NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R7-2-405	Amend
R7-2-407	New Section
R7-2-610	Amend
R7-2-620	New Section

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

Authorizing statutes: A.R.S. §§ 15-203(A), 20 U.S.C. § 1412(a)(6)(A), 34 CFR 300.129

Implementing statutes: A.R.S. §§ 15-203(A)(14), (19), and (22), and § 15-214

3. Effective Date of the Rule:

Consistent with A.R.S. § 41-1032, these rules become effective sixty days after certification by the Attorney General and filing with the Secretary of State.

4. Register citation and date for the original Notice of Proposed Rulemaking:

Notice of Rulemaking Docket Opening: 9 A.A.R., 3351, July 25, 2003

Notice of Proposed Rulemaking: 9 A.A.R., 4056, September 19, 2003

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

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6. An explanation of the rules, including the agency's reasons for initiating the rules:

This rules package addresses several issues related to exceptional students in order to improve services for these students as authorized or required by state or federal laws. The explanations below are detailed in respective order with the numerical order of the rules.

In January 2002, Exceptional Student Services (ESS) and the Arizona Special Education Advisory Panel (SEAP) began a yearlong study of the *Arizona Administrative Code* including R7-2-405. This study was prompted in part by deficiencies noted in the U.S. Department of Education, Office of Special Education Programs (OSEP) review of the Arizona documentation for eligibility for funding under the Individuals with Disabilities Education Act. Arizona was cited by USDOE/OSEP for failure to complete due process hearings and appeals within the required timelines. The recommended changes to R7-2-405 move the state from its current two-tier system of due process hearings to a one-tier system using Administrative Law Judges (ALJs) as the single tier. The two-tier system was a substantial contributor to the problems cited by USDOE/ OSEP. An ad hoc due process work group studied other state systems to determine the benefits and drawbacks of each approach. The final recommendation of the workgroup was to move to the one-tier system using ALJs.

In 1997 the Arizona Legislature required the State Board of Education to adopt rules to promote Braille literacy with specific requirements outlined in A.R.S. § 15-214. The proposed R7-2-407 establishes standards and assistance

requirements for providing educational services and materials for visually impaired students as required by A.R.S. § 15-214.

The proposed amendments to R7-2-610 are also sought to comply with the statutory requirements of A.R.S. § 15-214 to assure that teachers certified in the education of blind and visually impaired pupils demonstrate competency in Braille.

The addition of R7-2-620 is proposed in response to requests from the hearing impaired community for standards for educational interpreters. These requests were referred to a Certification Advisory Committee established by the State Board of Education in 2000 and a recommendation to provide certification for educational interpreters was forwarded to the Board. The State Board of Education's authority to certify educational personnel, however, is limited to that specifically authorized by A.R.S. § 15-203(A)(14). The Board does however have the authority to supervise and control the qualifications of non-teaching school personnel and prescribe standards relating to qualifications under A.R.S. § 15-203(A)(19). The proposed R7-2-620 was developed with input and support from the Arizona School for the Deaf and the Blind, the Arizona Department of Education Exceptional Student Services Division, special education teachers and the Special Education Advisory Panel to the State Board of Education in order to provide quality interpreting services for hearing impaired students through the implementation of required qualifications for educational interpreters.

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

Not applicable

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

The proposed rules will not diminish any previous grant of authority of a political subdivision of this state.

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

The rules as proposed are not expected to have significant, if any, economic impact, however they are expected to have several positive effects for exceptional students, the families of exceptional students and the schools and programs providing services for these students. Moving to a single-tiered process for administrative hearings regarding special education issues provides several positive impacts including a savings of both cost and time on behalf of both the families of exceptional students and the schools providing services to these students. These rules are expected to improve the qualifications of individuals providing assistance to visually impaired students and hearing impaired students by establishing qualifications for Braille literacy for teachers of the visually impaired and qualifications for educational interpreters for hearing impaired students. In addition, these rules will improve the access of textbooks in alternative formats for visually impaired students.

10. A description of the changes between the proposed rules, including any supplemental notices, and final rules:

A definition of a "504 Accommodation Plan" has been added.

A reference to the definition of "Public Education Agency (PEA)" has been included to use the same definition as that in R7-2-401.

R7-2-407(E)(3) included a reference to the "AIRC" which is currently the central repository designated by the Arizona Department of Education for publishers to provide materials in accessible electronic files. This entity was used as a placeholder early on in initial rule draft documents, however, in the Notice of Proposed Rulemaking all changes to "AIRC" were changed to "the central repository designated by the ADE". As an oversight, however, this Section was not changed and so in order to conform with the rest of the Section the change has been incorporated into this Notice of Final Rulemaking.

R7-2-610, subsection K(2)(e)(iv) has been revised to remove the required number of administrations of the exam to be administered by the University of Arizona annually.

Technical and grammatical changes were incorporated.

11. A summary of the principal comments and the agency response to them:

(*Public Comment*): Several individuals expressed concern that the educational requirements established for educational interpreters in R7-2-620 are not high enough. It was recommended that either an associates degree or a bachelor's degree be adopted.

(Agency Response): This rules package will provide the first guidance for minimum qualifications for educational interpreters, and we are still in the process of gathering data regarding current vacancies for these positions and qualifications of existing personnel. While the above recommendation may be appropriate to consider at a later date, these initial qualifications should establish a realistic baseline and not enhance the current shortage of professionals providing educational interpreter services. An ongoing dialogue with the field should be established to continually evaluate the standards and discuss modifications.

12. Any other matters prescribed by statutes that are applicable to the specific agency or to any specific rule or class of

rules:
No

13. Incorporations by reference and their location in the rules:
None

14. Was this rule previously adopted as an emergency rule?:
No

15. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

ARTICLE 4. SPECIAL EDUCATION

Section
R7-2-405. Due Process Standards Relating to Special Education
R7-2-407. ~~Reserved~~ Special Education Standards and Assistance for Providing Educational Services and Materials for Visually Impaired Students

ARTICLE 6. CERTIFICATION

Section
R7-2-610. Special Education Teaching Certificates
R7-2-620. Qualification Requirements of Professional, Non-Teaching School Personnel

ARTICLE 4. SPECIAL EDUCATION

R7-2-405. Due Process Standards Relating to Special Education

A. Definitions. The following definitions are applicable to this rule:
1. "Impartial hearing officer" or "hearing officer" means ~~a person or tribunal assigned to preside at a due process hearing whose duty it is to assure that proper procedures are followed and that rights of the parties are protected.~~ an Administrative Law Judge (ALJ) employed by the Arizona Office of Administrative Hearings (OAH) and assigned to preside at a due process hearing, whose duty is to assure that proper procedures are followed and that the rights of the parties are protected.
2. ~~"Parent" has the meaning found in A.R.S. Title 15, Chapter 7, Article 4, and includes a surrogate parent.~~
3.2. ~~"Public agency" means the school district, charter school, or state or county agency responsible for providing educational service services to a child.~~ "Public Education Agency" ("PEA") has the same definition as provided in R7-2-401.
4.3. "State Education Agency" ("SEA") means the Arizona Department of Education, Exceptional Student Services ~~Section~~ Division.

B. The due process procedures specified in this rule apply to all public education agencies dealing with the identification, evaluation, ~~special~~ educational placement ~~of~~, ~~and~~ or the provision of a free appropriate public education ("FAPE") for children with disabilities.

C. The SEA shall establish procedures concerning:
1. Impartial due process hearings; and
2. Confidentiality and access to student records.

D. An impartial hearing officer shall be:
1. Unbiased – not prejudiced for or against any party in the hearing;
2. Disinterested – not having any personal or professional interest that would conflict with objectivity in the hearing;
3. Independent – may not be an officer, employee, or agent of a public education agency involved in the education or care of the child or the SEA. A person who otherwise qualifies to conduct a hearing is not an employee of the public education agency or the SEA solely because the person is paid by the public education agency to serve as a hearing officer; and;
4. Trained ~~and evaluated~~ annually by the SEA as to the state and federal laws pertaining to the identification, evaluation, educational placement ~~of~~, and the provision of FAPE for children with disabilities.

E. Hearing officer qualifications and training.
1. All hearing officers shall participate in all required training ~~and evaluation~~ conducted by the SEA as to the state and federal laws pertaining to the identification, evaluation, educational placement ~~of~~, and the provision of FAPE for children with disabilities.

~~2. All hearing officers shall demonstrate competency by achieving a minimum score of 80% on a criterion-referenced test selected by the SEA.~~
~~3. A hearing officer shall be an attorney licensed to practice law in the United States, or an attorney on inactive status whose withdrawal from active practice is not premised upon adverse disciplinary action from any state or federal bar association. A hearing officer shall not have represented a parent in a special education matter during the preceding calendar year and shall not have represented a school district in any matter during the preceding calendar year.~~
~~4. An individual shall be removed from the list of eligible hearing officers if, at any time, the individual no longer meets the requirements specified in subsection (D)(1) through (4) and subsection (E)(1) through (3).~~
2. A hearing officer shall meet the requirements set forth by OAH regarding ALJs. A hearing officer shall not have represented a parent in a special education matter during the preceding 12 months, and shall not have represented a school district in any matter during the preceding 12 months.

F. Selection of hearing officers.
1. The SEA shall prepare and maintain a list of individuals who meet the qualifications specified in subsection (E) to serve as hearing officers. The list shall also include the qualifications of each hearing officer.
~~2. Three hearing officers shall be selected randomly by the SEA and shall be screened to determine availability and possible bias. Once the SEA has selected 3 hearing officers who are available and show no evidence of bias, the 3 names shall be provided to the public agency and the parent. The public agency and the parent will each have the opportunity to strike 1 name from the list provided. The remaining individual shall be named as the hearing officer unless either party objects for cause and provides such reason in writing to the SEA. Objections for cause shall require specific evidence that the individual does not meet the criteria specified in subsections (D) and (E)(1) through (3). The SEA shall review the evidence submitted and determine the qualifications of the individual. If the SEA determines that the individual is not qualified to serve as the hearing officer, the SEA shall repeat the process and select 3 additional hearing officers to be provided to the parties.~~
2. A hearing officer shall be assigned in accordance with the procedures of the Office of Administrative Hearings.

~~**G.** A parent shall submit a written request for a due process hearing to the public agency. The SEA shall provide a model form that a parent may use in requesting a due process hearing. Upon receipt of a written request, there shall be no change in the educational placement of the child until the hearing officer renders a decision, unless the public agency and parent agree. If a parent requests a due process hearing, the public agency shall advise the parents of any free or low-cost legal services available. All correspondence to the parent shall be provided in English and the primary language of the home. If the written request involves an application for initial admission, the child, with the consent of the parent, shall be placed in a program for which the child is eligible until the completion of all proceedings.~~

G. Request for Due Process.
1. A parent shall submit a written request for a due process hearing to the public education agency and the SEA. The SEA shall provide a model form that a parent may use in requesting a due process hearing. Upon receipt of a written request, there shall be no change in the educational placement of the child except under the applicable provisions of IDEA, unless the PEA and parent agree. If a parent requests a due process hearing, the public education agency shall advise the parents of any free or low-cost legal services available, and provide a copy of the procedural safeguards notice. All correspondence to the parent shall be provided in English and the primary language of the home. If the written request involves an application for initial admission, the child, with the consent of the parent, shall be placed in a program for which the child is eligible until the completion of all proceedings.
2. If the public education agency requests a due process hearing, such request shall be made on a model form, as noted in (G)(1), and a copy shall be provided to the parent and the SEA.

H. An impartial due process hearing shall be conducted in accordance with the following procedures:
~~1. The hearing officer shall hold a preconference meeting to ensure that all matters are clearly defined, to establish the proceedings that will be used for the hearing, and to set the time and dates for the hearing.~~
1. The hearing officer shall hold a pre-hearing conference, at a location mutually agreed upon by the PEA and the parent, to determine if the complaint is a legitimate due process complaint, to ensure that all matters are clearly defined, to establish the proceedings that will be used for the hearing, to determine who will represent and/or advise each party, and to set the times and dates for the hearing.
2. The hearing officer shall conduct the hearing at a location mutually agreed upon by the PEA and the parent.
~~2.~~3. The hearing officer shall preside at the hearing and shall conduct the proceedings in a fair and impartial manner, ~~to the end~~ and shall ensure that all parties involved have an opportunity to:
   a. Present their evidence and confront, cross-examine, and compel the attendance of witnesses;
   b. Object to the introduction of any evidence at the hearing that has not been disclosed to all parties at least five business days before the hearing;
   c. Produce outside expert witnesses; and
   d. Be represented by legal counsel and/or accompanied and advised ~~or~~ by individuals with special knowledge or training with respect to the problems of children with disabilities.
~~3.~~4. The parent involved in the hearing shall be given the right to:

a. Have the child who is the subject of the hearing present;
b. Have the hearing conducted in public; and
c. Have an interpreter provided by the public education agency.

~~4.~~5. The hearing officer shall review all relevant facts concerning the identification, evaluation, the educational placement, and the provision of FAPE. This shall include any Independent ~~Education~~ Educational Evaluation secured by the parent.
a. The hearing officer shall determine whether the public education agency has met all relevant requirements of federal and state law, rules, and regulations.
b. The hearing officer shall render findings of fact and a decision, which shall be binding on all parties unless appealed pursuant to this rule~~, as to whether:~~ .
~~i. The evaluation procedures utilized in determining the child's needs have been appropriate in nature and degree;~~
~~ii. The diagnostic profile of the child on which the placement was based is substantially verified;~~
~~iii. The child's rights have been fully observed;~~
~~iv. The placement has been determined to be appropriate to the needs of the child;~~
~~v. The placement of the child in the special education program is with the written consent of the parent.~~

~~5.~~6. The hearing officer's findings of fact and decision shall be in writing and shall be provided to the parent, the public education agency, the SEA, and their respective representatives. The parent may choose to receive an electronic verbatim record of the hearing and electronic findings of fact and decision relative to the hearing in addition to the written findings of fact and decision. The hearing officer's findings of fact and decision shall be delivered by certified mail or by hand within 45 calendar days after the public education agency's receipt of the request for the hearing. ~~The notification of the hearing officer's decision shall include a statement that either party may appeal the decision to the Office of Administrative Hearings and that such appeal must be filed within 35 calendar days after receipt of the decision.~~ A hearing officer may grant specific extensions of time beyond the 45 calendar days at the request of either party.

7. The findings of fact and decision of the hearing officer shall be final at the administrative level. The notification of the findings of fact and decision shall contain notice to the parties that they have a right to judicial review.

~~6.~~8. The SEA, after deleting any personally identifiable information, shall make such written findings of fact and decision available to the public.

I. Expedited hearing for disciplinary matters.
1. An expedited hearing for disciplinary matters may be requested ~~concerning long-term suspension or expulsion~~:
a. By the parent if the parent disagrees with the determination that the child's behavior was not a manifestation of the child's disability; or
b. By the parent if the parent disagrees with any decision regarding placement~~; or~~ under 34 CFR 300.520-300.528; or
c. By the public education agency if the public education agency maintains that it is dangerous for the child to be in the current placement during the pendency of the due process proceedings.
2. Hearing officers for an expedited hearing shall be assigned by the ~~SEA after review to determine that the hearing officer meets the standards specified in subsection (D)(1) through (4). The strike provisions specified in subsection (F) are not applicable.~~ Office of Administrative Hearings.
3. The expedited hearing shall be conducted and the findings of fact and decision shall be issued within 10 ~~calendar~~ business days from the receipt of the request.

~~**J.** Administrative appeal.~~
~~1. A final administrative appeal may be obtained through the Office of Administrative Hearings. Requests for appeal shall be submitted in writing through the SEA.~~
~~a. Such an appeal shall be accepted only if it is initiated within 35 days after the decision of the hearing officer has been received by the party appealing.~~
~~b. The official conducting the review shall:~~
~~i. Examine the entire hearing record;~~
~~ii. Ensure that the procedures at the hearing were consistent with the requirements of due process;~~
~~iii. Seek additional evidence if necessary;~~
~~iv. Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;~~
~~v. Make findings of fact and a decision on completion of the review;~~
~~vi. Give a copy of the written findings of fact and the decision to the parties.~~
~~2. The findings of fact and decision of the administrative law judge shall be delivered by certified mail or by hand to all parties within 30 calendar days of the receipt of the request for appeal. The SEA, after deleting any personally identifiable information, shall make such written findings of fact and decision available to the public.~~
~~3. The findings of fact and decision of the administrative law judge shall be final at the administrative level. The notifi-~~

~~cation of the findings of fact and decision shall contain notice to the parties that they have a right to judicial review.~~

R7-2-407. ~~Reserved~~ Special Education Standards and Assistance for Providing Educational Services and Materials for Visually Impaired Students

A. All requirements in this Section are in addition to the general special education standards in R7-2-401 for public education agencies providing special education.

B. For the purposes of this rule, the following definitions apply:

1. "Accessible Electronic File" means, until the effective date of a nationally adopted file format, a digital file in a mutually agreed upon electronic file format that has been prepared using a markup language that maintains the structural integrity of the information and can be processed by Braille conversion software. Upon the effective date of a nationally adopted file format, such as the Instructional Materials Accessibility Standard (IMAS), "Accessible Electronic File" shall mean an electronic file conforming to the specifications of the nationally adopted file format, including future technical revisions and versions of this nationally adopted file format.
2. "Individualized Braille literacy assessment" means the Learning Media Assessment or other standardized or individualized assessments that pertain to the child's reading medium.
3. "Non-printed instructional materials" means non-printed textbooks and related core materials, including those that require the availability of electronic equipment in order to be used as a learning resource, that are written and published primarily for use in elementary school and secondary school instruction and are required by a state educational agency or a local educational agency for use by pupils in the classroom. These materials shall be available to the extent technologically available, and may include software programs, CD-ROMs and internet-based materials.
4. "Printed instructional materials" means textbooks and related printed core materials, that are written and published primarily for use in elementary school and secondary school instruction and are required by a state educational agency or a local educational agency for use by pupils in the classroom. This may include workbooks, practice tests and tests.
5. "Publisher" means an individual, firm, partnership or corporation that publishes or manufactures printed instructional materials for students attending public schools in Arizona, including an on-line service, a software developer, or a distributor of an electronic textbook.
6. "Specialized format" means Braille, audio or digital text which is exclusively for use by blind or other persons with disabilities.
7. "Structural integrity" means the structure of all parts of the printed instructional material will be kept intact to the extent feasible and as mutually agreed upon by the publisher and the local educational agency. This may include appropriate representation of graphic illustrations.

C. Upon determination of a student having a visual impairment as assessed by a full and initial evaluation defined in R7-2-401(E)(6)(i), a visually impaired student who is determined to be blind as defined by A.R.S. § 15-214(B) shall receive an individualized Braille literacy assessment.

D. Individualized Education Programs (IEP) for Blind students. In addition to the requirements for establishing and implementing an IEP consistent with R7-2-401(F) for a student determined to have a disability, each IEP for a student determined to be "blind" as assessed by R7-2-401(E)(6)(i) and defined by A.R.S. § 15-214(B), shall presume that proficiency in Braille is essential in achieving academic success unless otherwise determined by the IEP team established consistent with the regulations for the most recent reauthorization of the Individuals with Disabilities Education Act (IDEA) and in the manner provided by the most recent reauthorization of the IDEA Act for developing an IEP. An IEP developed under this Section for a student determined to be blind shall include all required provisions of A.R.S. § 15-214(A)(3), including the following:

1. The results of the individualized Braille literacy assessment.
2. The date on which Braille instruction will begin, the methods to be used and the frequency and duration of the Braille instruction.
3. The level of competency expected to be achieved within specified time-frames and the objective measures to be used for evaluation.
4. The Braille materials and equipment necessary to achieve the stated expected competency gains, including ordering instructional materials to achieve the I.E.P.-stated goals.
5. The rationale for not providing Braille instruction if Braille is not determined to be an appropriate medium by the IEP team and is not included in the IEP.

E. The Arizona Department of Education shall designate a central repository for publishers to, upon request, provide accessible electronic files for instructional materials used by public schools in Arizona as defined in subsection (B)(1). The central repository shall be responsible for maintaining a complete list of available accessible electronic files for instructional materials and instructional materials in specialized formats, processing requests from PEAs for instructional materials in specialized formats and providing access to these materials in specialized formats to schools throughout Arizona that are providing services to blind or other students with disabilities.

1. Upon receipt of a written request certifying to the requirements set forth in subsections (a) through (c) publishers shall deliver to the repository, at no additional cost and consistent with the time-frame for providing materials for stu-

dents without disabilities, accessible electronic files for printed instructional materials and non-printed instructional materials. Certification shall include all of the following:

a. The PEA purchased a copy of the printed instructional material or non-printed instructional material for use by a student who is blind or has a visual impairment in a course which the student is attending or registered to attend;
b. The student who will utilize the instructional materials in a specialized format has an IEP stating that such materials and/or equipment are necessary for the student to achieve stated expected competency gains; and
c. The instructional materials are for use by the student in connection with a course in which he/she is enrolled, as verified by the person overseeing the education of students who are blind or visually impaired.

2. A PEA may access the materials maintained by the central repository, upon written request, for instructional use with a student with a visual impairment, as identified by R7-2-401(E)(6)(i), who requires the use of instructional materials in a specialized format pursuant to the student's IEP.
3. Nothing in this Section shall be construed to prohibit the central repository from assisting a student with a disability by using the electronic format version of instructional material provided pursuant to this Section solely to transcribe or arrange for the transcription of the printed instructional material into Braille or large print. In the event a Braille transcription is made, the central repository has the right to share the Braille copy of the printed instructional material with other eligible students with disabilities. The PEA will be required to return the specialized format version of the instructional material to the central repository when the student no longer needs the instructional material. The central repository may share the copies of the specialized format of the instructional material with other PEAs who have met the requirements of subsections (B) and (D) of this Section to provide services to students who require such services pursuant to R7-2-401(F)(5).

ARTICLE 6. CERTIFICATION

R7-2-610. Special Education Teaching Certificates

A. Except as noted, all certificates are subject to the general certification provisions in R7-2-607 and the renewal requirements in R7-2-617.
B. Terms used in this Section are defined in A.R.S. § 15-761.
C. Provisional Cross-Categorical Special Education Certificate -- grades K-12
1. The certificate is valid for two years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
2. The holder is qualified to teach students with mild to moderate mental retardation, emotional disability, specific learning disability, orthopedic impairments and other health impairments.
3. The requirements are:
   a. A bachelor's degree;
   b. One of the following:
      i. Completion of a teacher preparation program in special education from an accredited institution, which included courses in mental retardation, emotional disability, specific learning disability, orthopedic impairments and other health impairments; or
      ii. Forty-five semester hours of education courses which teach the standards described in R7-2-602, including 21 semester hours of special education courses and eight semester hours of practicum with students representing at least three of the five disability areas. Special education courses shall include survey of exceptional students; teaching methodologies and strategies for students with disabilities; foundations course in mild to moderate mental retardation, learning disability, emotional disabilities, and physical/health impairment; and diagnosis and assessment of mild disabilities. Two years of verified teaching experience in special education in grades K-12 may substitute for the eight semester hours of practicum; or
      iii. A valid cross-categorical special education certificate from another state.
   c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment;
   d. A passing score on the cross-categorical special education portion of the Arizona Teacher Proficiency Assessment; and
   e. A valid Class 1 or Class 2 fingerprint clearance card.

D. Standard Cross-Categorical Special Education Certificate -- grades K-12
1. The certificate is valid for six years.
2. The holder is qualified to teach students with mild to moderate mental retardation, emotional disability, specific learning disability, orthopedic impairments and other health impairments.
3. The requirements are:
   a. Qualification for the provisional cross-categorical Special Education certificate;
   b. A passing score on the performance portion of the Arizona Teacher Proficiency Assessment; and
   c. A valid Class 1 or Class 2 fingerprint clearance card.

E. Provisional Specialized Special Education Certificate -- grades K-12
1. The certificate is valid for two years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
2. The holder is qualified to teach students with mental retardation, emotional disability, specific learning disability,

orthopedic impairments or other health impairments, as specified on the certificate.

3. The requirements are:
   a. A bachelor's degree;
   b. One of the following:
      i. Completion of a teacher preparation program in the specified area of special education from an accredited institution; or
      ii. Forty-five semester hours of education courses which teach the knowledge and skills described in R7-2-602, including 21 semester hours of special education courses and eight semester hours of practicum in the designated area of disability. Special education courses shall include survey of exceptional students; teaching methodologies for students with disabilities; foundations of instruction in the designated area of disability; and diagnosis and assessment of disabilities. Two years of verified teaching experience in the area of disability in grades K-12 may be substituted for the eight semester hours of practicum; or
      iii. A valid special education certificate in the specified area from another state.
   c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment;
   d. A passing score on the specified disability special education portion of the Arizona Teacher Proficiency Assessment; and
   e. A valid Class 1 or Class 2 fingerprint clearance card.

F. Standard Specialized Special Education Certificate -- grades K-12

1. The certificate is valid for six years.
2. The holder is qualified to teach students with mental retardation, emotional disability, specific learning disability, orthopedic impairments or other health impairments, as specified on the certificate.
3. The requirements are:
   a. Qualification for the provisional Special Education certificate;
   b. A passing score on the performance portion of the Arizona Teacher Proficiency Assessment; and
   c. A valid Class 1 or Class 2 fingerprint clearance card.

G. Provisional Severely and Profoundly Disabled Certificate -- grades K-12

1. The certificate is valid for two years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
2. The requirements are:
   a. A bachelor's degree;
   b. One of the following:
      i. Completion of a teacher preparation program in severely and profoundly disabled education from an accredited institution; or
      ii. Forty-five semester hours of education courses which teach the knowledge and skills described in R7-2-602, including 21 semester hours of special education courses and eight semester hours of practicum. Special education courses shall include survey of exceptional students, teaching methodologies for students with severe and profound disabilities, foundations of instruction of students with severe and profound disabilities, and diagnostic and assessment procedures for students with severe and profound disabilities. Two years of verified teaching experience with students in grades Prekindergarten-12 who are severely and profoundly disabled may be substituted for the eight semester hours of practicum; or
      iii. A valid Severely and Profoundly Disabled certificate from another state.
   c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment;
   d. A passing score on the severely and profoundly disabled special education portion of the Arizona Teacher Proficiency Assessment; and
   e. A valid Class 1 or Class 2 fingerprint card.

H. Standard Severely and Profoundly Disabled Certificate -- grades K-12

1. The certificate is valid for six years.
2. The requirements are:
   a. Qualification for the provisional severely and profoundly disabled certificate;
   b. A passing score on the performance portion of the Arizona Teacher Proficiency Assessment; and
   c. A valid Class 1 or Class 2 fingerprint clearance card.

I. Provisional Hearing Impaired Certificate -- grades K-12

1. The certificate is valid for two years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
2. The requirements are:
   a. A bachelor's degree;
   b. One of the following:
      i. Completion of a teacher preparation program in hearing impaired education from an accredited institution; or
      ii. Forty-five semester hours of education courses which teach the knowledge and skills described in R7-2-602, including 21 semester hours of special education courses for the hearing impaired and eight semester hours

of practicum. Special education courses shall include survey of exceptional students, teaching methodologies for students with hearing impairment, foundations of instruction of students with hearing impairment, and diagnostic and assessment procedures for the hearing impaired. Two years of verified teaching experience in the area of hearing impaired in grades Prekindergarten-12 may be substituted for the eight semester hours of practicum; or

iii. A valid hearing impaired certificate from another state.

c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment;

d. A passing score on the hearing impaired special education portion of the Arizona Teacher Proficiency Assessment; and

e. A valid Class 1 or Class 2 fingerprint clearance card.

J. Standard Hearing Impaired Certificate -- grades K-12

1. The certificate is valid for six years.
2. The requirements are:
   a. Qualification for the provisional hearing impaired certificate;
   b. A passing score on the performance portion of the Arizona Teacher Proficiency Assessment; and
   c. A valid Class 1 or Class 2 fingerprint clearance card.

K. Provisional Visually Impaired Certificate -- grades K-12

1. The certificate is valid for two years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
2. The requirements are:
   a. A bachelor's degree;
   b. One of the following:
      i. Completion of a teacher preparation program in visual impairment from an accredited institution; or
      ii. Forty-five semester hours of education courses which teach the knowledge and skills described in R7-2-602, including 21 semester hours of special education courses for the visually impaired and eight semester hours of practicum. Special education courses shall include survey of exceptional students, teaching methodologies for students with visual impairment, foundations of instruction of students with visual impairment, and diagnostic and assessment procedures for the visually impaired. Two years of verified teaching experience in the area of visually impaired in grades Prekindergarten-12 may be substituted for the eight semester hours of practicum; or
      iii. A valid visually impaired special education certificate from another state.
   c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment;
   d. A passing score on the visually impaired special education portion of the Arizona Teacher Proficiency Assessment; and
   e. Demonstration of competency in Braille through one of the following:
      i. A passing score on the original version of the National Library of Congress certification exam; or
      ii. A valid certificate for a literary Braille transcriber issued by the National Library of Congress; or
      iii. A passing score on a Braille exam administered by another state; or
      iv. A passing score on the Braille exam developed and administered by the University of Arizona. Individuals who take this test and are not students at the University of Arizona may be assessed a fee.
   f. A valid Class 1 or Class 2 fingerprint clearance card.

L. Standard Visually Impaired Certificate -- grades K-12

1. The certificate is valid for six years.
2. The requirements are:
   a. Qualifications for the provisional visually impaired certificate;
   b. A passing score on the performance portion of the Arizona Teacher Proficiency Assessment; and
   c. A valid Class 1 or Class 2 fingerprint clearance card.

M. Provisional Speech and Language Impaired Certificate -- grades K-12

1. This certificate is valid for two years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
2. The requirements are:
   a. A bachelor's degree;
   b. One of the following:
      i. Completion of a teacher preparation program in speech and language special education from an accredited institution; or
      ii. Forty-five semester hours of education courses which teach the knowledge and skills described in R7-2-602, including 30 semester hours of special education courses for the speech impaired. Special education courses shall include survey of exceptional students, teaching methodologies for students with speech impairment, foundations of instruction of students with speech impairment, diagnostic and assessment procedures for the speech impaired, and a minimum of 200-clock hours of supervised clinical practice in providing speech and language impairment services. All clinical practice clock hours shall be supervised by an American Speech

and Language Association-certified pathologist or by a state-certified speech and language therapist; or

iii. A valid Speech and Language Impaired special education certificate from another state.

c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment;

d. A passing score on the speech and language impaired special education portion of the Arizona Teacher Proficiency Assessment; and

e. A valid Class 1 or Class 2 fingerprint clearance card.

N. Standard Speech and Language Impaired Certificate -- grades K-12

1. The certificate is valid for six years.
2. The requirements are:
   a. Qualification for the provisional speech and language impaired certificate;
   b. A passing score on the performance portion of the Arizona Teacher Proficiency Assessment; and
   c. A valid Class 1 or Class 2 fingerprint clearance card.

O. Provisional Early Childhood Special Education Certificate -- Birth to five years

1. The certificate is valid for two years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
2. The requirements are:
   a. A bachelor's degree;
   b. One of the following:
      i. Completion of a teacher preparation program in early childhood special education from an accredited institution; or
      ii. Forty-five semester hours of education courses which teach the standards described in R7-2-602, including child development and learning, language development, social and emotional development, curriculum development and implementation, and assessment and evaluation, early childhood special education, and eight semester hours of practicum in early childhood special education. Two years of verified teaching experience in the area of early childhood special education may be substituted for the eight semester hours of practicum; or
      iii. A valid early childhood special education certificate from another state.
   c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment;
   d. A passing score on the early childhood special education portion of the Arizona Teacher Proficiency Assessment; and
   e. A valid Class 1 or Class 2 fingerprint clearance card.

P. Standard Early Childhood Special Education Certificate -- Birth to five years

1. The certificate is valid for six years.
2. Requirements are:
   a. Qualify for the provisional early childhood Special Education certificate;
   b. Passing score on the performance portion of the Arizona Teacher Proficiency Assessment; and
   c. A valid Class 1 or Class 2 fingerprint clearance card.

R7-2-620. Qualification Requirements of Professional, Non-Teaching School Personnel

A. Definitions:

1. "Educational Interpreter." For the purposes of this Section, "educational interpreter" means a person trained to translate in sign language for students identified to require such services through an Individualized Education Program (IEP) or a 504 accommodation plan in order to access academic instruction. This does not in any way restrict the provisions of R7-2-401(B)(14) which defines "interpreter" and provides that each student's IEP team determines the level of interpreter skill necessary for the provision of FAPE, nor does it restrict a school district's ability to develop a job description for someone in a position of "educational interpreter" that requires additional job responsibilities.
2. "Accommodation plan developed to comply with Section 504 of the Rehabilitation Act of 1973, 29 USC 794, et.seq. ("504 accommodation plan")". For the purposes of this Section, "504 accommodation plan" means a plan developed for the purpose of specifying accommodations and/or services that will be implemented by classroom teachers and other school personnel so that students will benefit from their educational program.

B. Educational Interpreters for the Hearing Impaired

1. Persons employed by or contracting with schools and school districts to provide educational interpreting services for hearing impaired students must meet the following qualifications from and after January 1, 2005:
   a. Have a high school diploma or GED;
   b. Hold a valid fingerprint clearance card, and
   c. Show proficiency in interpreting skills through one of the following:
      i. A minimum passing score of 3.5 or higher on the Educational Interpreter Performance Assessment (EIPA), or
      ii. Hold a valid Certificate of Interpretation (CI) and/or Certificate of Transliteration (CT) from the Registry of Interpreters for the Deaf (RID), or
      iii. Hold a valid certificate from the National Association of the Deaf (NAD) at level 3 or higher.

2. If a public education agency (PEA) is unable to find an individual meeting the above qualifications, the PEA may hire an individual with lesser qualifications, but the PEA is required to provide a professional development plan for the individual they employ to provide educational interpreting services. This professional development plan must include the following:
   a. Proof of at least twenty-four hours of training in interpreting each year that a valid certification is not held or EIPA passing score is not attained, and
   b. Documentation of a plan for the individual to meet the required qualifications within three years of employment. If the qualifications are not attained within three years, but progress toward attainment is demonstrated, the plan shall be modified to include an intensive program for up to one year to meet the provisions of subsection (B)(1).
3. An individual employed under the provisions of subsection (2) of this rule must also have the following:
   a. A valid fingerprint clearance card, and
   b. A high school diploma or GED.

C. Compliance with these rules will be reviewed at the same time as a PEA is monitored for compliance with the requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq.

NOTICE OF FINAL RULEMAKING

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

CHAPTER 2. CORPORATION COMMISSION – FIXED UTILITIES

PREAMBLE

1. Sections Affected — **Rulemaking Action**

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
R14-2-2001	New Section
R14-2-2002	New Section
R14-2-2003	New Section
R14-2-2004	New Section
R14-2-2005	New Section
R14-2-2006	New Section
R14-2-2007	New Section
R14-2-2008	New Section
R14-2-2009	New Section
R14-2-2010	New Section
R14-2-2011	New Section

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

Authorizing statutes: 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 statutes: 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:

July 23, 2004

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.

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
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, and 8) coordinate enforcement efforts with Arizona Attorney General.

   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, and 8) submitting of company records upon request of the Commission.

   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, and 7) enforce penalties or sanctions.

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, and 7) submitting of company records upon request of the Commission.

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.

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 item #11 in this preamble.

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 R14-2-1909.

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 R14-2-1909(A).

Analysis: The defined term "Customer Account Freeze" is used only in Section R14-2-1909. The term is described in Section R14-2-1909.A. In addition, Section R14-2-1909.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 R14-2-1905(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 R14-2-1902 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".

R14-2-1903 – Application

Issue: The Attorney General has determined that the Commission lacks the requisite authority to adopt rules as to wireless communications.

Resolution: End the second sentence after "radio services," deleting "until those Telecommunications Companies are mandated by law to provide equal access."

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

Issue: The Attorney General requests replacing the inconsistent usage of the terms "Telecommunications Company" and "Unauthorized Carrier" with the term "alleged Unauthorized Carrier."

Resolution: Insert "alleged" before each occurrence of "Unauthorized Carrier" throughout all sections of the rule.

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 time-frame 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: The Attorney General requests that the refund for slamming be reduced from 150% to 100% to follow the state Slamming Act rather than the federal slamming rules.

Resolution: Delete each occurrence of "150%" and replace with "100%."

1907.C.4

Issue: AT&T comments that as drafted, this Section could allow the original Telecommunications Company to apply the 100 percent credit toward charges incurred during the 90-day absolution period, and that in contrast, Section R14-2-1907(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 100 percent credit should still apply.

Analysis: This Section requires 100 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 R14-2-1907(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 100 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 100 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 R14-2-1905. 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 R14-2-1905.

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 R14-2-1910.

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 R14-2-1907 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 R14-2-1907 does not so allow.

Qwest also comments that this Section directly conflicts with Section R14-2-1907(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 R14-2-1907(C)(3). This should be accomplished by adding the additional language appearing in Section R14-2-1907(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 R14-2-1907(C)(4).

Staff recommends against AT&T's proposed change to Section R14-2-1907(C)(4), and accordingly recommends against AT&T's proposed changes to this Section.

Analysis: We believe that our change to Section R14-2-1908(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 R14-2-1908 be posted on its web site 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 web site 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 web site 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 telecommuni-

cations 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 R14-2-1901(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: The Attorney General requests that the references to the Code of Federal Regulation be made using the incorporation by reference language mandated by A.R.S. § 41-1028.

Resolution: Insert after "C.F.R. 64.1190(e)(2) "incorporated by reference. This reference to 47 C.F.R. 64.1190(e)(2) is to the version in effect as of January 1, 2004 and no future editions or amendments. Copies of 47 C.F.R. 64.1190(e)(2) are available from the Federal Communications Commission at 445 12th Street SW, Washington D.C. 20554 and at the offices of the Arizona Corporation Commission at 1200 W. Washington Street, Phoenix, Arizona 85007 and online at www.gpoaccess.gov and are on file with the Office of the Secretary of State."

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 R14-2-1901(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 R14-2-2008(B)(3), should be revised slightly to define precisely when the clock begins ticking on the five-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 R14-2-2008.

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 non-binding 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.

R14-2-1910.D

Issue: The Attorney General requests that the Staff's written summary not be admissible in any subsequent formal complaint proceeding.

Resolution: At the end of the Section, insert "Staff's written summary shall not be admissible in the formal complaint proceeding."

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.

R14-2-1912 – Waivers

Issue: The Attorney General requests that the provision for waivers be eliminated.

Resolution: Delete the rule and renumber accordingly.

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.E

Issue: The Attorney General has determined that the Commission lacks the requisite authority to adopt rules as to wireless communications.

Resolution: Delete "includes all" following "Telecommunications Company" and insert "does not include."

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. Further, the elimination of wireless carriers eliminates this concern.

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: The elimination of wireless carriers renders this issue moot.

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 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 R14-2-1907(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 R14-2-1907(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 R14-2-2006(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.

2007.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 R14-2-2007 be posted on its web site 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 web site 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 web site 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: The Attorney General requests that the Staff's written summary not be admissible in any subsequent formal complaint proceeding.

Resolution: At the end of the Section, insert the sentence "Staff's written summary shall not be admissible in the formal complaint proceeding."

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 time-frame in this rule be changed from five days to 10 days.

Analysis: We believe that the rule as proposed allows a reasonable time-frame 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 time-frame in this rule be changed from 10 business days to 20 business days.

Analysis: We believe that the rule as proposed allows a reasonable time-frame 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 time-frame in this rule be changed from 10 business days to 20 business days.

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

Resolution: No change required.

2008.B.6

Issue: This Section repeats the provision contained in R14-2-2008(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 R14-2-2008(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 time-frame 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 non-binding 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 time-frame 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 time-frame 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 time-frame 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.

R14-2-2010 – Waivers

Issue: The Attorney General requests that the provision for waivers be eliminated.

Resolution: Delete the rule and renumber accordingly.

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:

47 C.F.R. 64.1190(e)(2) is incorporated by reference in R14-2-1909(D).

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. CORPORATION COMMISSION – FIXED UTILITIES

ARTICLE 19. CONSUMER PROTECTIONS FOR UNAUTHORIZED CARRIER CHANGES

Section

ARTICLE 20. CONSUMER PROTECTIONS FOR UNAUTHORIZED CARRIER CHARGES

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. "Executing Telecommunications Carrier" means a Telecommunications Company that effects a request that a Subscriber's Telecommunications Company be changed.

E. "Letter of Agency" means written authorization, including internet enabled with electronic signature, by a Subscriber authorizing a Telecommunications Company to act on the Subscriber's behalf to change the Subscriber's Telecommunications Company.

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.

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. "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.

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.

J. "Unauthorized Charge" means any charge incurred as a result of an Unauthorized Change.

R14-2-1902. Purpose and Scope

These rules 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 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.

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 Carrier shall not contact the Subscriber to verify the Subscriber's selection received from a Telecommunications Company submitting a change.

D. An Executing Telecommunications 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 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 alleged 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 alleged Unauthorized Carrier that the change was unauthorized, the alleged 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 an alleged Unauthorized Carrier has been notified that an Unauthorized Change has occurred and the alleged Unauthorized Carrier cannot verify within five business days that the change was authorized pursuant to R14-2-1905, the alleged 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 alleged 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 alleged Unauthorized Carrier if a Subscriber has not paid charges to the alleged 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 alleged 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, 100% of any alleged Unauthorized Carrier's charges that a Subscriber paid to the alleged Unauthorized Carrier. The original Telecommunications Company shall apply the credit of 100% to the Subscriber's authorized charges.

D. Until the alleged Unauthorized Carrier 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 alleged Unauthorized Carrier 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 with-

out the Subscriber's permission;

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;
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;
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 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;
6. If a Subscriber has paid charges to the Unauthorized Carrier, the Unauthorized Carrier must pay 100% of the charges to the original Telecommunications Company and the original Telecommunications Company shall apply the 100% as credit to the Customer's authorized charges;
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;
8. A Subscriber who has been slammed can report the Unauthorized Change to the Arizona Corporation Commission;
9. The name, address, web site, and toll free consumer services telephone number of the Arizona Corporation Commission; and
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 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 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) incorporated by reference. This reference to 47 C.F.R. 64.1190(e)(2) is to the version in effect as of January 1, 2004 and no future editions or amendments. Copies of 47 C.F.R. 64.1190(3)(2) are available from the Federal Communications Commission at 445 12th Street SW, Washington D.C. 20554 and at the offices of the Arizona Corporations Commission at 1200 W. Washington Street, Phoenix, Arizona 85007 and online at www.gpoaccess.gov and are on file with the Office of the Secretary of State.

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 or at least 24 months following the cancellation of the Customer 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 Change;
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. 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. Staff's written summary shall not be admissible in the formal complaint proceeding.

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. 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.

R14-2-1913. Script Submission

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 R14-2-1913(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 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. "Commission" means the Arizona Corporation Commission.

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.

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.

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" does not include providers of wireless, cellular, personal communications services, or commercial mobile radio services.

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.

R14-2-2002. Purpose and Scope

The provisions of this Article 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 in which the Telecommunications Company offers to establish residential service or in which 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 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;
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 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 than 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. 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. Staff's written summary shall not be admissible in the formal complaint proceeding.

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. 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.

R14-2-2011. Script Submission

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 R14-2-2011(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 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.