

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  UNAUTHORIZED CHANGES IN TELECOMMUNICATIONS SERVICE [EMERGENCY RULES]	DOCKET NO. RMU-99-8
--	---------------------

**ORDER ADOPTING RULES WITHOUT NOTICE AND  
PROVIDING FOR EARLY EFFECTIVE DATE**

(Issued July 23, 1999)

Pursuant to the authority of IOWA CODE §§ 17A.4(2), 17A.5(2)"b"(2), 476.2 and 476.3(1) (1999) and 1999 Iowa Acts, Chapter \_\_\_\_ (this number not yet available), identified during the session as House File 588, the Utilities Board adopts the rules in the notice attached hereto and incorporated by this reference. The adopted rules add new subrules IOWA ADMIN. CODE 199-6.8 and 22.23. The reasons for proposing these amendments and new subrules are set forth in the attached notice of intended action. For the reasons stated, the Board finds that delaying the adoption of the attached rules would be contrary to the public interest and that an early effective date, as specified in the attached notice, will confer a benefit on the public.

**IT IS THEREFORE ORDERED:**

1. A rule making, identified as Docket No. RMU-99-8, is commenced for the purpose of adopting the amendments attached to this order, effective August 2, 1999.

2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin a notice in the form attached to and incorporated by reference in this order.

**UTILITIES BOARD**

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary, Deputy

/s/ Diane Munns

Dated at Des Moines, Iowa, this 23<sup>rd</sup> day of July, 1999.

## UTILITIES DIVISION [199]

### NOTICE OF INTENDED ACTION

Pursuant to the authority of Iowa Code sections 17A.4(2), 17A.5(2)"b"(2), 476.2 (1999) and 1999 Iowa Acts, Chapter \_\_\_ (number not yet available), identified during the 1999 legislative session as House File 588 (HF 588), the Utilities Board (Board) gives notice that on July 23, 1999, the Board issued an order in Docket No. RMU-99-8, Unauthorized Changes Of Telecommunications Service [Emergency Rules], "Order Adopting Rules Without Notice And Providing For Early Effective Date," adopting procedural rules for complaints alleging changes in telephone services that are not authorized by the affected customer. On the same date, the Board also issued an order proposing to adopt the same rules (and other proposed rules, described below) through a regular notice-and-comment proceeding. A separate notice of the proposed rule making is being published contemporaneously with this notice of intended action. By this reference, the Board incorporates the preamble from the proposed rules into this notice to explain the reasons for adopting these rules. It is the Board's intention that the proposed rules, modified if necessary based upon the comments received, will be adopted to replace these emergency rules.

The Board finds it is appropriate to adopt these rules without notice and public participation, pursuant to Iowa Code section 17A.4(2), because it would be contrary to the public interest to delay the effectiveness of these rules while public comment

is received. As described in the notice of intended action for the proposed rules, the problems of unauthorized changes in telecommunications service, sometimes known as "slamming" and "cramming," are growing fast. In HF 588, the Iowa General Assembly declares that unauthorized changes in telecommunications service are a form of consumer fraud. HF 588 gives the Board the authority to adopt rules prohibiting unauthorized changes and to hear and decide complaints alleging unauthorized changes. Without procedural rules, however, the Board cannot process those complaints. It would be contrary to the public interest to delay these procedural rules to receive public comment when the rules do little more than implement the new statute.

For similar reasons, the Board finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that these rules will confer a benefit on the public sufficient to justify an effective date of August 2, 1999, which is earlier than the effective date that would otherwise apply. With these rules, the Board will be able to offer Iowa telecommunications customers an efficient mechanism for resolving slamming and cramming complaints. Swift, certain resolution of these complaints will decrease or eliminate the existing economic incentive to engage in this particular form of consumer fraud, thereby conferring a benefit on all Iowans who use local or long distance telephone services.

The rules being adopted on an emergency basis are as follows:

Item 1 of the adopted rules adds a new subrule 6.8 to the Board's rules, specifying the complaint procedures for allegations of unauthorized changes in

telecommunications services. Generally, the complaints will be resolved pursuant to the Board's standard complaint procedures, with informal proceedings, a proposed resolution from Board staff, and an option for formal complaint proceedings in appropriate cases.

Item 2 of the adopted rules provides definitions applicable only to this particular type of utility action. Item 2 also includes subrule 22.23(2), which prohibits unauthorized changes in service and provides for verification of all changes to a customer account, along with customer notification of any such changes. Changes made at the request of a submitting service provider must be verified using one of the three FCC-approved verification procedures (written, electronic, and independent third party). Because the Board is adopting the existing FCC verification procedures, adoption of these emergency rules will not require any telephone service provider to change its existing verification procedures.

Changes made as a result of a direct customer request to the executing service provider may be verified using the FCC procedures or through the internal records of the executing service provider, if those records contain sufficient information to establish the date and time of the request and the identity of the requesting customer. Again, because all three FCC-approved verifications methods are permitted (along with an additional option), adoption of these emergency rules should not require any telephone service provider to change its existing verification procedures.

The adopted rules require customer notification of all changes in service within 30 days of the effective date of the change, as required by HF 588, § 1. The notice must clearly and conspicuously identify the change, any charge or fee associated with the change, and the name and toll-free contact number of the service provider responsible for the change. This information may be included as a line item in the billing portion of the customer's bill, as a separate written statement in the bill envelope, in a separate mailing to the customer, or by such other means as will provide the required information in a clear and conspicuous manner.

The next section of the adopted rules, identified as proposed subrule 22.23(4), requires each telephone service provider to inform complaining customers of their right to contact the Board and refers the reader to chapter 6 of the Board's rules for the applicable complaint procedures.

Finally, adopted subrule 22.23(7) includes provisions for addressing complaints between telephone service providers. HF 588 grants primary jurisdiction over this subject matter to the Board. The rule includes a provision permitting any party to request that a matter be immediately docketed as a formal complaint proceeding, bypassing the informal process, in appropriate circumstances.

The proposed rules in Docket No. RMU-99-7, set forth in the companion notice of intended action, include other provisions that the Board is not adopting on an emergency basis. These include a requirement that all telephone service providers in Iowa must register with the Board and various penalties applicable to a service provider that demonstrates a pattern of violations.

Because of the practice changes that will have to be implemented by telephone service providers as a result of these rules, the Board is taking steps to provide affected companies with immediate notice of these emergency-adopted rules. First, the Board will mail copies of this notice and the notice of proposed rule making to each telephone company that holds a certificate of public convenience and necessity under Iowa Code section 476.29, to each company that has an application for certificate pending, and to the Iowa Telecommunications Association. Second, the Board will post copies of this notice and the notice of proposed rule making on the Board's web page, <http://www.state.ia.us/government/com/util/orders.htm>. Finally, the Board will cause this notice to be published in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code sections 476.2, 476.3(1), and HF 588.

---

Item 1. Amend 199 IAC 6 by adding the following new rule:

**6.8(476) Special procedures for complaints alleging unauthorized changes in telecommunications services.** Notwithstanding the deregulation of a communications service or facility pursuant to Iowa Code section 476.1D, complaints alleging an unauthorized change in telecommunications service (see rule 22.23) will be processed pursuant to the rules set forth in this chapter with the following additional or substituted procedures:

a. Upon receipt of the written complaint and with the customer's acknowledgement, a copy of the complaint will be forwarded to the executing service provider and the preferred service provider as a request for a change in the subscriber's service to the subscriber's preferred service provider, unless the service has already been changed to the preferred service provider.

b. The complaint will also be forwarded to the alleged unauthorized service provider. That entity shall file a response to the complaint within ten days of the date the complaint was forwarded. The response must include proof of verification of the subscriber's authorization for a change in service or a statement that the unauthorized service provider does not have such proof of verification.

c. If the alleged unauthorized service provider includes with its response alleged proof of verification of the subscriber's authorization for a change in service, then the response will be forwarded to the customer. The customer will have ten days to challenge the verification or otherwise reply to the service provider's response.

d. As a part of the informal complaint proceedings, Board staff may issue a proposed resolution to determine the potential liability, including assessment of damages, for unauthorized changes in service among the customer, the previous service provider, the executing service provider, and the submitting service provider, and any other interested person. In the event of a soft slam (as defined in 199 IAC 22.23(1)"j"), Board staff may also propose joint and several liability between the reseller and the facilities-based service provider. In all cases, the proposed

resolution shall allocate responsibility among the interested persons on the basis of their relative responsibility for the events that are the subject matter of the complaint. For purposes of this rule and in the absence of unusual circumstances, the term "damages" means charges directly relating to the telecommunications services provided to the customer that have appeared or may appear on the customer's bill. The term "damages" does not include incidental, consequential, or punitive damages.

e. If the complainant, the service provider, Consumer Advocate, or any other interested person directly affected by the proposed decision is dissatisfied with the proposed resolution, a request for formal complaint proceedings may be filed. A request for formal complaint proceedings will be processed by the Board pursuant to 199 IAC 6.5 et seq.

If no request for formal complaint proceedings is received by the Board within 14 days after issuance of the proposed resolution, the proposed resolution will be deemed binding upon all persons notified of the informal proceedings and affected by the proposed resolution. Notwithstanding the binding nature of any proposed resolution as to the affected persons, the Board may at any time and on its own motion initiate formal proceedings which may alter the allocation of liability.

f. No entity shall commence any actions to re-bill, directly bill, or otherwise collect any disputed charges for a change in service until after Board action on the complaint is final. If final Board action finds that the change in service was unauthorized and determines the customer should pay some amount less than the

billed amount, the service provider is prohibited from re-billing or taking any other steps whatsoever to collect the difference between the allowed charges and the original charges.

Item 2. Amend 199 IAC 22 by adding the following new rule:

**199–22.23(476) Unauthorized Changes In Telephone Service.**

**22.23(1) Definitions.** As used in this rule, unless the context otherwise requires:

a. "*Change in service*" means the designation of a new provider of a telecommunications service to a consumer, including the initial selection of a service provider, and includes the addition or deletion of a telecommunications service for which a separate charge is made to a consumer account.

b. "*Consumer*" means a person other than a service provider who uses a telecommunications service.

c. "*Cramming*" means the addition or deletion of a product or service for which a separate charge is made to a telecommunications consumer account without the verified consent of the affected consumer. Cramming does not include the addition of extended area service to a customer account pursuant to Board rules, even if an additional charge is made.

d. "*Executing service provider*" means, with respect to any change in telecommunications service, a service provider who executes an order for a change in service received from another service provider or from its own customer.

e. "*Jamming*" means the addition of a preferred carrier freeze to a consumer's account without the verified consent of the consumer.

f. *"Letter of agency"* means a written document complying with the requirements of 47 C.F.R. § 64.1160.

g. *"Preferred carrier freeze"* means the limitation of a consumer's account so as to prevent any change in preferred service provider for one or more services unless the consumer gives the service provider from which the freeze was requested the consumer's express consent.

h. *"Service provider"* means a person providing a telecommunications service, not including commercial mobile radio service.

i. *"Slamming"* means the designation of a new provider of a telecommunications service to a consumer, including the initial selection of a service provider, without the verified consent of the consumer.

j. *"Soft slam"* means an unauthorized change in service by a service provider that uses the carrier identification code (CIC) of another service provider, typically through the purchase of wholesale services for resale.

k. *"Submitting service provider"* means a service provider who requests another service provider to execute a change in service.

l. *"Telecommunications service"* means a local exchange or long distance telephone service other than commercial mobile radio service.

m. *"Verified consent"* means verification of a consumer's authorization for a change in service.

**22.23(2)** *Prohibition of unauthorized changes in telecommunications service.*

*a. Verification required.* No telecommunications carrier shall submit a preferred carrier change order or other change in service order to another service provider unless and until the change has first been confirmed in accordance with the procedures set forth in 47 C.F.R. § 64.1150 (1999). No telecommunications carrier shall execute a change in service on one of its own customer accounts unless and until the change has first been confirmed in accordance with the procedures set forth in 47 C.F.R. § 64.1150 (1999) or through maintenance of sufficient internal records to establish a valid customer request for the change in service. At a minimum, any such internal records must include the date and time of the customer's request and adequate verification of the identification of the person requesting the change in service. The burden will be on the telecommunications carrier to show that its internal records are adequate to verify the customer's request for the change in service.

All verifications shall be maintained for at least two years from the date the change in service is implemented. Verification of service freezes shall be maintained for as long as the preferred carrier freeze is in effect.

*b. Letter of agency form and content.* A letter of agency must conform to the requirements of 47 C.F.R. § 64.1160 (1999).

*c. Customer notification.* Every change in service shall be followed by a written notification to the affected customer to inform the customer of the change. Such notice shall be provided within 30 days of the effective date of the change. Such notice may include, but is not limited to, a conspicuous written statement on the

customer's bill, a separate mailing to the customer's billing address, or a separate written statement included with the customer's bill. Each such statement shall clearly and conspicuously identify the change in service, any associated charges or fees, the name of the service provider associated with the change, and a toll-free number by which the customer may inquire about or dispute any provision in the statement.

*d. Preferred carrier freezes.* Preferred carrier freezes must comply with the requirements of 47 C.F.R. § 64.1190 (1999).

**22.23(3)** *[Reserved for future use.]*

**22.23(4)** *Subscriber complaints regarding changes in service—procedures.*

When a telecommunications service provider is contacted by an Iowa customer alleging an unauthorized change in service, the service provider shall inform the customer of the customer's right to contact the Board regarding the complaint. The service provider shall provide the customer with the Board's toll-free number for complaints, (877) 565-4450.

When a subscriber submits to the Board a written complaint alleging an unauthorized change in service, the complaint will be processed by the Board pursuant to chapter 6 of the Board's rules, entitled "Complaint Procedures."

**22.23(5)** *[Reserved for future use.]*

**22.23(6)** *[Reserved for future use.]*

**22.23(7)** *Service provider complaints regarding changes in service.* When a service provider files a written complaint charging another service provider with

causing unauthorized changes in end user services to the detriment of the complaining service provider, the complaint will be processed pursuant to chapter 6 of the Board's rules, entitled "Complaint Procedures," except that any party to the proceeding may petition the Board for an order initiating formal complaint proceedings at any time, regardless of the status of the informal complaint proceedings. The Board will grant such petitions or enter such an order on its own motion if the Board finds that informal complaint proceedings are unlikely to aid in the resolution of the complaint.

July 23, 1999

/s/ Allan T. Thoms

Allan T. Thoms

Chairperson