

§7106. Unauthorized change of carrier

1. Unauthorized change of carrier. This subsection governs the initiation of a change in a customer's local or intrastate interexchange carrier that is not authorized by that consumer.

A. Notwithstanding Title 32, chapter 69, subchapter 5 or Title 32, section 14716, and except as otherwise provided by the commission by rule adopted pursuant to subsection 3, a local or intrastate interexchange carrier may not initiate the change of a customer's local or intrastate carrier unless the change is expressly authorized by the customer as verified by one of the following methods:

- (1) Written or electronically signed authorization from the customer;
- (2) Toll-free electronic authorization placed from the telephone number that is the subject of the change order; or
- (3) Oral authorization of the customer obtained by an independent 3rd party. [PL 2007, c. 638, §2 (AMD).]

B. When a customer's service is changed to a new local or intrastate interexchange carrier, the new local or intrastate interexchange carrier shall maintain for 24 months a record of nonpublic customer-specific information that establishes that the customer authorized the change. [PL 2003, c. 530, §2 (AMD).]

C. [PL 2003, c. 530, §3 (RP).]

D. A local or intrastate interexchange carrier that has initiated an unauthorized customer change shall:

- (1) Pay all usual and customary charges associated with returning the customer to the customer's original local or intrastate interexchange carrier;
- (2) Return to the customer any amount paid to that carrier by the customer or on the customer's behalf; and
- (3) Pay any access charges and related charges to access providers or to an underlying carrier when applicable. [PL 2011, c. 623, Pt. B, §26 (AMD).]

E. [PL 2011, c. 623, Pt. B, §26 (RP).]
[PL 2011, c. 623, Pt. B, §26 (AMD).]

2. Penalty. A local or intrastate interexchange carrier that violates this section is subject to penalty in accordance with this subsection.

A. The commission may impose an administrative penalty against any person who violates this section or any rule or order adopted pursuant to this section. In determining whether to impose a penalty, the commission may consider whether the violation was intentional. The penalty for a violation may be in an amount not to exceed \$7,200 for each day the violation continues, up to a maximum of \$57,000 for a first offense and a maximum of \$157,000 for subsequent offenses. The amount of the penalty must be based on:

- (1) The severity of the violation, including the intent of the violator, the nature, circumstances, extent and gravity of any prohibited acts;
- (2) The history of previous violations;
- (3) The amount necessary to deter future violations;
- (4) Good faith attempts to comply after notification of a violation; and
- (5) Such other matters as justice requires. [PL 2021, c. 318, §20 (AMD).]

B. [PL 2011, c. 623, Pt. B, §26 (RP).]

C. [PL 2003, c. 505, §41 (RP).]

D. The commission may order a telephone utility to withhold funds collected on behalf of a carrier that is subject to an administrative penalty proceeding conducted pursuant to this section if it finds that it is more likely than not that penalties will be imposed or customer refunds will be ordered that are equal to or greater than the amount ordered withheld. The commission shall provide the carrier notice and an opportunity to be heard prior to ordering funds to be withheld. If the commission finds that there is a clear danger that, if notified in advance, the carrier will conceal or otherwise make funds unavailable to satisfy penalties or customer refunds prior to providing notice and an opportunity to be heard, it may issue an order to the public utility to withhold the funds without providing notice or an opportunity to be heard. To issue such an order, the commission must also make the first finding required by this paragraph. The commission shall, without delay, provide a copy of the order to the carrier along with written notice that the carrier, on request, will be provided with an opportunity to contest the finding that it is more likely than not that penalties will be imposed or customer refunds will be ordered that are equal to or greater than the amount ordered withheld. [PL 2003, c. 505, §42 (NEW).]

[PL 2021, c. 318, §20 (AMD).]

3. Rules. The commission shall adopt nondiscriminatory and competitively neutral rules to further implement this section.

A. [PL 2011, c. 623, Pt. B, §26 (RP).]

B. [PL 2011, c. 623, Pt. B, §26 (RP).]

C. [PL 2011, c. 623, Pt. B, §26 (RP).]

D. [PL 2011, c. 623, Pt. B, §26 (RP).]

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2011, c. 623, Pt. B, §26 (AMD).]

4. Enforcement. The commission through its own counsel or through the Attorney General may apply to the Superior Court of any county of the State to enforce any lawful order made or action taken by the commission pursuant to this section. The court may issue such orders, preliminary or final, as it considers proper under the facts established before the court.

[PL 1997, c. 702, §1 (NEW).]

5. Notice to the Attorney General. If the commission has reason to believe that any carrier has violated any provision of the law for which criminal prosecution is provided and would be in order or any law regarding fraud or consumer protection, the commission shall notify the Attorney General. The Attorney General shall promptly institute any actions or proceedings the Attorney General considers appropriate.

[PL 2011, c. 623, Pt. B, §26 (AMD).]

6. Customer education. The Public Advocate shall periodically inform telephone customers in the State of the protections and rights provided by this section.

[PL 2007, c. 638, §3 (NEW).]

SECTION HISTORY

PL 1997, c. 702, §1 (NEW). PL 2001, c. 71, §2 (AMD). PL 2003, c. 505, §§40-42 (AMD). PL 2003, c. 530, §§1-4 (AMD). PL 2007, c. 638, §§2, 3 (AMD). PL 2011, c. 623, Pt. B, §26 (AMD). PL 2021, c. 318, §20 (AMD).

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