

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 16, 2008

To: The Commission
(Meeting of May 29, 2008)

From: Pamela Loomis, Deputy Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 2307 (Price) – Telephone services: change in telephone service provider.**
As amended April 30, 2008

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT WITH AMENDMENTS

SUMMARY OF BILL:

AB 2307 would amend Section 2889.5 of the Public Utilities Code (PU Code), relating to telephone service. Existing law prohibits a telephone corporation, or any person, firm, or corporation representing a telephone corporation, from changing a subscriber's telephone service provider without specified verification, including for residential service, independent 3rd-party verification meeting specified requirements, and notification by the United States Postal Service.

This bill would instead require telephone corporations to offer residential customers the **option** of verification of the customer's decision to change the residential telephone service provider by independent 3rd-party verification and notification by United States mail (although certain inconsistent language in the amendment makes this outcome inoperable).

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

The California Public Utilities Commission (Commission) opposes AB 2307 because it purports to allow the customer to waive the Third Party Verification (TPV) requirements mandated by the Federal Communications Commission (FCC) when changing the customers' telephone service provider. This proposed bill appears to render the TPV requirements optional. On the other hand, inconsistencies in the language in the proposed bill in 2889.5 (D)(5) negates this "optional" provision.

SUMMARY OF SUGGESTED AMENDMENTS:

The bill should be amended to state the specific language of 47 CFR Sec. 64.1120 relevant to the intent of this amendment.

The following amendments are recommended to AB 2307 as amended April 16, 2008:

On page 3, delete lines 38 through 40, and add in lieu thereof:

“(5) Confirmation of a sale of residential service shall be made pursuant to paragraph (3) or in accordance with one of the following procedures:

(A) The submitting telephone corporation has obtained the subscriber’s written or electronically signed authorization in a form that meets the requirements of 47 CFR § 64.1130; or

(B) The submitting telephone corporation has obtained the subscriber’s electronic authorization to submit the preferred carrier change order. Such authorization must be placed from the telephone number(s) on which the preferred carrier is to be changed and must confirm the subscriber’s intent to change carrier. Submitting telephone corporations selecting to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism, that records the required information regarding the preferred carrier change, including automatically recording the originating automatic number identification.

(6) Submitting telephone corporations must provide a residential subscriber the option to verify the change of his or her telephone service provider either by an independent third-party verification pursuant to paragraph (3) or by one of the methods provided in paragraph (5).

On page 5 of the bill, in line 2, delete “one” and add in lieu thereof: “two”.

This amendment is in conformance with Sec. 64.1120 which requires a submitting telephone corporation to maintain and preserve records of verification of subscriber authorization for a minimum period of two years after obtaining such verification.

DIVISION ANALYSIS (Consumer Protection and Safety Division):

- Existing law prohibits a telephone corporation from changing a subscriber's telephone service provider without specified verification, including for residential service, independent 3rd-party verification (TPV) meeting specified requirements, and notification by the United States Postal Service.

- In the proposed amended 2889.5 (D)(3), the bill requires the carrier to offer the TPV to the residential customer when changing his or her service provider. **If** the customer requests the verification, then the existing verification requirements will apply. The customer may or may not fully understand the protection provided by the verification process and may decide to waive it for expediency. This loophole can create confusion and may lead to more consumer complaints.
- In the proposed amended 2889.5 (D)(5), the bill requires that **if a customer does not** request a verification, then confirmation shall be given pursuant to the FCC's 47 CFR 64.1120. This is the same section that establishes the TPV requirement. At a minimum, if the intent of the proposed bill is to allow the customer to waive the TPV requirement, the language in this section should be made consistent (and not refer back to the very language it proposes to make optional).
- If the bill were enacted, making the TPV optional, CPSD believes that it will weaken existing consumer protection against slamming. The bill would undermine the effectiveness of the Commission's consumer complaint resolution and Slamming Citation Program. Should residential customers inadvertently waive the TPV, by error or because of lack of understanding, the Commission will not have the taped verification as evidence to respond to consumer complaints and issue applicable citations.
- If the bill were enacted, making the TPV optional, carriers could reinstate problematic practices such as the use of signed checks and sweepstake entry forms as forms of authorization that were previously banned by the TPV process. Use of such TPV opt out forms could expose consumers to fraudulent practices that had been successfully eliminated via enactment of the TPV process.

PROGRAM BACKGROUND:

- The Commission has opted to act as adjudicator of slamming complaints, giving it authority to enforce slamming rules promulgated by the FCC. (See D.06-03-013 at p 156 (OP16).)
- In August 2006, as part of the Commission's Consumer Protection Initiative, the Commission adopted the Slamming Citation Program in UEB-001, which authorizes the CPSD Director to issue citations of \$1000 for violation of the TPV requirements, as promulgated by the FCC Code of Federal Regulation.
- The FCC's 47 CFR 64.1120 requires that the carriers obtain verification of orders when changing the residential customers' telephone providers. These requirements are referred to as Third Party Verifications (TPVs). The optional nature of the TPV in the proposed amendment is inconsistent with Federal law.

LEGISLATIVE HISTORY:

- SB 1140 (Peace, Chapter 358, Statutes of 1996) added the third-party verification requirement in current PU Code Sec. 2889.5. At that time, the CPUC was receiving thousands of slamming complaints. The Legislature contends that this bill would be the best method to combat this fraudulent practice. By adoption of SB 1140, the Legislature rejected other recommendations that AB 2307 now seeks to revive.

FISCAL IMPACT:

None.

STATUS:

AB 2307 is presently on the Assembly Floor Consent Calendar.

SUPPORT/OPPOSITION:

Support: Verizon (sponsor)

Opposition: None on file.

STAFF CONTACTS:

Pamela Loomis, Deputy Director
Office of Governmental Affairs

pcl@cpuc.ca.gov
(916) 327-8441

Jeanette Lo
Program Manager, CPSD

jlo@cpuc.ca.gov
(415) 703-1825

Roxanne Scott
Staff, Communications Division

rs2@cpuc.ca.gov
(415) 703-5263

Date: May 16, 2008

BILL LANGUAGE:

BILL NUMBER: AB 2307 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 30, 2008
AMENDED IN ASSEMBLY APRIL 16, 2008

INTRODUCED BY Assembly Member Price

FEBRUARY 21, 2008

An act to amend Section 2889.5 of the Public Utilities Code,
relating to telephone service.

LEGISLATIVE COUNSEL'S DIGEST

AB 2307, as amended, Price. Telephone services: change in
telephone service provider.

Existing law prohibits a telephone corporation, or any person,
firm, or corporation representing a telephone corporation, from
changing a subscriber's telephone service provider without specified
verification, including for residential service, independent
3rd-party verification meeting specified requirements, and
notification by the United States Postal Service.

This bill would provide that a subscriber's decision to change the
residential telephone service provider may be verified by
~~meeting~~ *using electronic means that comply with*
specified requirements set forth in federal law.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2889.5 of the Public Utilities Code is amended
to read:

2889.5. (a) No telephone corporation, or any person, firm, or
corporation representing a telephone corporation, shall make any
change or authorize a different telephone corporation to make any
change in the provider of any telephone service for which competition
has been authorized of a telephone subscriber until all of the
following steps have been completed:

(1) The telephone corporation, its representatives or agents shall
thoroughly inform the subscriber of the nature and extent of the
service being offered.

(2) The telephone corporation, its representatives or agents shall
specifically establish whether the subscriber intends to make any
change in his or her telephone service provider, and explain any
charges associated with that change.

(3) For sales of residential service, the subscriber's decision to
change his or her telephone service provider shall be confirmed by
an independent third-party verification company, or as provided in
paragraph (5). For purposes of this provision, the confirmation by a

third-party verification company shall be made as follows:

(A) The third-party verification company shall meet each of the following criteria:

(i) Be independent from the telephone corporation that seeks to provide the subscriber's new service.

(ii) Not be directly or indirectly managed, controlled, or directed, or owned wholly or in part, by the telephone corporation that seeks to provide the new service or by any corporation, firm, or person who directly or indirectly manages, controls, or directs, or owns more than 5 percent of the telephone corporation.

(iii) Operate from facilities physically separate from those of the telephone corporation that seeks to provide the subscriber's new service.

(iv) Not derive commissions or compensation based upon the number of sales confirmed.

(B) The telephone corporation seeking to verify the sale shall do so by connecting the subscriber by telephone to the third-party verification company or by arranging for the third-party verification company to call the subscriber to confirm the sale.

(C) The third-party verification company shall obtain the subscriber's oral confirmation regarding the change, and shall record that confirmation by obtaining appropriate verification data. The record shall be available to the subscriber upon request. Information obtained from the subscriber through confirmation shall not be used for marketing purposes. Any unauthorized release of this information is grounds for a civil suit by the aggrieved subscriber against the telephone corporation or its employees who are responsible for the violation.

(D) Notwithstanding subparagraphs (A), (B), and (C), a service provider shall not be required to comply with these provisions when the customer directly calls the local service provider to make changes in service providers. However, a service provider shall not avoid the verification requirements by asking a subscribing customer to contact a local exchange service provider directly to make any change in the service provider. A local exchange service provider shall be required to comply with these verification requirements for its own competitive services. However, a local exchange service provider shall not be required to perform any verification requirements for any changes solicited by another telephone corporation.

(4) For a sale of residential service confirmed by an independent third-party verification company, the telephone corporation seeking to verify the change in service, in addition to the requirements of paragraph (3), shall notify the subscriber by United States Postal Service that the subscriber's telephone service provider has been changed. The service provider that initiated the change shall send that notice within 14 days of the date of the change. The notice shall provide the subscriber with clear, legible notice of the change in service provider, and shall include a customer service telephone number for the subscriber to call if the subscriber did not authorize the change in service.

(5) Confirmation of a sale of residential service may be made ~~pursuant to~~ *using an electronic means that complies with* Section 64.1120 of Title 47 of the Code of Federal Regulations.

(6) For sales of all nonresidential services, the subscriber's decision to change his or her service provider shall be confirmed

through any of the following means:

(A) Independent third-party verification, as set forth in paragraph (3) of subdivision (a).

(B) The telephone corporation shall mail to the subscriber an information package seeking confirmation of his or her change in the telephone corporation. The information package shall describe the new service and shall include a postage prepaid postcard or mailer that the subscriber can use to deny, cancel, or confirm a service order, as soon as possible, and wait 14 days after the information package is mailed before making the change in the telephone corporation. The telephone corporation shall make the change only if the subscriber does not cancel the change in service order.

(C) Verify the subscriber's change in his or her telephone service provider by obtaining the subscriber's signature on a document fully explaining the nature and extent of the action. The document shall be a separate document whose sole purpose is to explain the nature and extent of the action.

(D) Obtain the subscriber's authorization through an electronic means that takes the information, including the calling number, and confirms the change to which the subscriber has given his or her consent.

(7) Where the telephone corporation obtains a written order for service, the document shall thoroughly inform the subscriber of the nature and extent of the action. The subscriber shall be furnished with a copy of the signed document. The subscriber by his or her signature on the document shall indicate a full understanding of the relationship being established with the telephone corporation. If a written subscriber solicitation or other document contains a letter of agency authorizing a change in service provider, in combination with other information including, but not limited to, inducements to subscribers to purchase service, the solicitation shall include a separate document whose sole purpose is to explain the nature and extent of the action. If any part of a mailing to a prospective subscriber is in language other than English, any written authorization contained in the mailing shall be sent to the same prospective subscriber in the same language.

(8) The telephone corporation shall retain a record of the verification of the sale for at least one year. These records shall be made available to the subscriber, the Attorney General, or the commission upon request.

(b) If a residential or business subscriber that has not signed an authorization notifies the telephone corporation within 90 days that he or she does not wish to change telephone corporations, the subscriber shall be switched back to his or her former telephone corporation at the expense of the telephone corporation that initiated the change.

(c) For purposes of this section, competitive services are those services where subscribers have the ability to presubscribe to a telephone service provider.

(d) When a subscriber changes telephone service providers, the change shall be conspicuously noticed on the subscriber's bill. Notice in the following form is deemed to comply with this subdivision:

"NOTICE: Your local (or long distance) telephone service provider has been changed from (name of prior provider) to (name of current provider).

Cost of change: \$ ____."

(e) Any telephone corporation that violates the verification procedures described in this section shall be liable to the telephone corporation previously selected by the subscriber in an amount equal to all charges paid by the subscriber after the violation.

(f) In addition to the liability described in subdivision (e), any telephone corporation that violates the verification procedures described in this section shall credit to a subscriber any charges paid by the subscriber in excess of the amount that the subscriber would have been obligated to pay had the subscriber's telephone service not been changed. The commission shall adopt regulations to govern credits to subscribers pursuant to this subdivision.

(g) The remedies provided by this section are in addition to any other remedies available by law.

(h) As described in federal law, no telephone corporation, or any person, firm, or corporation representing a telephone corporation, shall make any change or authorize a different telephone corporation to make any change in the provider of any telephone service for which competition has been authorized of a telephone subscriber without having on file, or having instituted reasonable steps designed to obtain, signed, dated orders for service from the subscriber. All orders shall be in the form prescribed in federal law for letters of agency. As described in federal law, the telephone corporation is responsible for charges associated with disputed changes in telephone service for which it cannot produce a signed, dated order for service from the subscriber. This subdivision applies to all intrastate services for which competition has been authorized.