

PROCEDURES FOR CHANGING TELECOMMUNICATIONS SERVICE PROVIDERS

Section 1. Verification of Orders for Telecommunications Service.

No telecommunications service provider, whether operating as an interexchange carrier (IXC), a local exchange carrier (LEC), or a reseller of either interexchange or local exchange service, shall submit to an LEC, or implement by itself, a primary interexchange carrier (PIC) or LEC change order unless and until the order has first been confirmed in accordance with the following procedures:

- (a) The prospective IXC or LEC has obtained the customer's written authorization in a form that meets the requirements of Section 2 of these procedures; or
- (b) The prospective IXC or LEC has obtained the customer's electronic authorization, placed from the telephone number(s) on which the PIC or LEC is to be changed, to submit the order that confirms the information described in Section 2(e) of these procedures to confirm the authorization. IXCs or LECs electing 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 customer to a voice response unit, or similar mechanism, that records the required information regarding the PIC or LEC change, including automatically recording the originating automatic number identification; or
- (c) An appropriately qualified independent third party has obtained the customer's oral authorization to submit the PIC or LEC change order that confirms and includes appropriate verification data (e.g., the customer's date of birth or social security number). The independent third party must (1) not be owned, managed, controlled, or directed by the prospective IXC or LEC, or by the marketing agent for the prospective IXC or LEC; (2) must not have any financial incentive to confirm the PIC or LEC change order for the prospective IXC or LEC, or for the marketing agent of the prospective IXC or LEC; and (3) must operate in a location physically separate from the prospective IXC or LEC, or from the marketing agent for the prospective IXC or LEC. The content of the verification must include clear and conspicuous confirmation that the customer has authorized a PIC or LEC change; or
- (d) A three-way call, initiated by a customer's prospective service provider, has been undertaken by the LEC, the customer, and that prospective service provider, in which the customer affirmatively states a desire to change intrastate service providers. A separate affirmation must be specifically expressed for each type of service for which the customer seeks to change providers. In the course of the three-way call:
 - (1) Neither service provider shall disclose confidential or proprietary information;
 - (2) The current service provider shall not attempt to persuade the customer not to switch service providers; and
 - (3) The current service provider shall not be allowed to market other telecommunications services to the customer.

Section 2. Letter of Agency Form and Content.

(a) An IXC or LEC shall obtain any necessary written authorization from a subscriber for a PIC or LEC change by using a letter of agency (LOA) as specified in this section. Any LOA that does not conform with this section is invalid.

(b) The LOA shall be a separate document (or an easily separable document) containing only the authorizing language described in Section 2(e) of these procedures and whose sole purpose is to authorize an IXC or LEC to initiate a PIC or LEC change. The LOA must be signed and dated by the subscriber to the telephone lines(s) requesting the PIC or LEC change.

(c) The LOA shall not be combined with inducements of any kind on the same document.

(d) Notwithstanding paragraphs (b) and (c) of this Section, the LOA may be combined with checks that contain only the required letter of agency language prescribed in Section 2(e) of these procedures and the necessary information to make the check a negotiable instrument. The LOA check shall not contain any promotional language or material. The LOA check shall contain, in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a PIC or LEC change by signing the check. The LOA language also shall be placed near the signature line on the back of the check.

(e) At a minimum, the LOA must be printed in a type of sufficient size and readability to be clearly legible, and must contain clear and unambiguous language that confirms:

- (1) The subscriber's billing name and address and each telephone number to be covered by the PIC or LEC change order;
- (2) The decision to change the customer's preferred service provider from the current IXC or LEC to the prospective IXC or LEC;
- (3) That the subscriber designates the prospective IXC or LEC to act as the subscriber's agent for the PIC or LEC change;
- (4) That the subscriber understands that only one telecommunications service provider may be designated as the subscriber's interLATA PIC for any one telephone number. To the extent that the law allows the selection of additional preferred service providers (e.g., for local, intraLATA, or international calling), the LOA must contain separate statements regarding each of those choices. Any carrier designated as the customer's PIC or LEC must be the carrier directly setting the rates for the subscriber. One service provider can be a subscriber's interLATA PIC, the subscriber's intraLATA PIC, and the subscriber's local service provider; and
- (5) That the subscriber understands that any PIC or LEC selection the subscriber makes may involve a charge to the subscriber for changing the subscriber's PIC or LEC.

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

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

Section 2.1 Changes in Subscriber Carrier Selections .

(a) The following provisions, requirements, and exceptions apply to telecommunications service providers that submit or execute PIC or LEC change orders on the behalf of customers located in Michigan, and shall apply equally to situations in which the change orders arise from in-bound or out-bound sales calls where the execution of the change order would result in the provision of service to those customers by the recipient of the in-bound call, an affiliate of the recipient, or a carrier for which the recipient serves as an agent or marketer.

- (1) No submitting carrier shall submit a change order on the behalf of a subscriber prior to obtaining: (A) authorization from the subscriber, and (B) verification of that authorization in accordance with the procedures prescribed in Section 1 of these procedures. For a submitting carrier, compliance with the verification procedures prescribed in these procedures shall be defined as compliance with, at a minimum, subsections (a) and (b) of this Section, as well as with Section 1. The submitting carrier shall maintain and preserve records of verification of subscriber authorization for a minimum period of two years after obtaining such verification.
- (2) An executing carrier shall not verify the submission of a change in a subscriber's PIC or LEC service provider upon receipt of a change order from a submitting carrier. For an executing carrier, compliance with these procedures shall be defined, at a minimum, as prompt execution, without any unreasonable delay, of change orders that have been verified by a submitting carrier, as well as adherence to the subscriber notification provisions set forth in Section 8 of these procedures.
- (3) Commercial mobile radio services (CMRS) providers shall be excluded from the verification requirements of these procedures as long as they are not required to provide equal access to common carriers for the provision of telephone toll services, in accordance with 47 USC §332(c)(8).

(b) Where a telecommunications service provider is selling more than one type of telecommunications service (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll), that service provider must obtain separate authorization from the subscriber for each service sold, although the authorizations may be made within the same solicitation. Each authorization must be verified separately from any other authorizations obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in these procedures.

(c) Definitions. For the purposes of these procedures, the following definitions are applicable:

- (1) Submitting carrier: a submitting carrier is generally any telecommunications service provider that: (A) requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed, and (B) seeks to provide retail services to the end user subscriber. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable carrier change requests, including fraudulent authorizations.
- (2) Executing carrier: an executing carrier is generally any telecommunications service provider that puts into effect a request that a subscriber's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.
- (3) Authorized carrier: an authorized carrier is generally any telecommunications service provider that is currently providing authorized service to a subscriber or that submits a change order, on behalf of that subscriber, in the subscriber's selection of a provider of telecommunications service with the subscriber's authorization verified in accordance with these procedures.
- (4) Unauthorized carrier: an unauthorized carrier is generally any telecommunications service provider that submits a change order, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service but fails to obtain the subscriber's authorization verified in accordance with these procedures.
- (5) Unauthorized change: an unauthorized change is a change in a subscriber's selection of a provider of telecommunications service that was made without authorization verified in accordance with these procedures.

Section 3. Violation of PIC or LEC Change Verification Procedures.

(a) No telecommunications service provider shall submit, or execute on its own behalf, a change in a customer's selection of a service provider except in accordance with the verification procedures prescribed in Section 505 of the Michigan Telecommunications Act (the Act), MCL 484.2505; MSA 22.1469(505), and as further defined in these procedures or Commission orders issued pursuant to Section 505.

(b) Any individual, corporation, partnership, association, governmental entity, or other legal entity, including the Commission, having knowledge of a violation of Section 3(a) of these procedures may initiate an action against a telecommunications service provider for failure to adhere to the PIC or LEC change verification procedures prescribed in Section 505 of the Act. Any such action will be

treated as a complaint case under Section 203 of the Act, MCL 484.2203; MSA 22.1469(203), and will be processed in accordance with the Administrative Procedures Act and the Commission's Rules of Practice and Procedure.

(c) If a hearing is necessary to resolve a complaint filed pursuant to Section 3(b) of these procedures and alleging a violation of Section 505 of the Act, the Commission shall have 180 days from the date the complaint was filed to issue its final order. However, if the principal parties of record agree that the complexity of issues involved requires additional time, the Commission may have up to 210 days from the date of the complaint's filing to issue its final order.

(d) If a telecommunications provider is found by the Commission to have violated the verification requirements of Section 505 of the Act, the procedures set forth in Sections 1, 2, 2.1, or 3(a) above, or an order issued by the Commission under Section 505, the Commission shall order remedies and penalties to protect and make whole end users and other persons who have suffered damages as a result of the violation, including, but not limited to, 1 or more of the following:

- (1) Order the person to pay a fine for the first offense of not less than \$10,000 nor more than \$20,000. For any subsequent offense, the Commission shall order the person to pay a fine of not less than \$25,000 nor more than \$40,000. If the Commission finds that the second or any subsequent offenses were knowingly made in violation of Section 505 of the Act, these procedures, or a Commission order issued under Section 505, the Commission shall order the person to pay a fine of not more than \$50,000. Each unauthorized or unverified change in a customer's telecommunications service provider or providers shall be a separate offense under this subsection.
- (2) Order an unauthorized service provider to refund to the customer any monies received from the customer that are greater than what the customer would have paid for taking the same service from its authorized provider.
- (3) Order an unauthorized service provider to reimburse the authorized provider in an amount equal to the revenues that the authorized provider would have received had it been allowed to provide service to the customer.
- (4) If the person is licensed under the Act, revoke the license if the Commission finds a pattern of violations of Section 505 of the Act.
- (5) Issue cease and desist orders.

(e) Although all other remedies and penalties may be ordered whether or not a violation is intentional, the fines authorized in Section 506(2)(a) of the Act, MCL 484.2506(2)(a); MSA 22.1469(2)(a), and restated in Section 3(d)(1) of these procedures, may not be imposed if the telecommunications provider that committed the violation shows that it has otherwise fully complied with Section 505 of the Act and further persuades the Commission that the violation was an unintentional and bona fide error that occurred despite the provider's maintenance of procedures reasonably adopted to avoid the error. Examples of a bona fide error include clerical, calculation, computer malfunction, programming, or printing errors. An error in legal judgement with respect to a person's obligation under Section 505 of the Act is not a bona fide error.

(f) The telecommunications provider that committed the violation bears the burden of proving that the violation was an unintentional and bona fide error.

(g) If the Commission finds that a party's complaint or defense filed under Section 505 of the Act is frivolous, the Commission shall tax costs, including reasonable attorney fees, against the nonprevailing party and its attorneys, and in favor of the prevailing party.

Section 4. PIC or LEC Protection Programs.

(a) An LEC shall offer, and a customer may request enrollment in, a PIC or LEC protection program under which the LEC cannot execute a PIC or LEC change order submitted by or on behalf of the customer until the LEC receives adequate proof that the customer authorized that change or the customer suspends its PIC or LEC protection.

(b) Adequate proof of a customer's authorization to change the customer's PIC or LEC despite the customer's enrollment in a PIC or LEC protection program shall be defined as receipt by the executing LEC of proof of verification of the change order by way of either an LOA or a three-way call initiated by the customer's prospective service provider (and undertaken by the executing LEC, the customer, and the prospective service provider), including an acknowledgment that the customer is waiving his or her PIC or LEC protection, if it is in effect.

(c) PIC or LEC protection programs, including all solicitations for membership in those programs, must clearly distinguish among telecommunications services (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) that are subject to PIC or LEC protection. A separate request shall be made, and separately verified authorization received by the executing LEC, for each type of telecommunications service to which a customer seeks to apply PIC or LEC protection.

(d) An LEC's PIC or LEC protection program shall be available under the same terms and conditions to all customers, including those taking service from a telecommunications service provider other than that LEC.

(e) Solicitation and imposition of PIC or LEC protection programs.

(1) All carrier-provided solicitation and other materials regarding PIC or LEC protection programs must include:

- (i) An explanation, in clear and neutral language, of what a PIC or LEC protection program is and what services may be subject to protection;
- (ii) A description of the specific procedures necessary to lift a customer's PIC or LEC protection, and an explanation that the subscriber will be unable to make a change in carrier selection unless he or she either suspends the protection or has the customer's prospective service provider supply the executing LEC with adequate proof of authority for the change, as

- defined in Section 4(b), above; and
- (iii) An explanation of any charges associated with the PIC or LEC protection program.
- (2) No LEC shall implement PIC or LEC protection unless the subscriber's request to impose that protection has first been confirmed in accordance with one of the following procedures:
- (i) The LEC has obtained the subscriber's written and signed authorization in a form that meets the requirements of Section 4(e)(3) of these procedures; or
 - (ii) The LEC has obtained the subscriber's electronic authorization, placed from the telephone number(s) on which the PIC or LEC protection is to be imposed, to impose that protection. The electronic authorization should confirm appropriate verification data (e.g., the subscriber's date of birth or social security number) and the information required in Section 4(e)(3)(ii)(1)-(4) of these procedures. Telecommunications carriers electing to confirm PIC or LEC protection orders 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 PIC or LEC protection request, including automatically recording the originating automatic numbering identification; or
 - (iii) An appropriately qualified independent third party has obtained the subscriber's oral authorization to initiate the PIC or LEC protection and confirmed the appropriate verification data (e.g., the subscriber's date of birth or social security number) and the information required in Section 4(e)(3)(ii)(1)-(4) of these procedures. The independent third party must (1) not be owned, managed, or directly controlled by the LEC or that LEC's marketing agent; (2) must not have any financial incentive to confirm PIC or LEC protection enrollment requests for the LEC or that LEC's marketing agent; and (3) must operate in a location physically separate from the LEC or that LEC's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized the implementation of PIC or LEC protection.
- (3) Written authorization to impose PIC or LEC protection. An LEC may accept a subscriber's written and signed authorization to implement PIC or LEC protection. Written authorization that does not conform with this Section is invalid and may not be used to impose PIC or LEC protection.
- (i) The written authorization shall comply with Section 2(b), (c), and (g) of the Commission's procedures concerning the form

and content for LOAs.

- (ii) At a minimum, the written authorization must be printed with a readable type, of sufficient size to be clearly legible, and must contain clear and unambiguous language that confirms:
 - (1) The subscriber's billing name and address and the telephone number(s) to be covered by the PIC or LEC protection;
 - (2) The decision to place PIC or LEC protection on the telephone number(s) and particular service(s). To the extent that a jurisdiction allows the imposition of PIC or LEC protection on additional preferred carrier service selections (e.g., for local exchange, intra-LATA/intrastate toll, interLATA/interstate toll, and international toll service), the authorization must contain separate statements regarding the particular selections to be protected;
 - (3) That the subscriber understands that she or he will be unable to make a change in carrier selection unless she or he either suspends the protection or has the customer's prospective service provider supply the executing LEC with adequate proof of authority for the change, as defined in Section 4(b), above; and
 - (4) That the subscriber understands that any PIC or LEC protection may involve a charge to the subscriber.
- (iii) The LEC shall maintain and preserve records of verification of the subscriber's authorization to implement LEC or PIC protection for as long as that protection is being provided for the customer's service or services.

(f) Procedures for Suspending PIC or LEC protection. All LECs that offer PIC or LEC protection must, at a minimum, offer subscribers the following procedures for suspending PIC or LEC protection.

- (1) An LEC administering PIC or LEC protection program must accept a subscriber's written and signed authorization stating her or his intent to suspend its PIC or LEC protection; and
- (2) An LEC administering a PIC or LEC protection program must accept a subscriber's oral authorization stating her or his intent to suspend its PIC or LEC protection and must offer a mechanism that allows a submitting carrier to initiate and conduct a three-way conference call with the LEC providing the protection, the subscriber, and the subscriber's prospective or potential service provider in order to suspend the protection. When engaged in oral authorization to suspend PIC or LEC protection, the LEC providing the

protection shall confirm appropriate verification data (e.g., the subscriber's date of birth or social security number) and the subscriber's intent to suspend its PIC or LEC protection.

(g) Upon receipt of a PIC or LEC change order involving a customer with PIC or LEC protection, the LEC receiving that request shall promptly notify the person submitting the change order of the existence of the customer's PIC or LEC protection, and shall request adequate proof of verification of the change order as defined in Section 4(b), above. Following the LEC's receipt of adequate proof of verification, the LEC shall process and implement that change order promptly and without unreasonable delay.

(h) Any failure of a telecommunications service provider to adhere to the terms of this Section may be found to be a violation of Sections 205(2) and 502 of the Act, MCL 484.2205(2); MSA 22.1469(205)(2) and MCL 484.2502; MSA 22.1469(502), respectively, and may give rise to the imposition of penalties authorized under Section 601 of the Act, MCL 484.2601; MSA 22.1469(601).

(i) Any LEC that uses the Customer Account Record Exchange (CARE) system, or a similar electronic data transfer system, to exchange information with other service providers must indicate, on a continuous basis and as part of its electronic postings, which customer lines are being provided with PIC or LEC protection. Any information provided by that LEC regarding which customer lines have PIC or LEC protection:

- (1) May not be duplicated or sold by any other telecommunications service provider or that service provider's agents, affiliates, officers, or employees;
- (2) May not be used for marketing purposes by any other telecommunications service provider or that service provider's agents, affiliates, officers, or employees; and
- (3) May be used exclusively in connection with a pending sale of telecommunications services to an end use customer and for the purpose of determining whether the customer has PIC or LEC protection on the line or lines involved in the pending sale.