

M e m o r a n d u m

Date: May 21, 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 IF AMENDED

SUMMARY OF BILL:

This bill would provide that, in lieu of an independent third-party verification, a residential subscriber's decision to change a telephone service provider may be verified using an electronic means that complies with the Federal Communications Commission's regulations codified in 47 CFR 64.1120.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

As amended, the bill references the total Federal Regulation Code section 47 CFR 64.1120. This language could be interpreted to include parts of this federal regulation that conflict with the third-party verification requirements of PU Code Sec. 2889.5. In addition, section 64.1120(e) contains provisions governing a carriers' acquisition of a customer base, which subject is outside the scope of PU Code 2889.5 and which conflict with the Commission's D. 06-10-021 Adopting Mass Migration Guidelines.

Therefore a broad reference to the Code of Federal Regulation 64.1120 could possibly create overlap and confusion in implementation and enforcement. The language of the bill should be amended to reference the specific subsections of 47 CFR Sec. 64.1120, as noted below, which are relevant to the intent of this amendment.

The State Legislature has chosen third-party verification has the best method to prevent slamming. The bill should be amended to require the submitting telephone corporation to continue to offer this method of verification to the customer as option in addition to any of the two electronic verification methods added by this bill.

The recommended amendment to page 4 below would conform the record retention time to the record retention time required by the federal regulations which require 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.

SUMMARY OF SUGGESTED AMENDMENTS:

The following amendments are recommended to AB 2307 as amended April 30, 2008:

On page 2, at line 19, after the period, insert the following sentence:

“The telephone corporation shall provide the subscriber the option of confirmation by a third party verification company in addition to any option provided pursuant to paragraph (5). “

On page 3, delete lines 33 through 35, and add in lieu thereof:

“(5) Confirmation of a sale of residential service may be made pursuant to using an electronic means that complies with Section 64.1120 (c)(1) or (c)(2) of Title 47 of the Code of Federal Regulations.

On page 4 of the bill, in line 37 delete “one” and add in lieu thereof: “two”.

DIVISION ANALYSIS (Consumer Protection and Safety Division):

- Existing law prohibits a telephone corporation, or its agent, from changing a residential subscriber's telephone service provider without an independent third-party verification (TPV) meeting specified requirements, and notification by the United States Postal Service.
- Sec. 64.1120 of the Code of Federal Regulations includes two alternative methods of verification in addition to third-party verification. The two other verification methods, which would be added by this bill to the Public Utilities Code Sec. 2889.5, are:
- Sec. 64.1120 (c)(1): The subscriber's written or electronically-signed letter of agency that meets the requirements of 47 CFR 64.1130; and
- Sec. 64.1120 (c)(2): the subscriber's electronic authorization placed from the telephone number(s) on which the preferred carrier is to be changed. A submitting carrier who elects to use electronic authorization would have to establish one or

more toll-free numbers exclusively for that purpose and the calls to that number(s) must record the subscriber's verification and the originating automatic number identification (ANI – the calling number)

- Sec. 64.1120 also requires that the submitting carrier must give the subscriber the option to use the letter of agency for verification, and at least one of the other two options – third-party verification or electronic verification. The subscriber would choose which of the two (or perhaps three) options he/she wished to use.
- Sec. 64.1120 contains other regulatory requirements as well, including rules governing the third-party verification method of verification, and rules governing transfer of customers upon sale to another carrier.

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.
- This bill should only have minimal impact on the CPUC's slamming enforcement and citation programs.
- If this bill is adopted, the CPUC's Consumer Affairs Branch will have to be educated about the new procedures for carrier change verification.

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 awaiting hearing in the Senate Committee on Energy, Utilities and Communications.

SUPPORT/OPPOSITION:

Support: Verizon (sponsor)

Opposition: None on file.

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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.