

## Federal Communications Commission

## § 64.1150

will apply to the change in the subscriber's preferred carrier.

(f) Any carrier designated in a letter of agency as a preferred carrier must be the carrier directly setting the rates for the subscriber.

(g) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current telecommunications carrier.

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

(i) Letters of agency submitted with an electronically signed authorization must include the consumer disclosures required by Section 101(c) of the Electronic Signatures in Global and National Commerce Act.

(j) A telecommunications carrier shall submit a preferred carrier change order on behalf of a subscriber within no more than 60 days of obtaining a written or electronically signed letter of agency. However, letters of agency for multi-line and/or multi-location business customers that have entered into negotiated agreements with carriers to add presubscribed lines to their business locations during the course of a term agreement shall be valid for the period specified in the term agreement.

[64 FR 7760, Feb. 16, 1999. Redesignated at 65 FR 47692, Aug. 3, 2000, as amended at 66 FR 12893, Mar. 1, 2001; 66 FR 16151, Mar. 23, 2001; 68 FR 19159, Apr. 18, 2003; 73 FR 13149, Mar. 12, 2008]

### § 64.1140 Carrier liability for slamming.

(a) *Carrier Liability for Charges.* Any submitting telecommunications carrier that fails to comply with the procedures prescribed in this part shall be liable to the subscriber's properly authorized carrier in an amount equal to 150% of all charges paid to the submitting telecommunications carrier by such subscriber after such violation, as well as for additional amounts as prescribed in § 64.1170. The remedies pro-

vided in this part are in addition to any other remedies available by law.

(b) *Subscriber Liability for Charges.* Any subscriber whose selection of telecommunications services provider is changed without authorization verified in accordance with the procedures set for in this part is liable for charges as follows:

(1) If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. Upon being informed by a subscriber that an unauthorized change has occurred, the authorized carrier, the unauthorized carrier, or the executing carrier shall inform the subscriber of this 30-day absolution period. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change in accordance with the provisions of § 64.1160(e).

(2) If the subscriber has already paid charges to the unauthorized carrier, and the authorized carrier receives payment from the unauthorized carrier as provided for in paragraph (a) of this section, the authorized carrier shall refund or credit to the subscriber any amounts determined in accordance with the provisions of § 64.1170(c).

(3) If the subscriber has been absolved of liability as prescribed by this section, the unauthorized carrier shall also be liable to the subscriber for any charge required to return the subscriber to his or her properly authorized carrier, if applicable.

[65 FR 47691, Aug. 3, 2000]

### § 64.1150 Procedures for resolution of unauthorized changes in preferred carrier.

(a) *Notification of alleged unauthorized carrier change.* Executing carriers who are informed of an unauthorized carrier change by a subscriber must immediately notify both the authorized and allegedly unauthorized carrier of the incident. This notification must include the identity of both carriers.

(b) *Referral of complaint.* Any carrier, executing, authorized, or allegedly unauthorized, that is informed by a subscriber or an executing carrier of an unauthorized carrier change shall direct that subscriber either to the state commission or, where the state commission has not opted to administer these rules, to the Federal Communications Commission's Consumer & Governmental Affairs Bureau, for resolution of the complaint. Carriers shall also inform the subscriber that he or she may contact and seek resolution from the alleged unauthorized carrier and, in addition, may contact the authorized carrier.

(c) *Notification of receipt of complaint.* Upon receipt of an unauthorized carrier change complaint, the relevant governmental agency will notify the allegedly unauthorized carrier of the complaint and order that the carrier remove all unpaid charges for the first 30 days after the slam from the subscriber's bill pending a determination of whether an unauthorized change, as defined by § 64.1100(e), has occurred, if it has not already done so.

(d) *Proof of verification.* Not more than 30 days after notification of the complaint, or such lesser time as is required by the state commission if a matter is brought before a state commission, the alleged unauthorized carrier shall provide to the relevant governmental agency a copy of any valid proof of verification of the carrier change. This proof of verification must contain clear and convincing evidence of a valid authorized carrier change, as that term is defined in §§ 64.1120 through 64.1130. The relevant governmental agency will determine whether an unauthorized change, as defined by § 64.1100(e), has occurred using such proof and any evidence supplied by the subscriber. Failure by the carrier to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation.

(e) *Election of forum.* The Federal Communications Commission will not adjudicate a complaint filed pursuant to § 1.719 or §§ 1.720 through 1.736 of this chapter, involving an alleged unauthorized change, as defined by § 64.1100(e), while a complaint based on the same

set of facts is pending with a state commission.

[65 FR 47692, Aug. 3, 2000, as amended at 68 FR 19159, Apr. 18, 2003; 73 FR 13149, Mar. 12, 2008]

**§ 64.1160 Absolution procedures where the subscriber has not paid charges.**

(a) This section shall only apply after a subscriber has determined that an unauthorized change, as defined by § 64.1100(e), has occurred and the subscriber has not paid charges to the allegedly unauthorized carrier for service provided for 30 days, or a portion thereof, after the unauthorized change occurred.

(b) An allegedly unauthorized carrier shall remove all charges incurred for service provided during the first 30 days after the alleged unauthorized change occurred, as defined by § 64.1100(e), from a subscriber's bill upon notification that such unauthorized change is alleged to have occurred.

(c) An allegedly unauthorized carrier may challenge a subscriber's allegation that an unauthorized change, as defined by § 64.1100(e), occurred. An allegedly unauthorized carrier choosing to challenge such allegation shall immediately notify the complaining subscriber that: The complaining subscriber must file a complaint with a State commission that has opted to administer the FCC's rules, pursuant to § 64.1110, or the FCC within 30 days of either the date of removal of charges from the complaining subscriber's bill in accordance with paragraph (b) of this section, or the date the allegedly unauthorized carrier notifies the complaining subscriber of the requirements of this paragraph, whichever is later; and a failure to file such a complaint within this 30-day time period will result in the charges removed pursuant to paragraph (b) of this section being reinstated on the subscriber's bill and, consequently, the complaining subscriber will only be entitled to remedies for the alleged unauthorized change other than those provided for in § 64.1140(b)(1). No allegedly unauthorized carrier shall reinstate charges to a subscriber's bill pursuant to the provisions of this paragraph without first