

## Federal Communications Commission

## § 64.1160

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 claim 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 government 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 providing such subscriber with a reasonable opportunity to demonstrate that the requisite complaint was timely filed within the 30-day period described in this paragraph.

(d) If the relevant governmental agency determines after reasonable investigation that an unauthorized change, as defined by § 64.1100(e), has occurred, an order shall be issued providing that the subscriber is entitled to absolution from the charges incurred during the first 30 days after the unauthorized carrier change occurred, and neither the authorized or unauthorized carrier may pursue any collection against the subscriber for those charges.

(e) If the subscriber has incurred charges for more than 30 days after the unauthorized carrier change, the unauthorized carrier must forward the billing information for such services to the authorized carrier, which may bill the subscriber for such services using either of the following means:

(1) The amount of the charge may be determined by a re-rating of the services provided based on what the authorized carrier would have charged the subscriber for the same services had an unauthorized change, as described in § 64.1100(e), not occurred; or

(2) The amount of the charge may be determined using a 50% Proxy Rate as follows: Upon receipt of billing information from the unauthorized carrier, the authorized carrier may bill the subscriber for 50% of the rate the unau-

thorized carrier would have charged the subscriber for the services provided. However, the subscriber shall have the right to reject use of this 50% proxy method and require that the authorized carrier perform a re-rating of the services provided, as described in paragraph (e)(1) of this section.

(f) If the unauthorized carrier received payment from the subscriber for services provided after the first 30 days after the unauthorized change occurred, the obligations for payments and refunds provided for in § 64.1170 shall apply to those payments. If the relevant governmental agency determines after reasonable investigation that the carrier change was authorized, the carrier may re-bill the subscriber for charges incurred.

(g) When a LEC has assigned a subscriber to a carrier without authorization, and where the subscriber has not paid the unauthorized charges, the LEC shall switch the subscriber to the desired carrier at no cost to the subscriber, and shall also secure the removal of the unauthorized charges from the subscriber's bill in accordance with the procedures specified in paragraphs (a) through (f) of this section.

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

**§ 64.1170 Reimbursement procedures where the subscriber has paid charges.**

(a) The procedures in 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 paid charges to an allegedly unauthorized carrier.

(b) If the relevant governmental agency determines after reasonable investigation that an unauthorized change, as defined by § 64.1100(e), has occurred, it shall issue an order directing the unauthorized carrier to forward to the authorized carrier the following, in addition to any appropriate state remedies:

(1) An amount equal to 150% of all charges paid by the subscriber to the unauthorized carrier; and

(2) Copies of any telephone bills issued from the unauthorized carrier to