

Appendix A

LOUISIANA PUBLIC SERVICE COMMISSION CONSUMER PROTECTION REGULATIONS FOR CHANGING TELECOMMUNICATION SERVICE PROVIDERS

PREAMBLE

The Louisiana Public Service Commission (“LPSC” or “Commission”) hereby promulgates the following Regulations (“the Regulations”) to protect consumers from unscrupulous and deceptive practices of telecommunication service providers, their agents, assigns, telemarketers and any other representative.

The purpose of these Regulations is to set forth requirements for Telecommunication Service Providers regarding submission and execution of telecommunication service changes. The practice of changing an end-user’s telecommunication service without the end-user’s consent OR changing an end-user’s telecommunication service after obtaining consent based upon a misrepresentation or deceptive practices by the carrier, telemarketer, third party verifier or any other agents or representatives of the carrier is known as slamming. “Carriers have an economic incentive to slam because they have high fixed costs for network equipment and low marginal costs for providing service to additional end-users. Thus, providing service to additional end-users, even without authorization, adds to a carrier’s cash flow with little additional cost. Moreover, carriers may provide service to slammed consumers for a considerable time before the consumers become aware of the unauthorized carrier change. Hence, slamming distorts telecommunication markets by enabling companies to engage in misleading practices to increase their end-user bases, revenues, and profitability through illegal means.”¹

I. Scope; Jurisdiction; Short Title

A. Scope

1. It is the Commission’s intent that these Regulations shall apply to all Telecommunication Service Providers (“TSP”) providing local and long distance services over which the Commission has regulatory authority.

B. Jurisdiction

1. The Commission has the authority to regulate all common carriers and public utilities and has all other regulatory authority as provided by law. The Commission shall adopt and enforce reasonable rules, regulations and procedures which are necessary for the discharge of its duties including other powers and duties as provided by law.²

C. Effect

1. To the extent the Commission’s regulatory authority over any particular TSP or over certain conduct or services offered or provided by any particular TSP is expressly preempted, then these Regulations shall be interpreted in a manner

¹ *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996.* Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, CC Docket No. 94-129, Rel. July 15, 1997.

² La. Const. Art. 4 §21 (B).

which recognizes all such preemptions with the remainder of this Order being left intact.

2. These Regulations hereby supersede the Commission's General Order, dated January 8, 1998. Furthermore, to the extent these Regulations contradict section 1201 (B) 1 & 2 of the Commission's Regulations for Competition in the Local Telecommunications Market (Local Competition Regulations), this order will supersede the Local Competition Regulations.³
3. This order, including but not limited to the verification methods, is not intended to apply to those subscribers who are being returned to their preferred carrier following an unauthorized switch of their service, to those subscribers whose service has been suspended pursuant to the subscriber's request, to those calls requesting a modification of the existing service or to those orders requesting an initial hook up because no service is currently being provided to that phone number. This order is only intended to apply when there is a service provider change.

D. Short Title

1. This order may be cited as the "Slamming Order" or the "Slamming Regulations."

II. **Definitions**

- A. Billing Carrier: Any carrier or agent who submits the bill to the end-user.
- B. Certificated Carrier: A TSP who has legally obtained a Louisiana Public Service Commission Certificate of Authority to operate in Louisiana.
- C. Carrier Identification Code (CIC): The numerical code assigned by the North American Numbering Plan Administrator.
- D. Consent: Approval given by an end-user to change the end-user's telecommunication service. Consent requires a meeting of the minds. Misleading or deceptive telemarketing or carrier misrepresentation or fraudulent LOAs does not constitute consent.
- E. End-user: Any person, firm, partnership, corporation, municipality, cooperative organization, or governmental agency that uses telecommunication services of a TSP.
- F. Executing carrier: The carrier that effects the PC change, (*i.e.*, the LEC, ILEC or CLEC or underlying carrier in the case of a CIC-less reseller).
- G. Independent third party verifier: A party independent from the soliciting Telecommunication Service Provider used to verify a change in an end-user's telecommunication service who meets all of the following criteria:
 1. Is independent from the telephone corporation or carrier that seeks to provide the end-user's new service;
 2. Is not directly or indirectly managed, controlled, directed or owned, wholly or in part, by the telephone carrier that seeks to provide the new service or by any corporation, firm or person who directly or indirectly manages, controls,

³See Commission General Order, dated March 15, 1996, as amended.

- directs or owns more than 5 % of the telephone carrier;
3. Operates from facilities physically separate from those of the telephone carrier that seeks to provide the end-user's new service;
 4. Does not derive commissions or compensations based upon the number of sales confirmed.
- H. Intentional: A purposeful action or inaction which, to a reasonable person, causes or is substantially certain to cause a particular consequence. Intent shall be imputed to a carrier when an authorized agent, telemarketer or any other representative takes action or inaction on the carrier's behalf regardless of whether the carrier agreed to the action or inaction
- I. Local Provider (LP): Any telecommunication company providing local telecommunication service, excluding pay telephone providers and call aggregators.
- J. LPSC or Commission: The Louisiana Public Service Commission.
- K. Preferred carrier (PC): The carrier chosen by an end-user to provide telecommunication service, whether local, and/or long distance, (IntraLATA and/or InterLATA) and/or any combination of those services. Preferred carrier also means the carrier an end-user used prior to an unauthorized switch.
- L. PC Freeze: An end-user authorization to prohibit a TSP change.
- M. Premium: Additional products or services offered to consumers for subscribing to and/or using a carrier's telecommunication service. Premiums may include telecommunication service-related products and services or offerings unrelated to telecommunication service.
- N. Slamming or Unauthorized change: The changing of an end-user's telecommunication service without the end-user's consent OR changing an end-user's telecommunication service after obtaining consent based upon a misrepresentation or deceptive practices by the carrier, telemarketer or third party verifier, or any other agents or representatives of the carrier. Any action or inaction by the carrier's telemarketer, agent or any other representative, whether the action was with or without the carriers' express or implied permission, shall be imputed to the submitting carrier for purposes of these Regulations.
- O. Submitting carrier: The carrier that requests a PC change on behalf of a consumer. In the event a CIC-less reseller is obtaining the new end-user, the CIC-less reseller is considered the submitting carrier.
- P. Telecommunication Service Provider (TSP): A generic term used to refer to any person or entity offering and/or providing telecommunication service for compensation or monetary gain, excluding pay telephone providers and call aggregators. A TSP includes any local or toll long distance provider.
- Q. Unauthorized carrier: A carrier who makes an unauthorized switch of an end-user's telecommunication service. Unauthorized carrier includes those carriers who fail to follow the required verification procedures listed in this order and those who switch service based upon consent obtained by the misleading or deceiving action or inaction of a carrier, telemarketer or a carrier's agent, assign or any other representative whether the carrier agreed to the statements or not.

III. Provider Selection and Verification

- A. No TSP shall submit a PC change on behalf of an end-user to an executing carrier unless and until the order has been confirmed in accordance with at least one of the verification procedures listed in this order.
- B. Verification is required for all in-bound calls from end-users and out-bound calls to end-users including, but not limited to, any phone call, contact, practice, procedure or solicitation made by end-users, telemarketers, TSPs or any other agents, assigns, or any other representatives of a TSP.
- C. An end-user's request for any additional or altered service, including, but not limited to, travel and calling card services or voice mail, does not constitute an authorization to change the telecommunication service provider.
- D. Method of Contact.
 - 1. End-user contacts executing carrier.
 - a. An executing carrier may change an end-user's PC without additional verification only when the end-user submits the change request to the executing carrier in writing; or
 - b. If the end-user contacts the executing carrier via telephone, the executing carrier must obtain the Automatic Numbering Identification (ANI) or obtain the end-user's billing name, address and number of each telephone to be changed, and confirm that the caller is at least 18 years of age and is authorized to make changes for the particular telephone service(s).
 - c. The Executing carrier need not comply with the verification section listed in this order when the Executing carrier is complying with the regulations of Section III.D.1.a.or b.
 - 2. Submitting carrier submits change on behalf of the end-user to the executing carrier.
 - a. Prior to requesting that an executing carrier change an end-user's TSP, a submitting carrier must first verify the PC change by one of the Methods of Verification listed in this Order, whether the end-user initiated the contact or the end-user is contacted by a carrier, agent, representative or telemarketer representative of the carrier.
- E. Methods of Verification. A TSP must use one of the following verification procedures with respect to in-bound calls to the submitting carrier, and all or out-bound calls:
 - 1. Letter of Agency (LOA). The TSP must obtain a written Letter of Agency (LOA) from the end-user which meets the following criteria:
 - a. Separate Document Required.
 - (1) The letter of agency shall be a separate document or an easily separable document containing only the authorized language as described in this order and requested for the sole purpose of authorizing a TSP to initiate a carrier change.
 - (2) Exception. The letter of agency may be combined with checks or negotiable instruments that contain only the required letter

of agency language as specified in this order, any information necessary to make the check a negotiable instrument and the following:

- (a) The letter of agency check or negotiable instrument shall not contain any promotional language or material.
 - (b) The letter of agency check shall contain, in easily readable, bold-face type at least as large and as dark as any other on the front of the check and not smaller than the size and readability equal at least to 12 point New Roman font, whichever is larger, a notice that by signing the check, the consumer is authorizing a change to a carrier, which must be named.
 - (c) The letter of agency language also shall be placed near the signature line on the back of the check.
- b. All information provided in the LOA must be printed in a type having the size and readability equal to at least 12 point New Roman font and must contain clear and unambiguous language that confirms:
- (1) The end-user's billing name and address and each telephone number covered by the TSP change order.
 - (2) A statement indicating that the end-user is electing to change from the current TSP to the prospective TSP and a statement indicating the type of service the end-user is changing, (i.e., local, IntraLATA and/or InterLATA long distance service).
 - (3) A statement indicating that the end-user understands that any TSP selection the end-user chooses may involve a charge to the end-user for changing the end-user's TSP and could involve a charge for changing back to the original TSP.
 - (4) A description of any and all terms, conditions, or charges that will be incurred, including the rate, calling plan or other package or plan being offered or promised in exchange for the switch.
- c. All LOAs must be signed and dated by the end-user and must indicate which telephone line(s) will be affected by the carrier change.
- d. An LOA shall not suggest or require that a end-user must take some action in order to retain the end-user's current TSP.
- e. If any portion of the LOA is translated into another language, then all portions of the letter of agency must be translated into that language.
- f. The LOA must not be associated with or attached to any type of display or promotional offering other than one offering telecommunication service or as listed in this order regarding a check or negotiable instrument.
- g. Any LOA which fails to conform with this Order is invalid. A carrier who submits a change request based upon an invalid LOA is in

violation of the verification procedures and this order and may be cited for slamming.

2. Audio Recording.

- a. For out-going calls from carriers, their telemarketers, agents or any other representatives to a consumer, an independent third party verifier must make an audio recording of the independent third party verifier's entire conversation, from the time the call is dialed until the call is disconnected. The oral recording must include the information as listed in this section.
- b. For end-user initiated calls to the submitting carrier, the carrier may make the audio recording of the conversation in accordance with this section in lieu of utilizing an independent third party verifier.
- c. The independent third party verification must initially state the following points: the name of the person calling and the name of the verification company, that the person is calling to verify or confirm for the soliciting carrier (who must be named) that the customer wishes to switch to the named carrier for the named service (local, long distance etc.), that the person on the line is the decision maker/person who can change the service for the telephone number(s) and is at least 18 years old.
- d. All audio recordings, whether made by the TSP or the independent third party verifier, must include the following information at some point during the call:
 - (1) The end-user's billing name and address and each telephone number covered by the TSP change order.
 - (2) The date the recording was made including the time the recording was commenced and completed. If custody of the recording is held by anyone other than the person/company who made the recording, then the chain of custody must be documented by naming each company who had custody, the person responsible at each company, the address, zip code and telephone number of each company in possession of the audio.
 - (3) Verification of the service(s) to which the end-user is subscribing including the rate, calling plan or other package or plan being offered or promised including all fees or charges which will be assessed anywhere on the bill in exchange for the switch.
 - (4) A statement clearly identifying the certificated name of the provider to which the end-user is switching.
 - (5) A statement that the call concerns the end-user's decision to change the TSP from the current TSP to the prospective TSP and the type of service being changed (i.e. local, IntraLATA and/or InterLATA long distance).
 - (6) A statement that the end-user understands that any TSP

selection the end-user chooses may involve a charge to the end-user for changing the end-user's TSP and could involve a charge for changing back to the original TSP.

3. Welcome Package

- a. Within three business days of the end-user's request for or consent to a PC change, the soliciting TSP must send each new end-user an information package by first class mail containing the following information concerning the requested change:
 - (1) The information is being sent to confirm a telemarketing order placed by the end-user within the previous week.
 - (2) The name of the end-user's current TSP.
 - (3) The name of the newly requested TSP.
 - (4) The type of service being changed (*i.e.*, local, IntraLATA, and/or InterLATA long distance).
 - (5) A description of any terms, conditions, or charges that will be incurred including the rate, calling plan or other package or plan being offered or promised in exchange for the switch.
 - (6) The name, address, and telephone number of both the end-user and the soliciting TSP.
 - (7) A pre-paid postcard which the end-user can use to confirm the service order.
 - (8) A clear statement that the end-user must return the postcard to (name of soliciting carrier) BEFORE the end-user's telecommunication service can be switched.
- b. The soliciting company cannot submit the change request to the executing carrier until after it has received the postcard signed by the end-user.

IV. Record Retention Requirements

- A. All LOAs, recordings, electronic verification or other evidence of change orders shall be maintained by the soliciting TSP for at least one year from the date the end-user's service was switched.
- B. The Louisiana Public Service Commission may at any time following the date of enactment of this Order request that a carrier submit a list of PC changes and the corresponding verification associated with each PC change.
- C. The existence of evidence of LOAs, recordings, or other evidence of change orders must be confirmed or denied to the Louisiana Public Service Commission within seventy-two (72) hours and produced within seven (7) working days of a request by the Louisiana Public Service Commission. Based upon the volume of documents requested, the LPSC may, upon request, allow additional time, as necessary, to comply with production of such records.
- D. The TSP may not charge the Louisiana Public Service Commission, an end-user or

the executing carrier for the production of or reproduction of, or request for the production of or reproduction of any LOA, voice recording, electronic verification or any other evidence of the change order or any new or added service, such as voice mail, calling cards, etc., or any other service, which may appear on an end-user's telephone bill.

- E. Failure to maintain such records or provide the requested information within 7 days of the LPSC initial demand, or other lawfully granted period of time, may, after notice and an opportunity for hearing, subject a carrier to penalties as listed in this order. Failure to maintain and produce such records shall also constitute prima facie evidence that consent from the end-user was not obtained.

V. Telemarketing Associated with PC Changes

A. Mandatory disclosures.

1. Telecommunication Service Providers utilizing telemarketing, solicitations and/or confirmation cards to change an end-user's telecommunication service must include the following disclosures immediately, clearly and unequivocally, in language which does not tend to mislead the end-user into believing the end-user is talking to a representative of the end-user's preferred carrier or that the services being solicited are in any way associated with, connected to or a part of the end-user's preferred carrier:

- a. The telemarketing conversation must disclose the following information:

- (1) The name of the soliciting company.
- (2) That the call is for the purposes of obtaining the end-user's consent to change the end-user's telecommunication service.
- (3) The terms, rates, and charges
- (4) That the end-user telecommunication service may not be changed unless and until the requested change is verified in accordance with these rules; and
- (5) That the end-user may choose to change the preferred carrier on only one of the end-user's telephone lines or may choose to change the preferred carrier on any number of telephone lines if the end-user has multiple telephone lines.
- (6) That the end-user must designate the TSP to act as the end-user's agent should the end-user request a TSP change.
- (7) That any TSP selection the end-user chooses may involve a charge to the end-user for changing the end-user's TSP and could involve a charge for changing back to the original TSP.
- (8) That an end-user need not take any action in order to retain the end-user's current Telecommunication Service Provider.

- B. No carrier, telemarketer, agent or representative of a carrier may imply or mislead the end-user to believe the soliciting carrier is the soliciting carrier's underlying carrier or any other TSP or are offering a discount for the underlying carrier or are in any way associated with or connected with the soliciting carrier's underlying carrier or any

other TSP.

- C. No carrier, telemarketer, agent or representative of a carrier may use the soliciting carrier's or any other carrier's name, trade name, service mark, or any other representation in a manner which misleads, confuses or deceives the end-user. No TSP shall register under any name that could mislead, confuse or deceive a customer as to the true identity of the soliciting TSP or of any relationship or lack thereof between the soliciting carrier and any other TSP. (i.e. the Phone Company).
- D. Telecommunication Service Providers may not engage in any abusive telemarketing act or practice in accordance with La. R.S. 14:285. Furthermore, calls may only be placed to Louisiana end-users between 8:00 a.m. and 8:00 p.m.

VI. Responsibility of TSPs

- A. The executing carrier shall execute a telecommunication service change from a certificated TSP only after the submitting carrier requests the change. The executing carrier must promptly switch the end-user back to the former PC at no charge to the end-user if requested by the end-user, on behalf of the end-user or by the PC. These charges may be recovered from the unauthorized carrier consistent with these rules.
- B. All TSPs will be held liable under these Regulations for any and all acts undertaken by the TSP's agents, telemarketers, or other representatives whether the act of the agent, telemarketer or other representative was with or without the TSPs' permission.
- C. All end-users must be given notice by the billing carrier that their preferred carrier has changed on the next bill following any provider change. The new carrier must be clearly named. The notice must be in conspicuous, easily readable, bold-face type at least as large and as dark as any other on the bill and not smaller than 12 point New Roman font. The submitting carrier, or its billing agent is responsible for requesting the notice. In the event a submitting carrier submits a logo for the bill, the logo may serve as the notice if it is conspicuous, easily readable, bold-face type at least as large and as dark as any other on the front of the bill and not smaller than 12 point New Roman font. Each bill must also include the phone number of the submitting carrier."

VII. Procedures

- A. Slamming complaints submitted to the Commission shall be processed in the following manner:
 - 1. The end-user may report the slam to the Commission either in writing, e-mail, or via telephone.
 - 2. Once the executing carrier is notified by the Commission staff, or the end-user, the executing carrier shall immediately switch the end-user back to the PC.
 - 3. Once the Commission staff notifies the submitting carrier, in writing, of the complaint, the Commission may opt to include a Notice of Possible Suspension/Cease and Desist.
 - a. Following the receipt of information indicating multiple complaints or a continuing patten of violations of these rules, the Commission may issue a Rule to Show Cause why a submitting carrier should not be required to cease and desist soliciting and taking orders for service from customers within the state, pending a final decision on the

alleged violations pursuant to the provisions of this Section.

- b. Prior to a hearing on the Rule to Show Cause, and upon oral or written notice to the submitting carrier, a single Commissioner may also direct the Executive Secretary to issue a Temporary Restraining Order (TRO) requiring the submitting carrier to cease and desist soliciting and taking orders for service from customers within the state. A TRO may be granted when it clearly appears to the Commissioner from information that immediate and irreparable injury, loss or damage will result to the public before the Commission decision on the Rule to Show Cause. A TRO issued in conjunction with a Rule to Show Cause shall remain in effect until the Commission decision on the Rule to Show Cause, but in no event longer than 30 days or beyond the date of the next Business and Executive Session of the Commission, whichever is later. A hearing on the Rule to Show Cause shall be held not more than 15 days after service of the notice of the Rule. If a TRO or cease and desist order is issued by the Commission, the Commission will authorize the LEC or any company involved in billing for the submitting carrier to suspend billing services for new customers during the pendency of the TRO or cease and desist order.
 - c. A cease and desist order issued after hearing of the Rule to Show Cause shall remain in effect no longer than the date of a final decision by the Commission on the alleged violations, at which time the Commission may, pursuant to the provisions of Section X Penalties, impose a penalty upon the submitting carrier including a permanent cease and desist or revoke the authority of the submitting carrier to provide services in the state, at its discretion.
4. The submitting carrier shall treat any further billing to the subscriber as disputed pending final resolution of the complaint by the Commission.
 - a. The submitting carrier may not report an end-user to any credit bureau, agency or any such organization, department or facility regarding the charges in dispute until a determination has been made by the Commission regarding the slamming allegations.
 5. The Commission staff may docket the complaint and open an investigation concurrently with the notice sent to the carrier.
 6. If the Commission staff determines that the submitting carrier did not violate the Regulations, then the Commission may notify the submitting carrier, that the submitting carrier may seek to recover any monies due from the end-user.
 - a. If the Commission determines that the end-user was not slammed, the carrier must notify the end-user, in writing, that the charges are now due. No late fees may be charged unless the end-user fails to pay the amount owed within thirty days of notification.
 7. If the Commission staff determines that the submitting carrier did violate the Regulations, then a docket number may be assigned and citations mailed pursuant to the LPSC procedural rules. The matter should also be published in the LPSC bulletin pursuant to the LPSC procedural rules.

VIII. PC Freeze

- A. On the first bill of every calendar year, and thereafter annually, all TSPs able to employ a PC freeze must notify all end-users in a competitively neutral manner that a PC freeze is available upon affirmative election by the customer to affect such a freeze and that such election could result in a delay in changing to another carrier in the future..
- B. Existing end-users of all carriers who bill or can employ a PC freeze must be notified by January, 1999 and annually thereafter that a PC freeze is available and may be requested through the executing carrier. The executing carrier must be indicated to the end-user by name.

IX. Dispute Resolution

- A. All carriers involved in disputes with other carriers concerning premiums and charges must pursue private settlement negotiations regarding the transfer of charges and the values of the charges or lost premiums from the unauthorized carrier to the properly authorized carrier prior to petitioning the Commission.

X. Penalties

- A. Slamming Fines
 - 1. Any slam, including, but not limited to, switching without obtaining an end-user's informed consent, switching by obtaining a fraudulent LOA or switching based upon any other misrepresentations for the purpose of obtaining uninformed consent, may subject the unauthorized carrier, after notice and opportunity for hearing, to a penalty not to exceed \$20,000, payable to the LPSC, for each violation. Continued violations may also constitute grounds for revocation of a TSP's certificate of authority to provide service in Louisiana.
- B. End-user Compensation
 - 1. If a TSP has been found guilty of slamming, the following shall occur:
 - a. ALL charges or rates billed pursuant to an unauthorized PC change shall be reduced to the lesser of the unauthorized carrier charges or the charges that would have been charged by the preferred carrier if the switch had not been made within 45 days of notification of the unauthorized switch.
 - b. The carrier responsible for the unauthorized switch shall additionally be responsible for all charges associated with correcting the unauthorized switch, including charges incurred by the executing carrier or the preferred carrier.
 - 2. The end-user shall be compensated in kind by the unauthorized carrier for all lost premiums caused by the unauthorized switch. If the exact service or other premium is not available, the end-user shall be reimbursed monetarily.
- C. Preferred Carrier Compensation
 - 1. All rates and charges or any other compensation collected by the unauthorized carrier may be flowed through to the preferred carrier; plus any difference in the rate in order to make the preferred carrier whole.
- D. Record Retention Penalty

1. Failure of a carrier to maintain appropriate verification records as required by this order may subject the carrier to a \$1,000 fine per switch, after notice and opportunity for hearing, regardless of whether the switch was authorized.
- E. The remedies provided by this order are in addition to any other remedies available by law.

XI. Miscellaneous

- A. All executing carriers who can effectuate a PC change must maintain records of all PC switchbacks, expedited or otherwise. This information should be provided to the Commission upon request.
- B. No TSP will be allowed to use any promotional offering, (the Contest, Sweepstakes or Box Method) for any service or product which is billed through a LEC, other than those identified in Section III(E)(1)(a)(2) or those tariffed by the TSP.”

XII. Other Laws; Severability

- A. Nothing in these rules shall be construed to limit or repeal the application of any state or federal rule regarding telemarketing. In addition, TSPs which engage in telemarketing shall be subject to the same laws or rules as other telemarketers.
- B. Severability.
1. If a court of competent jurisdiction finds any provision of these Regulations to be invalid or unenforceable as to any TSP or circumstance, such finding shall not render that provision invalid or unenforceable as to any other TSPs or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of these Regulations in all other respects shall remain valid and enforceable.
 2. If any provision of these Regulations is stayed in connection with a judicial review of these Regulations, the remaining provisions of these Regulations shall remain valid and enforceable.