldCom commented that scripts should be filed annually except if a new launch is
19 initiated that causes the creation of a whole new set of scripts. WorldCom also comments that it
20 would like clarification that while the Commission may review scripts so that it has notice of what
21 and how telecommunications products are being sold, but that it will not mandate that a specific
22 script be used and will not re-write, re-script or direct a company's marketing efforts as long as no
23 fraudulent or misleading statements are stated or implied. WorldCom urges that the Commission set
24 criteria for types of scripts that could cause punitive actions by the Commission.
25

26 Allegiance comments that this section should apply only to scripts provided to third
27 party marketing agents. Allegiance further comments that this section should be clarified to require
28

1 that script submissions only need to be made annually or after substantial amendment to the script,
2 that the Commission is not seeking pre-approval rights for such scripts, and that scripts are not
3 required.

4 Qwest comments that production of these scripts raises confidentiality issues. Qwest
5 states that any problems found by the Commission upon reviewing the scripts will require the
6 Commission to use the confidential information, and in addition, the filing of a script and the right of
7 the Director of the Utilities Division constitutes an unlawful, prior, restraint upon speech. Qwest
8 therefore recommends elimination of this section. Qwest comments that it supports the objections
9 made by AT&T, WorldCom and Cox that this section is overbroad, and recommends that the
10 Commission require annual filings of only those scripts relating to marketing practices.
11

12 On July 12, 2002, following the public comment hearing on these rules, Staff filed
13 Supplemental Comments in response to issues regarding this section. Staff proposes that the
14 language of this rule be clarified to apply to sales or marketing scripts that involve an offer to sell a
15 product or service, including all scripts for unrelated matters that include a prompt for workers to
16 offer to sell a product or service. Staff further proposes a clarification to this section that requires
17 such scripts to be filed 90 days from the day the rules are published in a notice of final rulemaking in
18 the Arizona Administrative Register, on April 15 of each year, whenever directed to do so by the
19 Director of the Commission's Utilities Division, and whenever a material change to a script occurs or
20 a new script is used that is materially different from a script on file.
21

22 On July 24, 2002, Cox, the Wireless Group and AT&T filed responses to Staff's
23 Supplemental Comments on this section. Cox states that Staff's proposed revisions resolve some of
24 the issues raised and are a significant improvement. AT&T continues to object to required
25 submission of confidential and proprietary scripts where there is no allegation of wrongdoing or
26 consumer confusion, stating that this section imposes costly and unnecessary compliance burdens on
27
28

1 companies and that the Commission has authority to request script submission in the course of a
2 complaint proceeding. The Wireless Group still believes that this section, even with the proposed
3 clarifications, would be unduly burdensome, and that the wireless industry sales practices are already
4 subject to consumer protection laws. The Wireless Group believes that a requirement that scripts be
5 provided to Staff in connection with actual complaints or in response to a specific request for review
6 from the Commission is a more appropriate balancing of benefit against burden than is the annual
7 submission of marketing scripts.

8 **Analysis:** This section puts in place a mechanism for monitoring Telecommunications
9 Companies' scripts for fraudulent practices that are known to occur in the industry and are prohibited
10 by this article, and provides that Staff may initiate a formal complaint to review any script. This
11 section does not require that scripts be pre-approved by the Commission, or require that scripts be
12 used at all.
13

14 The prevention of consumer fraud by public service corporations upon Arizona
15 consumers constitutes a compelling state interest that outweighs the burdens of compliance
16 referenced in the comments. The clarifications proposed by Staff in its Supplemental Comments
17 reasonably address the comments regarding the breadth of this section. With the clarifications, the
18 requirements of this section are narrowly tailored to apply only to those scripts that would be used in
19 the types of customer contacts where misleading or improper marketing activities are known to have
20 occurred.
21

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

BEFORE THE ARIZONA CORPORATION COMMISSION

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WILLIAM A. MUNDELL

Chairman

JIM IRVIN

Commissioner

MARC SPITZER

Commissioner

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

DOCKET NO. RT-00000J-99-0034

STAFF'S REPLY COMMENTS

General Comments

Economic, Small Business and Consumer Impact Statement

Qwest objects to Staff's preliminary summary of this statement. Staff has prepared a more detailed statement, which is attached as Exhibit A.

Conflict with FCC Rules

Qwest repeatedly insists that the Commission's rules are inconsistent with the federal rules, and thus invalid. Qwest cites Arizona's statutory provisions concerning slamming. However, these provisions allow the Commission to create rules "that are not inconsistent with federal law and regulations". See A.R.S. § 44-1572(L). The proposed rules provide greater protection for consumers. This is consistent with the purpose of the federal rules. While the proposed rules are not the same as the federal rules, the proposed rules do not conflict with the federal rules. The legislature could not have intended § 1572 to place the Commission in a straitjacket, with its only option being to adopt a mirror image of the federal rules. If that were the legislature's intention, it would have simply instructed the Commission to administer the federal rules. Moreover, the Commission's authority over public service corporations is founded on Article XV of the Arizona Constitution. Reading § 1572 in the manner Qwest suggests raises an issue with respect to the constitutionality of such a provision. Because statutes should be read to avoid constitutional difficulties, § 1572 should be construed to allow the Commission to add protections

1 for Arizona consumers above and beyond that of the federal rules. Lastly, Qwest cites the FCC's
2 First Order on Reconsideration in CC Docket No. 94-129 (rel. May 3, 2000) to support its
3 interpretation. But the FCC has more recently clarified its view of the preemptive effect of its
4 own rules, finding that its rules should not preempt more stringent state provisions. In the Third
5 Report and Order and Second Order on Reconsideration, the FCC noted that:

6 Although we recognize that it may be simpler for carriers to comply with one set
7 of verification rules, we will not interfere with the states' ability to adopt more
8 stringent regulations.... States have valuable insight into the slamming problems
9 experienced by consumers in their respective locales and can share their expertise
10 with [the FCC]. We will not thwart that effort.... The carriers challenging the
11 [FCC's] decision to refrain from preempting state regulations have failed to
12 identify a particular state law that should be preempted and how that state law
13 conflicts with federal law or obstructs federal objections.¹

14
15 The proposed rules do not conflict with federal law or obstruct federal objectives. They simply
16 impose more stringent standards, as expressly contemplated and permitted by the FCC.

17 18 **Jurisdiction over wireless**

19
20 The Arizona Wireless Carriers Group, in footnotes 6 and 7 of their comments, reply to Staff's
21 legal memorandum concerning wireless jurisdiction. A copy of Staff's legal memorandum is
22 attached as Exhibit B. Staff agrees that the rule in Pima County v. Heinfeld is a valid canon of
23 statutory construction. However, Staff believes that it is not appropriate to apply this canon in
24 these circumstances. As Staff explained in its prior memorandum, three other canons suggest
25 that the Commission does have jurisdiction to apply the proposed cramming rules to wireless
26 carriers. These three canons are (1) that implied repeals are disfavored (2) that statutes are to be

27
28 ¹ FCC Third Report and Order and Second Order on Reconsideration in CC Docket No.
94-129, FCC 00-255, Rel. Aug. 15, 2000, at ¶ 87.

1 "liberally construed to effect their objects and to promote justice" A.R.S. § 1-211.B, and (3) that
2 statutes should be read to avoid constitutional difficulties. These considerations outweigh the
3 cannon cited by the wireless carriers.

4 Comments to Specific Rules

5 R14-2-1901 (C) Definition of "Customer"

6 Qwest recommends the Commission replace the proposed definition of "Customer" with the
7 FCC's definition of "Subscriber" and use "Subscriber" throughout the rules.
8

9
10 Staff recommends against adoption of the Qwest Proposal. Customer and Subscriber are distinct
11 defined terms of the proposed rules. Using both terms in the rules clarifies a
12 Telecommunications Company's obligations to a Customer, while allowing the company to
13 market and obtain authorization from the Subscriber, who is either the Customer, or its agent.
14

15 R14-2-1901 (D) Definition of "Customer Account Freeze"

16 Qwest recommends the Commission replace the proposed term with either "Preferred Carrier
17 Freeze" or "Subscriber Freeze." Qwest recommends the alternative phrasing because a freeze
18 does not affect the entire account, and as such "Preferred Carrier Freeze" more accurately
19 reflects the action.
20

21 Qwest also asserts that an unlawful conflict between the Commission's proposed Rule and the
22 FCC exists because the Arizona proposal allows a Subscriber to place a stay on any service,
23 whereas the FCC rule is limited to staying a change in provider.
24

25 Staff notes that proposed rule 1909.A limits a Customer Account Freeze to stopping "a change in
26 a Subscriber's intraLATA and interLATA Telecommunications Company selection until the
27 Subscriber gives consent..." Because this term is more fully described in the text of Rule 1909.A,
28

1 Staff recommends that R14-2-1901 (D) be deleted. Staff notes that Qwest has filed a tariff to
2 implement a local service freeze. See Docket T-01051B-02-0073. Staff believes that the issues
3 concerning Qwest's local service freeze should be resolved in Docket T-01051B-02-0073.
4

5 **R14-2-1901 (F) Definition of "Letter of Agency"**

6 Qwest recommends the Commission remove Letter of Agency from the definitional section
7 because the definition fails to explain that a Letter of Agency is a written authorization by a
8 subscriber empowering another person or entity to act on the subscriber's behalf.
9

10 Staff believes that the proposed clarification is not necessary, because an executing carrier is
11 required to accept an Internet LOA from a submitting carrier under Proposed Rule 1905.D
12

13
14 **R14-2-1901 (G) Definition of "Subscriber"**

15 Cox Arizona Telecom, L.L.C. ("Cox") requests the Commission to revise the definition of
16 Subscriber to exclude business customers where service is provided under a written contract. Cox
17 believes the proposed rules may not be appropriate in the business services market where the
18 customer and provider have a contractual arrangement.
19

20 Staff recommends against adoption of the Cox proposal. The proposed rules require authorization
21 and verification to changes to a Customer's account. Contracted services to a business customer
22 are likely to already provide proper authorization.

23 **R14-2-1902 Purpose and Scope**

24 Qwest recommends elimination of this rule because according to Qwest it violates ARS § 41-
25 1001.17, which limits rules to statements that "interprets or prescribes law or policy, or describes
26 the procedure or practice requirements of an agency."
27
28

1 Staff disagrees with Qwest's legal analysis. A statement of purpose and scope gives guidance as
2 to how the subsequent rules are to be interpreted. In this respect, proposed rule 1902 is more like
3 a definition than the type of statement prohibited by § 41-1001.17. This could be clarified by
4 adding the phrase "shall be interpreted to" at the beginning of each sentence, after "rule". Thus,
5 the first sentence would read "These rules shall be interpreted to ensure that..."

6 7 **R14-2-1904 (C) Authorized Telecommunications Company Change Procedures**

8 Qwest asserts that the Commission's proposed rule conflicts with federal rules, and is prohibited
9 by Arizona statute. According to Qwest the FCC rule is clear that an executing carrier may not
10 "verify" a change, whereas under the proposed Arizona rule, the executing carrier is only
11 prohibited from "contacting" the Subscriber.

12
13 Staff recommends against adoption of the Qwest comment. Staff believes the proposed language
14 provides clarity to a reasonable reader by stating in part that the executing carrier "shall not
15 contact the Subscriber to verify the Subscriber's selection..." This clearly prohibits verification
16 by the executing carrier, the same practice prohibited by the FCC rules.

17 18 19 **R14-2-1904(D) Authorized Telecommunications Company Change Procedures**

20 AT&T requests the Commission amend this proposed rule by eliminating the last sentence of the
21 subsection which shields the executing carrier from liability when it executes a change.

22
23 Staff recommends against adopting this proposal. Shielding the executing carrier is essential to
24 the operation of the proposed rules, and is consistent with the FCC rules.

25
26 Under both the FCC rules and the proposed rules, it is the submitting carrier that carries liability
27 and must verify. Indeed, for this reason the executing carrier is prohibited from verifying
28 changes. Accordingly, it would be both inconsistent and unfair for the executing carrier to face

1 liability. AT&T appears concerned that if the executing carrier errors in processing a properly
2 submitted change, this sentence could shield the executing carrier from liability. However, this
3 sentence does not apply in this situation, because the liability limitation applies only when the
4 executing carrier is "processing an Unauthorized Change." Therefore, an executing carrier is not
5 immune if it improperly processes an authorized change submitted by a submitting carrier.
6

7 **R14-2-1904(E) Authorized Telecommunications Company Change Procedures**

8 The proposed rule allows a Telecommunications Company selling more than one type of service
9 to obtain subscriber authorization for all services during a single contact. According to Qwest,
10 the Commission has proposed an unlawful conflict between Arizona rules and FCC rules because
11 the proposed rule implies that "separate" authorizations are not required by a company offering
12 more than one type of service.
13

14 Staff notes that separate authorizations may be given during a single contact. For example,
15 Qwest's proposed requirement would require that a Subscriber go through multiple phone calls
16 in order to change multiple services. This is burdensome and unreasonable. The FCC has
17 clarified that its rule does not prohibit multiple authorizations in a single contact.² Accordingly,
18 the proposed rules are consistent with the federal rules.
19

20
21 **R14-2-1905(A)(1) Letters of Agency Verification of Orders for Telecommunications**
22 **Service**

23 Qwest recommends retaining the language in subsection A.1, regarding internet enabled
24 authorization and asserts that the language is redundant to subsection D.
25
26
27

28 ² FCC Third Report and Order and Second Order on Reconsideration in CC Docket No. 94-129, FCC 00-255, Rel. Aug. 15, 2000, at ¶ 79.

1 Staff recommends against adoption of the Qwest proposal. The proposed rule was written to
2 ensure a reasonable reader understands that electronic authorization, including internet
3 authorizations, are acceptable forms of verification.

4 R14-2-1905(C) Letters of Agency

5 Allegiance Telecom of Arizona, Inc. ("Allegiance") comments that this rule should only be
6 applicable to residential customers, not business customers. According to Allegiance, requiring
7 production of proper documentation in English and Spanish will require a significant investment.

8
9 AT&T requests that the carriers have the option of using the language that carrier has chosen to
10 use in marketing to the customer. AT&T also requests that the Commission eliminate the
11 requirement that the notice be in any language used in the transaction.

12
13 Cox believes that the Commission should only require English and Spanish versions, and not any
14 "other language" that may be used.

15
16 Qwest objects to a requirement that notice be written in any language used in the sales
17 transaction. Qwest recommends that a Telecommunications Company should only be required
18 to provide notice in the subscriber's choice of language.

19
20 Staff recommends against adoption of any proposal to limit the publication of the notice to either
21 English, Spanish or any language used during the transaction. The proposed rule is written to
22 ensure that the Subscriber retains the opportunity to read the notice in the language which the
23 Subscriber is most comfortable.

24
25 R14-2-1905 (D)

26 Qwest recommends deleting section D as Qwest finds the section duplicative of Section A.1.
27
28

1 Staff recommends against adoption of this proposal for the reasons stated in its response to
2 1905.A.1.

3 **R14-2-1905 (F) (2)**

4 Qwest asserts that the proposed section conflicts with federal rules because the federal rules do
5 not allow an independent verifying entity to have a financial incentive to "confirm" a change.
6 According to Qwest, the Arizona rules prohibit any financial incentive to "verify" the
7 authorization. Qwest asserts that this rule might prohibit telecommunications companies from
8 paying independent third parties.
9

10 Staff recommends no change to the proposed rule. The proposed rule is not intended to be
11 substantively different than the federal rule. Proposed rule R14-2-1905.F.2 prohibits incentives
12 to "verify that... change orders are authorized." This prohibits payments based on the third
13 party's determination that an order is authorized. It does not prohibit payments that are natural
14 as to the determination made by the third party (for example, a flat rate of X dollars per
15 verification).
16

17
18 **R14-2-1906 Notice of Change**

19 Allegiance asserts that this rule should only be applicable to residential customers, not business
20 customers. In addition, according to Allegiance, requiring production of proper documentation
21 in English and Spanish will require a significant investment.
22

23 AT&T comments that the rule should be eliminated as Federal Truth in Billing requirements
24 provide the required information.
25

26 Cox proposes that the section be clarified to indicate that the notice be sent to the affected
27 Subscriber.
28

1 Staff concurs with the Cox comment to insert "to the subscriber" after "separate mailing" to
2 ensure a Telecommunications Company has a duty to communicate with its own customers.
3 Staff does not support any of the other proposed changes to this rule.

4 R14-2-1907 Unauthorized Changes

5 Qwest comments that the Commission's proposed rules conflict with the federal rules because
6 the proposed rules contain a longer absolution period than the federal rules. Qwest asserts that it
7 will not be able to "meet the mandates of both sets of rules"

8
9 Staff believes that Qwest is mistaken. Although the federal rules specify a shorter period,
10 nothing in the federal rules prohibits a longer absolution period.

11 12 R14-2-1907 (B)

13 Qwest recommends eliminating the five-business day response required for action to resolve an
14 unauthorized change. Qwest views the time frame as unrealistic.

15
16 Staff does not agree with Qwest. An Unauthorized Change is a fraud on the consumer that
17 requires an immediate response by a Telecommunications Carrier.

18 19 R14-2-1907 (C)

20 Qwest notes that the beginning of the rule uses the phrase "Telecommunications Company",
21 while the remainder of this rule uses the term "Unauthorized Carrier" to refer to the same
22 company.

23
24 Staff agrees that this provision should be changed so that it is consistent. Accordingly, Staff
25 recommends that the phrase "Telecommunications Company" be replaced with the term
26 "Unauthorized Carrier" in the part of proposed rule R14-2-1907.C before the beginning of R14-
27 2-1907.C.1.

1 R14-2-1907 (C) (2)

2 Qwest comments that the Commission's proposal to absolve subscribers of all unpaid charges for
3 ninety days will confuse subscribers.
4

5 Staff does not agree with Qwest, and believes consumers are better served with a 90-day
6 absolution period as embodied in Arizona statutes and the Proposed Rule.
7

8 R14-2-1907 (C) (3)

9 Qwest comments that the proposed Arizona rule does not allow a carrier to rebill the subscriber
10 as the Federal Rule does. Qwest asserts this rule will confuse Arizona subscribers.
11

12 Staff does not agree with Qwest, and believes consumers are better served with a 90-day
13 absolution period, during which the carrier cannot rebill the customer, as embodied in the
14 proposed rule.
15

16 R14-2-1907(C)(4)

17 AT&T comments that the Rule as currently drafted could allow the Original
18 Telecommunications Company to apply the 150% credit towards charges incurred during the 90-
19 day absolution period. AT&T urges an amendment to clarify that credit to charges is to occur
20 after the 90 day absolution period.
21

22 Staff recommends against adoption of this proposal. Staff is concerned that on some occasions
23 Subscribers may pay a bill before they discover a slam. If such instances occur during the 90-
24 day period, the 150% credit should apply.
25
26
27
28

1 reflect the provisions of the remainder of proposed Article 19. Staff accordingly recommends
2 that AT&T's proposed revised language be adopted, except for the language AT&T proposes to
3 add to current proposed rule R14-2-1908.B.7.
4

5 **R14-2-1908 (B)(11)**

6 Cox requests the Commission clarify that Notice of Subscriber Rights applies only to intraLATA
7 and interLATA toll service provider freezes.
8

9 Staff does not recommend adoption of Cox proposal because it contains technical language.
10 Instead, Staff recommends that the proposed rule be amended by adding the phrase "long
11 distance" so that the rule reads "place a freeze on the Customer's long distance service account."
12

13 **R14-2-1908(C)(1)**

14 Cox requests the Commission clarify that the Notice of Subscriber Rights be provided by the
15 provider to its customers.
16

17 Staff does not share Cox concern as Section A.1 clearly states "shall provide to each of its
18 Subscribers..."
19

20 **R14-2-1908(C)(2)**

21 Qwest comments that requirements to publish the Notice of Customer Rights should include all
22 telecommunications companies or a requirement that each company contribute to the cost of a
23 generic notice.
24

25 Staff does not recommend adoption of Qwest comment. This proposal has already been rejected
26 on a number of occasions.
27
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R14-2-1908(C)(3)

AT&T asserts that providing Arizona specific notice information would be an onerous burden with limited value and requests the Commission to eliminate the requirement.

Staff does not recommend adoption of AT&T's comment because Staff believes that a notice advising Arizona subscribers of their Arizona-specific rights is appropriate.

R14-2-1908(C)(4)

AT&T requests the Commission allow the notice to be published in the language the carrier has chosen to use in marketing to the subscriber.

Staff recommends against adoption of any proposal to limit the publication of the notice to English, Spanish or the language chosen by the Telecommunications Company to market to the Customer.

R14-2-1909(D) Customer Account Freeze

Qwest comments that this section demonstrates conflict between the proposed rules and the FCC rules by Arizona requiring authorization to add a freeze and verification to lift a freeze.

Staff believes that these additional protections are necessary to protect consumers and accordingly should be adopted.

R14-2-1910 Informal Complaint Process.

AT&T suggests revising the proposed rule to correspond to an amendment approved by the Commission to proposed rule R14-2-2008.B.3. That rule was amended to add the phrase "of receipt of notice from the Commission" after the phrase "within 5 business days."

1 Cox objects to the proposed rule which in part includes that a failure to provide information
2 requested by Staff, or a good faith response within 15 business days will be deemed an
3 admission of a violation of the rules. Cox comments that the Commission's proposed rule is a
4 violation of its procedural due process rights. Cox comments that a more appropriate outcome
5 would be a rebuttable presumption that could be disproved at hearing.

6
7 Qwest asserts that the section should be eliminated because they create due process concerns by
8 putting a burden of proof on the responding company.

9
10 Qwest also comments that Subsections B(6) and B(7) should be eliminated, as they are
11 redundant to Subsections C and D.

12
13 Staff recommends adoption of the AT&T proposal to make this provision of proposed rule R14-
14 2-1910 correspond to proposed rule R14-2-2008. Staff notes that in most cases notice will be
15 received on the same day because notice will often be sent by telephone or electronic mail. Staff
16 does not share the concerns of parties that believe due process rights are violated by a
17 requirement the public service company respond to a regulatory inquiry promptly.

18 **R14-2-1911 Compliance and Enforcement**

19 Qwest comments that this proposed section should be deleted as it restates the penalty statutes
20 contained in Arizona Revised Statutes.

21
22 Staff believes that it is appropriate to clarify the procedures for compliance and enforcement that
23 apply to this article.

24 **R14-2-1914 Script Submission**

25
26 Allegiance comments that the proposed rule should be applied only to scripts provided to third
27 party marketing agents. Allegiance requests the Commission to clarify that scripts need only be
28

1 submitted on an annual basis, or after substantial amendment. Allegiance also requests the
2 Commission to clarify that scripts are not required.

3
4 AT&T requests the Commission remove this rule. AT&T comments that the Commission's
5 proposed rule is unworkable as the scripts are proprietary and confidential. AT&T comments
6 that the rule is overbroad, but AT&T is willing to provide responsive scripts to the Commission
7 if needed in a complaint proceeding.

8
9 Cox comments that the Commission's language is vague and potentially overreaching. Cox
10 requests the proposed rule be clarified to limit submissions to scripts used to directly solicit new
11 services from individual consumers in Arizona.

12
13 WorldCom requests the Commission clarify that the Commission will review the submitted
14 scripts for the purpose of obtaining an overview of telecommunications marketing activities in
15 the state, not to mandate that a specific script is used.

16
17 WorldCom also requests that the Commission clarify that scripts be submitted on an annual
18 basis, except in the event a new set of scripts is created.

19
20 Qwest comments that the proposed rule allowing the Utilities Division Director to review the
21 company's scripts constitutes an unlawful, prior restraint upon speech, in violation the
22 Constitution and should therefore be eliminated.

23
24 Staff does not share the concerns expressed by the parties on the submission of scripts, but
25 recognizes certain logistical issues concerning the timing of submissions should be resolved to
26 ensure the Commission's goal is met.

1 R14-2-2001 et. al.

2 Qwest comments that the Commission already has rules governing billing disputes and customer
3 complaints. Qwest requests that the Commission delete the proposed Article 20 in its entirety.

4 Staff does not support Qwest's recommendation to delete the Commission's proposed Article 20.
5 The consumers of this state should be protected against cramming. Moreover, Staff notes that
6 Qwest has used the existence of this rulemaking proceeding in an attempt to dismiss the civil
7 action filed by the Attorney General concerning cramming. Qwest asserted that because of this
8 rulemaking proceeding, the court should dismiss the civil action on the doctrine of primary
9 jurisdiction.³ Having made this argument, Qwest should be estopped from asserting that this
10 Commission's proposed cramming rules are not necessary.

11
12 **R14-2-2001 (A)**

13 The Arizona Wireless Carriers Group (Wireless Group) believe the Commission should delete
14 the definition of "authorized carrier" from the Section because it is not used in Article 20.

15
16 Staff supports the Wireless Group's recommendation.

17
18 **R14-2-2001 (D)**

19 Cox requests the Commission to revise the definition of Subscriber to exclude business
20 customers where service is provided under a written contract. Cox believes the proposed rules
21 may not be appropriate in the business services market where the customer and provider have a
22 contractual arrangement.

23
24 Staff believes that all customers should be protected by the proposed rules.
25

26
27 ³ Motion to Dismiss First Amended Complaint and Memorandum in Support at P.19 in
28 State of Arizona ex rel. Janet Napolitano, Attorney General v. Qwest Corp., et al.
Superior Court of Arizona, Pima County, Case No. C20014779. This motion was denied
by the court in a minute entry dated June 20, 2002.

1 **R14-2-2001 (F)**

2 The Wireless Group comments that the Commission should clarify "unauthorized charge" to
3 exempt all surcharges by wireless carriers, or clarify that only surcharges prohibited by law are
4 "unauthorized charges."
5

6 Staff does not believe that a change is necessary. Since the Commission may not regulate the
7 rates of wireless carriers, any surcharge imposed by the wireless carrier would be authorized by
8 law, and thus would fall under the current wording of the exemption.
9

10 **R14-2-2001 (F) Unsolicited Delivery of Wireless Phones**

11 The Wireless Group comments that the proposed rule is overbroad and could deny customer the
12 opportunity to purchase "phone in a box." The rule should be clarified to apply to "the
13 unsolicited delivery" of a wireless phone.
14

15 Staff agrees and recommends that the rule should be clarified to insert "unsolicited delivery"
16 before "wireless phone delivered."
17

18 **R14-2-2002 Purpose and Scope**

19 Qwest recommends elimination of this rule because according to Qwest it violates ARS § 41-
20 1001.17
21

22 See Staff's Comments to proposed rule R14-2-1902.
23

24 **R14-2-2005(A)(3) Explicit Subscriber Acknowledgement**

25 The Wireless Group comments that most telecommunications customers are sophisticated enough
26 to understand that when they purchase services, they will be required to pay for the service. The
27 Wireless Group believes the requirement is unnecessary.
28

1 Qwest recommends deleting any requirement for explicit customer acknowledgement that the
2 charges will be on the bill. Qwest believes it should be able to assume the subscriber expects to
3 see the charges on the bill.
4

5 Staff does not support eliminating a requirement for customer acknowledgement of proposed
6 charges because it is important that Subscribers are informed of the effect that a new product or
7 service will have on their bill. Staff notes that the explicit subscriber acknowledgement could be
8 a simple statement during a phone contact with the Telecommunications Company.
9

10
11 **R14-2-2005(B) Communication of Subscriber Information**

12 The Wireless Group urges the Commission to revise the rule to require telecommunications
13 companies to provide customers information when the customer requests it.
14

15 Qwest comments that they should be obligated to only providing a clear, non-misleading
16 description of the product or service. Qwest also comments that a description should be required
17 only for those issues requested.
18

19 Qwest recommends the Commission delete the requirement that company representatives explain
20 how the charge will appear on the bill because the explanation will only add unnecessary time to
21 the call.
22

23 Staff understands that some parties are concerned that the rule might be interpreted to require a
24 company to explain all of its products and services, regardless of whether they are mentioned
25 during the contact with the Subscriber. Given the wording and context of the rule, it is clear that
26 the rule only applies to products and services offered during the course of the contact with the
27 Subscriber.
28

1 R14-2-2005 (C) English – Spanish Language Requirement.

2 Allegiance comments that the rule should only be applicable to residential customers, not
3 business customers. According to Allegiance, requiring production of proper documentation in
4 English and Spanish will require a significant investment.

5
6 Cox believes that the Commission should only require English and Spanish versions, and not any
7 “other language” that may be used.

8
9 The Wireless Group proposes to make the proposed rule less onerous to the carrier by modifying
10 the rule to require the telecommunications carrier to communicate with customers in English or
11 Spanish upon request.

12
13 Qwest comments that they should provide notice in the language chosen by the subscriber.

14
15 Staff recommends no change in the proposed rule. Staff understands that the some companies are
16 concerned that they might be required to maintain multilingual personnel at all sales locations,
17 including retail outlets for wireless phones. Staff believes that this concern is unfounded because
18 the rule only applies to sales transactions – i.e. when a sale has been completed. If a Subscriber
19 were to contact the company employing some language not understood by the Company’s
20 representatives, the Company’s only obligation is to not complete the transaction since the
21 Company would not be able to comply with the notice and authorization requirements.

22
23 R14-2-2005 (D)

24 Cox comments that the Commission’s proposed rule to inform a Subscriber of the cost of “basic
25 local exchange service” during each potential transaction should be deleted. Cox asserts that the
26 requirement will create confusion by providing information the consumer did not request, use
27 terminology unknown to the consumer and increase the duration of the customer contact.

1 Cox provides that in the alternative, if the Commission wants to retain the requirement the rule
2 should be revised to expressly prohibit misleading descriptions of products and services and limit
3 the use of "basic" to "basic local exchange telephone service."

4 Staff does not support changing this provision. Providing the cost of basic service allows the
5 Subscriber to make an informed decision.
6

7 **R14-2-2006 Unauthorized Charges**

8 Qwest comments that any reference to credit reporting should be eliminated.
9

10 See Staff's comments to proposed rule R14-2-1907.D
11

12 **R14-2-2007(C)(1)**

13 Qwest comments that providing its address is burdensome, unnecessarily costly and should be
14 eliminated from the rule.
15

16 Staff does not believe that providing a mailing address is burdensome.
17

18 **R14-2-2007(D) Notice of Subscriber Rights**

19 Allegiance comments that the rule should only be applicable to residential customers, not
20 business customers. According to Allegiance requiring production of proper documentation in
21 English and Spanish will require a significant investment.
22

23 The Wireless Groups comments that the Commission's proposed rule place a substantial burden
24 on the affected companies and accomplishes little by requiring them to provide Arizona specific
25 notices. The Wireless Group comments that an abbreviated form of notice should meet the needs
26 of the Commission.
27
28

1 Staff believes that providing Arizona consumers information on their legal rights in Arizona is a
2 prudent cost for an Arizona public service company.

3 4 **R14-2-2008 Informal Complaint Process**

5 Cox objects to the proposed rule which in part includes a provision that a failure to provide
6 information requested by Staff, or a good faith response within 15 business days will be deemed
7 an admission of a violation of the rules. Cox comments that the Commission's proposed rule is a
8 violation of its procedural due process rights. Cox comments that a more appropriate outcome
9 would be a rebuttable presumption that could be disproved at hearing.

10
11 The Wireless Group comments that by revising the proposed rule to require the customer to
12 attempt to resolve complaints with the telecommunications company before using the
13 Commission's complaint process will reduce the number of potential complaints.

14
15 The Wireless Group also proposes extending all of the timeframes within the proposed rule.

16
17 Qwest asserts that the section should be eliminated because they create due process concerns by
18 putting a burden of proof on the responding company.

19
20 See Staff's comments to proposed rule R14-2-1910.

21 22 **R14-2-2009 Compliance and Enforcement**

23
24 The Wireless Group proposes the Commission revise the proposed rule to make the rule effective
25 only when Staff is reviewing a specific complaint.

26
27 Qwest comments that this proposed section should be deleted as it restates the penalty statutes
28 contained in Arizona Revised Statutes.

1 See Staff's comments to proposed rule R14-2-1911.
2

3 **R14-2-2012 Script Submission**
4

5 Allegiance comments that the rule should be applied only to scripts provided to third party
6 marketing agents. Allegiance requests the Commission to clarify that scripts must be submitted
7 only on an annual basis, or after substantial amendment. Allegiance also requests the
8 Commission to clarify that scripts are not required.

9 Cox comments that the Commission should clarify this section should to limit submissions to
10 scripts used to directly solicit new services from individual consumers in Arizona.

11
12 Wireless Group comments that the Commission's proposed Rule is highly burdensome and
13 should be eliminated, or limited to outbound telemarketing related to resolution of a specific
14 complaint. Scripts should also be filed confidentially.

15
16 Qwest comments that the proposed rule allowing the Utilities Division Director to review the
17 company's scripts constitutes an unlawful, prior restraint upon speech, in violation the
18 Constitution and should therefore be eliminated.

19
20 See Staff's comments to proposed rule R14-2-1914
21

22 RESPECTFULLY SUBMITTED this 26th day of June, 2002

23
24 

25 Timothy J. Sabo
26 Attorney, Legal Division
27 Arizona Corporation Commission
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1 The original and ten (10) copies of the foregoing
2 were filed this 26 day of June, 2002
3 with:

4 Docket Control
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8 A copy of the foregoing was placed on the Commission's web site and
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ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

A. Economic, small business and consumer impact summary

1. 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. Brief summary of the economic impact statement.

The proposed rulemaking on slamming and cramming will affect consumers of telecommunications services and companies providing those services.

Costs of the proposed rulemaking include costs related to new tasks at the Commission such as responding to and reviewing informal complaints, reviewing company scripts and records, reviewing requests for waivers, and compliance and enforcement.

Costs to telecommunications companies would include paying penalties or having sanctions imposed for slamming and cramming, obtaining subscriber authorization and verification, notifying subscribers of rights, submitting scripts and records to the Commission, and applying for waivers.

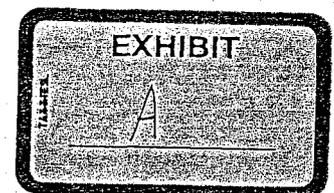
Benefits of the proposed rulemaking may include a decrease in slamming and cramming and an increase in telecommunications competition in the State of Arizona.

The proposed rulemaking is deemed to be the least intrusive and least costly alternative of achieving the whole purpose of the proposed rulemaking.

Because adequate data are not available, the probable impacts are explained in qualitative terms.

3. Name and address of agency employees to contact regarding this statement.

Marta Kalleberg and Timothy J. Sabo, Esq. at the Arizona Corporation Commission, 1200 West Washington, Phoenix, Arizona 85007.



B. Economic, small business and consumer impact statement.

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.

MEMORANDUM

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

FROM: Tim Sabo
Attorney, Legal Division

THRU: Christopher C. Kempley
Chief Counsel

DATE: December 10, 2001

RE: Commission Jurisdiction over wireless slamming and cramming
Docket RT-00000J-99-0034

I. Summary

The Commission's proposed slamming rules, A.A.C. R14-2-1901 *et seq.*, apply to wireless carriers only when federal law requires wireless carriers to provide equal access. See Proposed A.A.C. R14-2-1903. However, the Commission's proposed cramming rules, A.A.C. R14-2-2001 *et seq.*, are fully applicable to wireless carriers. See Proposed A.A.C. R14-2-2003. On November 20, 2001, Verizon Wireless filed a letter in this docket restating its claim that the Commission does not have jurisdiction to apply the proposed slamming and cramming rules to wireless carriers. Verizon asserts that the Commission does not have jurisdiction because Arizona's slamming and cramming statute, A.R.S. § 44-1571 *et seq.*, does not apply to wireless carriers. The Commission should reject this interpretation of Arizona's slamming and cramming statute because (1) the statute does not prohibit the Commission from applying slamming and cramming rules to wireless carriers, and the Commission already has the power to apply slamming and cramming rules to wireless carriers under the Commission's existing powers under



Title 40; (2) the statute should not be read as an implied repeal of the Commission's existing powers under Title 40; and (3) if the statute is read in the manner suggested by Verizon Wireless, it would raise a substantial question about the constitutionality of the statute, and statutes should be read to avoid constitutional problems. This memorandum will also address the scope of federal preemption of the Commission's jurisdiction over wireless carriers.

II. Federal law does not preempt Commission jurisdiction over wireless slamming and cramming.

Federal law provides that states are preempted from regulating wireless rates or market entry. 47 U.S.C. § 332 (c)(3). In areas that are not rates or market entry, states remain free to regulate wireless carriers. See Cellular Telecommunications Industry Assoc. v. Federal Communications Comm'n, 168 F.3d 1332, 1336 (D.C. Cir. 1999). Indeed, consumer protection is one of the areas that Congress expressly did not want to preempt. Id. Because consumer protection measures, including slamming and cramming rules, are not rates or market entry, the Commission's authority over slamming and cramming is not preempted.

III. The canons of statutory construction suggest that the Commission should reject the interpretation suggested by Verizon Wireless.

A. Arizona's slamming and cramming statute does not prohibit the Commission from applying slamming and cramming rules against wireless carriers.

Arizona's slamming and cramming statute does not apply to wireless carriers. A.R.S. § 44-1571(3), (4). However, this statute does not prohibit the Commission from applying slamming and cramming rules to wireless carriers. As Verizon Wireless points out, the provisions in Title 44 do not contain a grant of authority to the Commission over

wireless slamming and cramming. Wireless carriers provide “public... telephone service” and are thus public service corporations. Ariz. Const. art. XV § 2. Therefore, the Commission already had the power to enact slamming and cramming rules before the legislature added the new provisions to Title 44. See A.R.S. §§ 40-202 (power to “supervise and regulate every public service corporation”); 40-203 (power to prohibit unjust “practices or contracts”); 40-321 (service quality); 40-322 (power to determine and require just and reasonable service). Because the Commission already had the power to apply slamming and cramming rules against public service corporations, including wireless carriers, the Commission did not need additional authorization in Title 44; and because Title 44 does not contain a prohibition, the Commission is free to require wireless carriers to follow the proposed slamming and cramming rules.

B. Arizona’s slamming and cramming statute should not be read as an implied repeal of the Commission’s existing authority.

As already noted, Arizona’s slamming and cramming statute does not apply to wireless carriers, but the Commission has the power to enact the proposed rules under its Title 40 authority. The law strongly disfavors construing a statute as repealing an earlier one by implication; rather, whenever possible, the Arizona courts interpret two apparently conflicting statutes in a way that harmonizes them and gives rational meaning to both. See State v. Tarango, 185 Ariz. 208, 210; 914 P.2d 1300, 1302 (1996); Walters v. Maricopa County, 195 Ariz. 476, 481; 990 P. 2d 677, 682 (App. 1999). An implied repeal will only be found if the language of the newer statute clearly shows that the legislature intended the newer statute to override the older statute. Curtis v. Morris, 184 Ariz. 393, 397; 909 P.2d 460, 464 (App. 1995) decision approved 186 Ariz. 534, 535, 925 P.2d 259 (1996). There is nothing in the language of Arizona’s slamming and

cramming statute indicating legislative intent to repeal the Commission's authority over public service corporations, including wireless carriers. Instead, Arizona's slamming and cramming statute should be read as a prompt for the Commission to act under its existing authority. In this way, the statutes can be read so that they harmonize with each other. Because the statutes can be read consistently, the Commission should reject a reading of Arizona's slamming and cramming statute that would amount to an implied repeal of the Commission's authority under Title 40.

Moreover, the legislature intended to protect consumers from unjust practices in telecommunications services. Statutes should be "liberally construed to effect their objects and to promote justice." A.R.S. § 1-211.B. Because applying the proposed slamming and cramming rules to wireless furthers the goal of the statute, the Commission should not adopt a reading of the statute that thwarts the ultimate goal of the statute, protection of consumers.

C. Interpreting Arizona's slamming and cramming statute in the manner suggested by Verizon Wireless would raise a substantial Constitutional question, and the Commission should therefore avoid such a construction.

The Arizona Supreme Court has found that the Commission's powers under Article 15 § 3 are limited to ratemaking. Corp. Comm'n v. Pacific Greyhound Lines, 54 Ariz. 159, 94 P.2d 443 (1939). However, the Arizona Constitution vests in the Commission the power to "make and enforce reasonable rules, regulations, and orders for the convenience [and] comfort" of the customers of public service corporations. Ariz. Const. Art. 15 § 3. Recognizing the tension between this language and Pacific Greyhound, the Arizona Supreme Court has noted that Pacific Greyhound "undercut the framers' vision of the Commission's role as set forth in the text of the constitution, as

described by the framers, and in earlier case law.” Arizona Corp. Comm’n v. State ex rel. Woods, 171 Ariz. 286, 293, 830 P.2d 807, 814 (1992). This language calls into doubt Pacific Greyhound and indicates that there are still substantial unresolved questions regarding the scope of the Commission’s § 3 authority. Legislation should be read, if at all possible, in a way that is consistent with the constitution. Arizona Corp. Comm’n v. Superior Court, 105 Ariz. 56, 62, 459 P. 2d 489, 495 (1969); Stillman v. Marston, 107 Ariz. 208, 209, 484 P.2d 628 (1971). Because reading Arizona’s slamming and cramming statute as a prohibition on Commission regulation of wireless carriers would raise a significant question of whether the statute, so construed, conflicts with § 3, the Commission should not read the statute as a prohibition.

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