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RULE ADOPTIONS

PUBLIC UTILITIES
BOARD OF PUBLIC UTILITIES

Readoption with Amendments: *N.J.A.C. 14:10*

Adopted Repeals: *N.J.A.C. 14:10-1.4*, *1.15*, *1.17*, *1.18*, *1.19*, *2.2*, 3, 5.2, 5.9, 6.2, 7.2, 9.2, 10.2, 10.4, 10.6, 11.3, and 11.7

Adopted New Rules: N.J.A.C. 14:10-1, 1A.11, *2.1*, 3, 4, 5.9, 11.1, 11.4 and 11.11

Adopted Recodification: N.J.A.C. 14:10-1 as 14:10-1A

Telephone

Proposed: August 21, 2006 at *38 N.J.R. 3250(a)*.

Adopted: July 27, 2007 by the Board of Public Utilities, Jeanne M. Fox, President, Frederick F. Butler, Joseph L. Fiordaliso, Christine V. Bator, Commissioners.

Filed: July 30, 2007 as R.2007 d.276, **with substantive and technical changes** not requiring additional public notice and comment (see *N.J.A.C. 1:30-6.3*), **with the proposed amendments (other than recodification and section heading changes) to N.J.A.C. 14:10-1A.3, 1A.6 through 1A.9, 1A.12, 1A.13, 1A.15, *2.2*, *5.2*, *5.3* and *6.8* and new rules *N.J.A.C. 14:10-1.3* and *2.1* not adopted**.

Authority: *N.J.S.A. 48:2-13* and *48:2-21.15* through 21.23 and 56:8-1 et seq.

BPU Docket Number: TX06030230.

Effective Dates: July 28, 2007, Readoption;

September 17, 2007, Amendments, Repeals, New

Rules, and Recodification.

Expiration Date: July 28, 2012.

The New Jersey Board of Public Utilities is herein adopting portions of the proposed readoption of its telephone rules and readopting portions of its existing telephone rules. In addition, the Board is proposing amendments to the rules being adopted herein, in a

companion proposal published elsewhere in this issue of the New Jersey Register (Companion Proposal).

The rules, which were originally scheduled to expire on January 28, 2007, were proposed for readoption on August 21, 2006, at *38 NJR 3250(a)*. During the 60-day comment period on the readoption proposal, significant issues were raised that had not been brought forward previously. After consideration of these issues, the Board determined that portions of the readoption proposal should be redrafted. In order to accomplish this redrafting, and to thoroughly consider all comments and issues raised, the Board requested and was granted an extension of the existing rules until July 28, 2007, pursuant to N.J.S.A. 52:14B-5.1d.

Having now completed its review and consideration of all comments and issues raised, the Board is herein adopting most of the August 2006 readoption proposal. However, the Board has determined that several changes are necessary that cannot be made upon adoption because they are too substantive and require additional notice and comment. The provisions affected by these substantive changes were not adopted. Instead, the adoption continues these provisions as they are in the existing rules, that is, as they stood prior to the readoption proposal. To accomplish the necessary substantive changes, the Board has published a companion proposal elsewhere in this issue of the New Jersey Register, which proposes amendments to implement these substantive changes. There will be a 60-day comment period on that companion proposal.

Throughout this adoption, minor nonsubstantive changes have been made for clarification or organization, or to correct grammatical errors, cross-references or typographical errors. In addition, other minor clarifying amendments were made upon adoption, as described below.

Summary of Public Comments and Agency Responses:

The following persons submitted timely comments on the proposal: Lolita D. Forbes, Esq. Senior Attorney, on behalf of Verizon Wireless; Mark Ashby, Esq. Chief Counsel State Regulatory, on behalf of Cingular Wireless; Gregory M. Kennan, Vice President Regulatory Affairs, on behalf of One Communications; Andrew Klein, Esq. for the Klein Law Group, on behalf of American Telecharge, Inc., Covad Communications Co., Cordia Communications Corp., dPi Teleconnect, LLC, Info Highway Communications Corp., Line Systems, Inc., McGraw Communications Inc., Nationsline New Jersey, Inc., Optimum Global Communications, Inc., Quality Telephone, Inc. Unlimited Communications Service and Xtel Communications Inc. (Joint Commenters); Colleen A. Foley, Esq. of Saul Ewing and Zsuzanna E. Benedek Esq., Senior Attorney, Richard A. Hrip, Vice President External Affairs, and Brian Stair on behalf of United Telephone Company of New Jersey, Inc. d/b/a Embarq (Embarq); Christopher J. White, Esq. Deputy Public Advocate, on behalf of Rate Counsel; Clint Odom, Vice President Regulatory Affairs, on behalf of Verizon (VNJ); Chris Nurse, Director of Legislative and Regulatory Policy for AT&T Inc. Region, Dr. Debra Aron, Director of the Evanston Offices of LECG, LLC and William K. Mosca, Esq., Murray E. Bevan, Esq. Richard A. Guiditta, Esq. of Courter, Kobert & Cohen, and Mark A. Kefler, and Philip S. Shapiro, on behalf of AT&T Communications of NJ, L.P. (AT&T); Sara Bluhm, Assistant Vice President Energy & Federal Affairs, on behalf of New Jersey Business & Industry Association, (NJBIA); Cherie R.

Kiser, Esq., of Mintz Levin, on behalf of the New Jersey Cable Telecommunications Association (NJCTA); Martin C. Rothelder, Esq. of Rothfelder Stern, on behalf of Time Warner Telecom of New Jersey L.P. (Time Warner); Lauri A. Mazzuchetti, Esq., for Kelley Drye and Warren on behalf of Broadview Networks, Inc., and XO Communications. Inc. Joint CLEC Comments (JC); Dan Udovic; Abigal Caplovits Field, on behalf of New Jersey Public Interest Research Group Citizen Lobby (NJPIRG); Ava-Marie Madeam, Esq. Senior Regulatory Counsel, on behalf of Vonage America Inc.; Larry Spiwak on behalf of Phoenix Center, Jenifer Verplanck, President of the New Jersey Chamber of Commerce, on behalf of the New Jersey Chamber of Commerce; Jerry Keenan, Alliance for Action; Honorable Upendra Chivukula, New Jersey State Assembly; Chip Hillock on behalf of Regional Business Partnership; Karen Alexander, President and Chief Executive Officer, on behalf of New Jersey Utilities Association; Professor Keefe, Rutgers School of Management and Labor Relations.

On February 12, 2007, Kevin Ryan, Esq. of Kelley Drye and Warren, on behalf of Covad Communications, and One Communications Corp on behalf of its predecessors CT Communications and Conversant and XO Communications Inc., withdrew their comments.

General Comments:

1. COMMENT: Executive Order 66 (1978) (E.O. 66) requires every administrative rule in the State to expire five years after being promulgated. VNJ, Embarq, AT&T and Verizon Wireless commented that according to E.O. 66 only those rules that continue to be necessary, reasonable and efficient should be proposed for readoption. VNJ. Embarq and AT&T commented that the Board through this rulemaking has added new unnecessary regulations. Consistent with VNJ's comments, Embarq also stated that readoption of the rules runs afoul of the sunset review envisioned under the law and suggests that a self study be undertaken to determine whether or not certain rules should be allowed to expire and which should be improved.

NJBIA and AT&T commented that the market will bring true competition based on improved services and new technologies. VNJ stated the proposal to readopt the expiring rules is contrary to the statute, the needs of the State and the needs of customers. VNJ, Embarq and AT&T contended that the competitive landscape in New Jersey has evolved to include new forms of competition to the traditional landline phone and these new competitors have significant market positions (like broadband, Voiceover internet protocol (VoIP) and wireless). Because the telecommunications landscape is competitive, VNJ, Embarq and AT&T commented that many of the rules are unnecessary, counterproductive and outdated. VNJ, Embarq and AT&T commented that certain parts of the industry are burdened with old telecom rules while others are not.

AT&T commented that unnecessary regulations impose substantial burdens and costs on regulated carriers. Specifically programming, database management, network storage metrics measurement, tracking and report compilation functions needed to meet the service quality requirements create millions in expenses for regulated carriers. AT&T claimed that these rules serve to penalize customers.

AT&T commented that competitive local exchange carrier (CLEC) customers know that they can quickly and easily switch to another carrier if their CLECs' rates or service quality prove unsatisfactory. Nonetheless, AT&T claimed that, Board Staff reads the current New Jersey Administrative Code as treating all CLEC end-user local exchange services as non-competitive services. CLECs are obligated to follow the same extensive (and expensive) rate-case rules developed long ago when a single company was the only source of telecommunications services. AT&T commented that Board Staff expects CLECs to adhere to the rules no matter what sort of change is being implemented to a CLEC's services, and no matter how small or inconsequential a price increase might be, and claims that Board Staff's enforcement of the existing rules denies CLECs the flexibility that their intermodal competitors use to quickly and strategically raise or lower prices to meet or beat competitive offers. AT&T noted that CLECs should be permitted to quickly and efficiently adjust prices to market rates in the same manner as their unregulated competitors. AT&T suggested the Board should declare all CLEC services to be competitive services, as it will benefit New Jersey consumers, and argues artificial regulatory price constraints placed on CLEC local exchange services, while seemingly beneficial to customers in the short run, actually harm customers over time. AT&T further argued that carriers precluded from adjusting prices to market-based levels have no incentive to invest in those markets, which can have an undesirable effect of depriving customers of new technologies, new services and enhancements in service quality. AT&T claimed carriers will shift capital investment to other markets unfettered by needless regulation, and that New Jersey consumers and the New Jersey economy would feel the strain. AT&T also stated that the Board has the necessary authority to declare CLEC services competitive in this rulemaking, noting that the New Jersey Legislature has directed that the Board ". . . shall not regulate, fix or prescribe the rates, tolls, charges, rate structures, terms and conditions of service, rate base, rate of return, and cost of service, of competitive services." (See N.J.S.A. 48:2-21.19a) AT&T further stated that the Board has been given discretion to determine which services shall be deemed competitive. AT&T cited factors that the Legislature has identified that the Board must consider in making the determination as to whether or not a service is competitive. The factors are: "ease of market entry, presence of other competitors, and the availability of like or substitute services in the relevant geographic area." (See N.J.S.A. 48:2-21.19b) AT&T asserted, if all the above factors are found, a service should be classified as competitive. AT&T claims the record before the Board in this matter, as well as in other recent matters wherein the Board considered market competitiveness, clearly compels the conclusion that there are many carriers in the marketplace offering like or similar services that are easily substitutable for landline local exchange service. AT&T claimed that CLECs currently are obligated to follow the same extensive and expensive rate case rules as were established years ago.

AT&T commented that the facts and the law compel the Board to classify all CLEC landline local exchange services as competitive pursuant to *N.J.S.A. 48:2-21.19*, which the Board clearly can accomplish in the context of this rulemaking proceeding.

AT&T and NJCTA commented that market forces should be sufficient to serve the consumers and work to incent CLECs to provide superior quality service to customers.

AT&T suggested that the Board should only renew rules where there is clear evidence that the competitive market is failing to protect consumers. AT&T commented that there is no basis for continued traditional regulation of wireline carriers. Further, Embarq and AT&T suggested that due to vibrant competition, regulation provides little benefit and that rules are burdensome and useless and do not benefit consumers. AT&T further commented that over 5.1 million CLEC voice lines nationally are provided over cable facilities, increasingly over high speed connections. AT&T stated that high speed data lines grew from 2,754,286 in year end (YE) 1999 to 50,237,139 by YE 2005, and growth in New Jersey from 101,832 to 1,989,803 lines, an increase of 1954 percent; 97 percent of all New Jersey residential end-users premises have access to high-speed services; mobile wireless telephone subscribers nationally increased from 79,697,083 in YE 1999 to 203,669,128 in YE 2005 while in New Jersey the numbers grew, increasing from 2,289,181 to 7,723,622.; one-third of all households were receiving over half of their calls from wireless phones with nine percent of customers receiving almost all calls from wireless carriage. On the other hand, incumbent local exchange carriers switched access lines fell from 181,202,853 in YE 1999 to 143,766,498 in YE 2005, while in New Jersey the numbers fell from 6,867,616 to 4,714,621 nationally over that time period. And AT&T commented that CLEC serviced end user switched access lines nationally increased from 8,194,243 in YE 1999 to 31,583,879 as of YE 2005, while in New Jersey CLEC lines grew from 323,680 YE 2000 and 1,282,352 an increase of 396 percent.

Embarq commented that it does not seek to eliminate all rules, only those which are unnecessary and obsolete. Embarq and AT&T seek regulatory parity and feel the rules as proposed are unnecessary, ineffective, onerous and costly for landline carriers. They noted that, incumbent local exchange carriers retain carrier of last resort obligations (COLR). Embarq commented that the Board has not recognized the disparities in the marketplace that arise from COLR obligations, which ensure that safe adequate and proper telephone service is provided to customers. Embarq contended that wireless companies, CLECs, satellite entities and VoIP cable provider of telephone service have no COLR obligation, and can choose whom and where to serve.

Embarq and AT&T commented that in California the Commission made findings that streamlined telecommunications regulations. AT&T commented that California supports competitive neutrality among landline, cable, VoIP and wireless providers, and granted full pricing freedom for all business and residential retail services. Embarq noted that the level of competition in New Jersey is higher than in California. Additionally, Embarq stated that in California a service need not be identical to provide a competitive substitute; relevant market includes communications services regardless of technology, not just traditional wireline communications services; wireless and VoIP are a close substitute for landline services, Therefore, it is reasonable to eliminate all price regulations of basic business service; the market supports full pricing freedoms for basic residential service, which is not subsidized by the California high cost fund as of January 1, 2009; maintaining tariff procedures that require 30-day notice to customers when they impose a price increase or service change will be decided by the end of the year; rates and terms will be subject to public disclosure requirements and will have to be posted on the carriers website; ILEC promotions may be geographically targeted and should be tariffed under the same one-day rules that apply to the tariffing of any telecommunications

service; and 100 percent of all gains or loses from the sale of utility property should go to shareholders.

Embarq commented that losses due to regulatory disparities have resulted in Embarq's loss of approximately 8.8 percent of its access lines in those areas where Patriot Media Cable now offers stand-alone telephone service, as well as customer loss to other cable carriers through packaged service offerings.

AT&T and NJBIA commented that the State needs to help businesses grow. Industry observers note that the New Jersey communications sector is critical to job growth in other industries and that regulators must reevaluate regulation in recognition of the competitive marketplace and aim to reinvigorate the industry.

Dr. Aron, on behalf of AT&T, stated that traditional regulations impose constraints on technology that is shrinking, and consumers are defecting to technology that is largely unregulated. ILEC customers are migrating to alternative service providers, such as cable companies, VoIP companies, wireless companies and to broadband services, per Dr. Aron. Also, Dr. Aron states that prices must be permitted to go up and down according to market forces and providers must be able to adjust prices quickly and without telegraphing its competitors.

AT&T commented that cable companies are gaining telephony customers rapidly and that FCC data shows that unregulated wireless carriers have more customers than regulated wireline carriers. Those customers are not protected by State regulation.

Stating that the need for regulation is waning, AT&T and NJBIA contend that the Governor established a goal of increasing employment by stabilizing regulations for New Jersey's traditional sources of economic growth and employment, which include telecommunications firms. While AT&T stated regulated wireline carriers cannot compete while subject to regulatory burdens, Embarq argued that outdated asymmetrical regulations are inconsistent with the Governor's economic growth strategy to encourage investment in broadband infrastructure by clarifying and stabilizing the regulation of companies that provide broadband access.

Chris Nurse, on behalf of AT&T, stated that AT&T is not calling for the elimination of all regulations, and that it actually supports programs, such as the Universal Service Fund and the Lifeline Program for customers who need them, assuring universal service.

Mr. Nurse, on behalf of AT&T, recommended the Board should revise Chapter 14 to include among other things: 1) restoration of regulatory parity, whereby traditional wireline carriers would have their local exchange services declared competitive, thus affording them the same regulatory flexibility as the wireless, VOIP, and cable telephony service; 2) minimizing of market measurements, eliminating most non-financial and financial quality of service standards, metrics and reporting requirements, and streamlining any remaining requirements; 3) creating a complaint commensurate carrier change regime. Carrier change rules should reflect the fundamental objective of penalizing changes that carriers know are being made against the wishes of affected subscribers. Penalties levied with respect to bona fide instances of slamming should be based upon the facts concerning that complaint, and not on the basis of predetermined "penalty ma-

trices" that ignore the factors that the law requires to be evaluated in each case; 4) permissively detariffing, so that, rules governing tariffs, service withdrawals and customer notifications should be limited to address circumstances in which market forces are not effective; and 5) operator services and numbering rules and penalties should be tailored to address circumstances in which the market forces are not effective.

NJCTA advised that while several incumbent local exchange carriers (ILECs) suggested that the Board should provide the same regulatory relief to ILECs and CLECs, fostering competition does not always require symmetrical level of regulation. NJCTA supports a deregulatory environment that encourages competition and that does not impose additional regulations on CLECs in the name of regulatory parity. However, it states that this proceeding is not the appropriate means to determine whether ILECs should be granted additional regulatory relief regarding pricing and the provision of wholesale services. It further states that prior to deregulating dominant carriers, the Board must fully evaluate market conditions to assure that consumers and competitive service providers remain protected from continuing use of market power by the incumbent carriers.

Embarq suggested that any new regulation be considered in a separate proceeding by the Board after the existing regulations have been reviewed and revised.

Verizon indicated that the rules in Chapter 10 should not apply to services used by business customers, regardless of whether the business customer is a retail or wholesale customer, and should not apply where a carrier has negotiated a wholesale agreement with another provider, which is not subject to the Board's approval under Section 251 or 252 of the Federal Telecommunications Act of 1996, P.L. 104-104. In addition Verizon advocated that the Board should grant companies the flexibility to communicate generally available prices, terms, and conditions of service to customers by any method permissible under the applicable law, including by disclosure on the company's web site.

Embarq, in recommending that the existing rules be streamlined, commented that while it supports competitively neutral and balanced service regulations aimed at achieving regulatory parity, it does not support oppressive service regulations that are unnecessary.

AT&T commented that all CLEC services should be declared competitive since no competitive local exchange company offers a monopoly service. Carriers precluded from raising rates have no incentive to invest in the market, which in turn deprive customers of new technologies and services, as well as enhancements in service quality. The Board should find ease of market entry presence of other competition and the availability of like or substitute services in the relevant geographic area with respect to CLEC services.

Similarly, NJCTA commented that the Board should not impose additional requirements on CLECs and should remove some existing requirements consistent with the Legislature's intent to eliminate barriers to competition by prohibiting the Board from regulating "rates, tolls, charges, rate structures, terms and conditions of service, rate base, rate of return and cost of service of competitive services." The NJCTA further commented that the rules apply broadly to telephone utilities and there is no distinction

between competitive and noncompetitive services or providers. Accordingly, NJCTA commented that the rules should be examined to assess their relevance, and where rules are intended to apply solely to ILECs, the rule should be clarified to specify this fact.

NJPIRG commented that the Board should dismiss any argument that consumers are voting against regulation by abandoning wire-line providers for wireless and cable operators. The status of wire-line providers is not an indication that the regulated service quality standards or tariffs are unattractive to consumers and that markets do not inherently protect consumers.

RESPONSE: The Board does not agree with Verizon's recommendation to allow the majority of the rules under *N.J.A.C. 14:10* to expire. The Board believes it is not the intent of the Legislature to have all rules, which are necessary, reasonable and adequate automatically expire after five years. Executive Order 66 (1978) requires that the appropriate State agency review the existing rules to see if they are still relevant and necessary. That specific task has been completed and has resulted in the current proposal. Furthermore, the Board disagrees with the comments that the rules are no longer necessary due to the evolving telecommunications marketplace. While some of the more specific comments are addressed in more detail throughout the Summary of comments and responses, the Board does not find it reasonable to conclude generally that rules must be eliminated because some degree of competition exists.

Marketplace competition standing alone does not in and of itself eliminate the need for regulation, especially in areas such as service quality measures and consumer protections. Rules are designed to set an appropriate standard for telecommunications carriers to provide quality service to consumers at a reasonable rate.

Likewise, markets may not be sufficient to ensure service quality. The quality of service is a standard that is technical in nature, and therefore requires a level of expertise that is established by various means including State and Federal regulations.

While rules have associated costs, there have been no studies submitted by the industry showing that the cost of any particular existing or proposed rule poses a significant impediment to the provision of services. There is a cost associated with the provision of safe, adequate and proper service, which cannot be avoided. Every telecommunications carrier who elects to participate in the market has an obligation to consumers whom the Board endeavors to protect.

With respect to AT&T's comment regarding the reclassification of CLEC services, the Board cannot reclassify services through a rulemaking. As stated in the statutes, the Board is bound by the processes set forth in *N.J.S.A. 48:2-21.19*. It is not the intent of the Board at this time to implement a new plan to reclassify or detariff services; the intent of the proposed amendments is to clarify, simplify, reorganize, and make the present rules more efficient. The issues referred to herein by AT&T and NJCTA and Embarq have been addressed in the separate proceeding that was initiated by the Board in March 2007, *In the Matter of The Board's Investigation Regarding the Reclassification of Competitive Local Exchange Carrier Services as Competitive*, Docket No. TX06120841. The Board concluded in that proceeding that with regard to CLEC retail local exchange services, with the exception of lifeline service, there is ease of market entry, competitors

exist in the market and customers enjoy the availability of like or substitute services. Accordingly, the Board held that CLEC retail local exchange services are competitive.

While the Board concurs with the NJCTA recommendation that a full study of the market should be conducted by the Board along with hearings to evaluate the input of interested parties prior to deregulating dominant carriers, the Board does not believe that this is the appropriate forum to do so.

The Board considered the commenters' suggestions regarding deregulation, reclassification and detariffing of CLEC services in the separate proceeding initiated by the Board, discussed above.

The Board disagrees with the recommendation that the rules should not apply to services used by business customers (retail or wholesale). The intent of these rule revisions is to provide clarification of specific issues where needed and not to initiate a proceeding to reclassify or detariff services. The Board concurs with the suggestion that the rules under Chapter 10 should not apply where a carrier has negotiated a wholesale agreement with another provider, and will modify the rules in the Companion Proposal to make that understanding explicit. The Board concurs that companies should have the flexibility to communicate generally available prices, terms and conditions of service to customers on the company's website, if this information is provided in addition to the regular tariff filings provided to the Board. This language will be reflected in the Companion Proposal.

The Board disagrees with VNJ's comment regarding deregulation of business services. There remain single line business customers without contracts that benefit greatly from the Board's purview over rates, terms and conditions of service and service quality standards. Further, although some large business customers may have the bargaining power to "strike a deal" for price and quality with a provider, the Board believes that tariffed rates, terms and conditions and service quality should continue to stand as a floor for those subscribers who do not always have that power. Therefore, in the absence of an individually negotiated contract between Verizon and a customer to the contrary, the rules shall apply.

The commenters have made various arguments, which do not convince the Board that total elimination of rules for carriers under the Board's jurisdiction is appropriate at this time. Not all markets, services and geographic areas in New Jersey are sufficiently competitive. There are undoubtedly competitive choices for consumers with the financial and technological ability to seek out such alternatives, that is, cable triple play wireless packages etc., all of which are in excess of $ 50.00 to $ 100.00. However, these alternatives are not within the reach of all consumers in New Jersey. While New Jersey does have a very affordable lifeline service for low income consumers, there are large numbers of consumers who make too much income to qualify for public assistance, and who do not have the ability to afford most of the more expensive alternatives. These consumers need Board protection. This is one reason why the ILECs, as de facto carriers of last resort, must be viewed and, in certain circumstances, regulated differently than their competitors. The Board does recognize the commenters' claims that line loss has occurred over a period of time due to competitive entry by other providers, but the statement that the Board's rules are the reason for the decline has not been established

by any facts presented in this rulemaking. No evidence of a nexus between the Board's rules and the line losses has been submitted.

In addition, line loss in and of itself is not a sufficient indication that the market can or will discipline pricing for basic telephone services. Similarly, commenters who suggest that the Board's rules constrain technology have provided no evidence to support these statements. There has been no factual information provided in this rulemaking to show that some technology is available elsewhere but not in New Jersey due to the Board's rules.

Finally, several parties have argued that California has relaxed regulation of wireline carriers and the Board should do the same. There are numerous differences between these two states, namely, regulatory, statutory, geographic, demographic and economic. While California did provide some economic flexibility in 2006, there are other areas, such as service quality, that the California Commission continues to regulate. For example, the California Public Utility Commission (PUC) froze basic exchange rates for 2 1/2 years, and required offering of basic exchange service. In fact, this Board has given much of the same flexibility to industry participants over the past years in the business market, while California was making efforts to catch up with New Jersey.

Since the California decision cited by the commenters was made less than a year ago, and with residential rates capped, it is premature to attempt to analyze and evaluate the results of the new California regulatory framework to determine whether or not the same regulatory scheme is appropriate for New Jersey.

2. COMMENT: AT&T noted that the New York Public Service Commission (New York PUC) granted extensive local service pricing flexibility to incumbent carriers. Also, AT&T stated the New York PUC has voiced its intent to focus on network reliability and will open up a rulemaking to modernize current regulation and remove outdated regulation and harmful regulatory asymmetries.

RESPONSE: The Board initiated a proceeding in Docket Number TX06120841 that investigated the status of CLEC services and addressed the issue of CLEC flexibility, tariffs and rates. The Board concluded in that proceeding that with regard to CLEC retail local exchange services, with the exception of lifeline service, there is ease of market entry, competitors exist in the market and customers enjoy the availability of like or substitute services. Accordingly, the Board held that CLEC retail local exchange services are competitive.

3. COMMENT: Embarq claimed that basic local exchange rates in New Jersey are lower than those in the other 17 states in which Embarq serves as an ILEC and it has less than 0.7 percent of residential access lines serving lifeline customers. Embarq commented that the average household income in Embarq's service territory is over $ 101,000, and its customer base has the highest take rate for custom calling features and that there is in no need of additional service quality and reporting rules.

RESPONSE: The economic status of customers does not eliminate the need for rules. Even those customers at the highest income scales expect quality service at a reasonable price. ILEC rates must continue to be carefully considered and scrutinized by the Board to ensure non discriminatory and affordable rates are maintained.

4. COMMENT: Dan Udovic commented that declaring digital subscriber line (DSL) a competitive service in New Jersey does not reflect reality. Further, if VNJ is allowed to refuse CLECs access to its exclusive DSL connections, there is no widespread method to connect to the Internet other than through cable.

RESPONSE: DSL is an interstate service subject to regulation by the FCC.

Subchapter 1. General Provisions

5. COMMENT: NJCTA commented that *N.J.A.C. 14:10-1.1(a)*1 should be revised to delete the phrase "that operates a telephone system" because the statutory definition of public utility incorporates a reference to telephone systems and operators.

RESPONSE: The Board lists all entities in the rules for accuracy and completeness. Therefore, the rule has not been modified on adoption.

6. COMMENT: NJCTA commented that *N.J.A.C. 14:10-1.1(b)* should be revised to acknowledge the full extent of the FCCs jurisdiction over interstate telecommunications services, the services defined by Title II, Part II-Development of Competitive Markets, and the FCC's ancillary jurisdiction over other non-telecommunications services deemed to be interstate. Verizon seeks inclusion of the term "provided to residential retail customers" in *N.J.A.C. 14:10-1.1(b)*.

RESPONSE: The Board believes that the current statements in the rules referring to the FCC are sufficient and no further clarification is necessary. The rules, as proposed and adopted, clearly and specifically state that "this chapter applies only to intrastate telecommunications service" and that interstate telecommunications services is governed by the FCC. The Board also notes that rates, terms and conditions for business services have been deregulated for business customers with two lines or more. However, the Board believes that service quality standards should continue for ILECs for business customers because service quality is essential in providing safe, adequate and proper service to all customers, and absent some measurement via standards the Board cannot gauge the ability of a company to serve its customers in compliance with the rules.

7. COMMENT: Embarq commented that *N.J.A.C. 14:10-1.1(d)* employs the terms "agent" and "representative" and both are undefined. Also, Embarq noted the proposal Summary cross references *N.J.A.C. 14:10-11.5* but there is no cross reference in *N.J.A.C. 14:10-11.5* or *1.1(d)*.

RESPONSE: These terms were formerly located throughout *N.J.A.C. 14:10-11.5*. A definition of "agent," based on the definition of this term at *N.J.A.C. 14:10-11.2*, has been added upon adoption at *N.J.A.C. 14:10-1.2*. On adoption the term "representative" has been deleted in response to this comment as the term is synonymous with "agent" and therefore is redundant.

8. COMMENT: Regarding, *N.J.A.C. 14:10-1.2*, VNJ opposed definitions, such as basic service, which it argues is not consistent with the generally accepted understanding of the term and conflicts with previous Board definitions for the term. Verizon recommended the following definition: "Basic Service means service furnished to individual

line residential customers for the purpose of local calling and for access to a telecommunications network on either a flat rate or measure basis."

Embarq commented that the definition of basic service makes a distinction to include up to three lines and is confusing and impractical. The new definition results in separate billing, payment and treatment processes and is impractical, and is harmful to customers. The cost of changing programming and training procedures is unwarranted. Embarq proposed that the existing definition of basic service remain unchanged.

RESPONSE: The Board concurs that the proposed definition of basic service is confusing and has therefore deleted the proposed definition upon adoption. As the term is not used in the rules, it does not need to be defined.

9. COMMENT: VNJ commented that customer provided pay telephone service includes the term "private" and should be amended to include "an individual, business or partnership or corporation" instead of private entity.

RESPONSE: The Board agrees that the definition as proposed is inaccurately narrow, and has clarified the definition upon adoption. The Board has accepted this non-substantive change requested by Verizon to more accurately define the universe of entities that the rules currently applies to by deleting "private" and changing the definition to include "an individual, business or partnership, or corporation" instead of private entity.

10. COMMENT: VNJ commented that the definition of "rate" should be moved to the operator service provider subchapter located at N.J.A.C. 14:10-6. Embarq proposed the modification of the definition of "rate" to read "Operator Surcharge Rate" since that term appears in Subchapter 6.

RESPONSE: The Board concurs and has relocated the definition of "rate" into Subchapter 6 upon adoption as *N.J.A.C. 14:10-6.4(f)*. With this move, it is not necessary to revise the definition. By placing the term in the operator service provider subchapter, it will be clear that it applies only to operator service rates.

11. COMMENT Embarq objected to the inclusion of resellers in the definition of "carrier," and questions whether the term is intended to apply to non-facilities based resellers of interexchange carrier (IXC) services. Embarq argued the definition should explicitly exclude non-facilities based resellers of IXC services. The NJCTA commented that the definition of "carrier" should be modified to delete "telephone utility including an ILEC, an IXC, or a CLEC, and/or a reseller, as those terms are defined in the section," and seeks that the definition reference providers of telecommunications services, and states that "A telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services."

RESPONSE: Non-facilities based resellers of IXO services continue to be subject to the Board's rules and remain under the Board's jurisdiction. The Board disagrees with the comments of NJCTA, as the definition, as proposed and adopted, provides clarity and covers the various types of regulated carriers.

12. COMMENT: Regarding the definition of "facilities-based carrier" Embarq commented that the definition uses the phrase "telephone distribution system," which is not defined. Embarq commented that the term creates confusion.

RESPONSE: The Board concurs and has clarified the rule upon adoption to delete the term "distribution" from the definition of "facilities-based carrier" in order to eliminate any confusion as to its meaning. The phrase "telephone system" is more commonly used and therefore will provide clarification.

13. COMMENT: Embarq commented that the proposed definition of "local calling area," includes either the ILEC's or CLEC's local calling scopes as delineated in their respective tariffs, which is confusing. Embarq suggested that the definition exclusively refer to the ILEC calling area as set forth in the ILEC's tariff.

RESPONSE: The Board concurs and has clarified the term upon adoption.

14. COMMENT: Vonage suggested that the Board reject Rate Counsel's recommendation to expand the definition of "telecommunications carrier" to include VoIP. Rate Counsel's suggestion is inconsistent with the FCC's decision preempting traditional state telephone company regulation of most VoIP services. VoIP providers would be required to conform to a regulatory regime designed for different entities, with different technologies and different networks.

RESPONSE: At the present time, the FCC has found that states are preempted from traditional regulation of most VoIP services. Accordingly, the Board has not included VoIP service providers in the definition of telecommunications carrier.

15. COMMENT: NJCTA commented that the definition of aggregator should delete the reference to *N.J.A.C. 14:3-1.1*. The NJCTA commented that the definition of person be added as follows "Person means an individual, firm, joint venture, partnership, co-partnership, corporation, association, State, county, municipality, public agency or authority, bi-State or interstate agency or authority, public utility, regulated entity, cable television company, cooperation association, or joint stock association, trust, limited liability company, government entity, or other legal entity and includes any trustee, receiver, assignee, or personal representative thereof."

RESPONSE: The Board's existing regulatory scheme consolidates most basic definitions in Chapter 3, All Utilities, to avoid unnecessary repetition of definitions. Accordingly the commenter's suggested change has not been made.

16. COMMENT: NJCTA commented that the definition of facilities-based carrier should be modified to delete the term "carrier or" and should include the term "intrastate" before telecommunications service.

RESPONSE: *N.J.A.C. 14:10-1.1(b)* states that the chapter applies only to intrastate telecommunications services. Carrier is a term commonly used by the Board and is defined in *N.J.A.C. 14:10*. Therefore, the commenter's suggested change has not been made.

17. COMMENT: NJCTA commented that the definition of "information service provider" be added and defined as follows: "an entity providing a service that offers the capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service."

RESPONSE: The Board disagrees. The FCC has determined that the Board does not have regulatory authority over information service providers, and therefore the definition is unnecessary.

18. COMMENT: NJCTA commented that the definition of "local exchange carrier" be modified to include the following: "such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c) of the Federal Communications Act of 1934, as amended."

RESPONSE: The Board disagrees with this comment and will abide by any Federal law, which speaks to the issue. It is not necessary to restate those rules herein.

19. COMMENT: NJCTA commented that the definition of "public pay telephone provider" be edited to delete "as defined at *N.J.A.C. 14:3-1.1*."

RESPONSE: The Board believes that the cross-reference adds clarity to the rules and has therefore not made the suggested change.

20. COMMENT: NJCTA commented that the definition of "subscriber" include the term "telecommunications service" and delete the term "telephone."

RESPONSE: The Board agrees and has modified the definition accordingly on adoption, as the term "telecommunications service" is the current terminology and simply adds a more commonly used phrase without expanding the scope of the rule.

21. COMMENT: NJCTA commented that the definition of "telecommunications service provider" include the term "telecommunications" before carrier.

RESPONSE: The Board believes this revision is unnecessary since "carrier" and "telecommunications carrier" are the same.

22. COMMENT: NJCTA commented that the definition of "telephone utility" be edited to exclude the reference to *N.J.A.C. 14:3-1.1* and should include a reference to N.J.S.A. 48-2.13(a). Time Warner commented that the scope of the definition is beyond the statutory definition.

RESPONSE: The Board believes that the definition is consistent with the Board's statutory authority and therefore the suggested change has not been made. The Board disagrees with NJCTA as *N.J.A.C. 14:3-1.1* defines "person," as well as references *N.J.S.A. 48:2-13* and therefore is necessary.

23. COMMENT: NJCTA commented that the definition of "toll call," which means "a call that terminates outside the local calling area in which the call originated" should be deleted and should be replaced with the following: "means telephone service between stations in different local exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service. . ." Also, in the following sentence of the definition, the term "calling" should be replaced with the term "exchange."

RESPONSE: The Board believes that the definition is clear as proposed for amendment to incorporate the changed definition of local calling area and that the suggested change would add confusion.

24. COMMENT: NJCTA commented that the definition of "type of service" be revised to delete the terms "local exchange or interexchange" and include the term "telecommunications."

RESPONSE: The Board concurs and has revised the rule accordingly upon adoption. As the term "telecommunications carrier" includes local exchange and interexchange service and therefore is not too substantive to make upon adoption.

25. COMMENT: AT&T and Embarq commented that the definition of slamming should be modified to include "willful or intentional."

RESPONSE: The Board disagrees that the definition of slamming should require intent, as that would go beyond the definition of an unauthorized change set forth by the FCC at *47 CFR §64.1100 (e)*.

26. COMMENT: For *N.J.A.C. 14:10-1.3*, Recordkeeping; general provisions, VNJ commented that it disagrees with the proposed recordkeeping provisions because business customers have written contracts, which may set forth a negotiated restriction on back-billing and the rules should not supersede those contracts. Further, VNJ states it is an administrative burden to maintain the records and record retention of 18 months is reasonable for all customers absent a negotiated contract to the contrary, per VNJ. VNJ suggests deletion of this section.

NJCTA commented that the revised record retention requirements have not been demonstrated to be necessary and that the existing rules are adequate to protect consumers and promote a competitive market. NJCTA argues that these requirements would be costly as they require reconfiguring existing databases and systems to account for different types of records, and that the new rules would impose a burden on carriers who operate in numerous states and on an interstate basis. NJCTA claims that any perceived benefit that may result from the Board's proposed record retention rules is far outweighed by the financial burden of compliance with the substantially increased length of time for retention of records and the inconsistency with Federal rules. NJCTA further commented that because the requirements proposed are inconsistent with other state and Federal agencies and compel CLECs to develop systems solely for New Jersey they would have to reconfigure existing databases and hire a system analyst to design record retention systems.

NJCTA went on to suggest that all record retention requirements be deleted except for the slamming requirements and that the Board should adopt the FCC record retention requirements of 18 months since carriers have adopted record retention policies to meet FCC requirements.

Accordingly, NJCTA suggested eliminating all of the wording pertaining to the changes to *N.J.A.C. 14:10-1.3(a)*1 and 2. In general, AT&T commented that if record retention requirements must be imposed at all they should not be onerous or increased from existing requirements.

AT&T and Embarq proposed that the recordkeeping timeframe for back billing of retail customers be reduced from six years to three; for service quality reporting from five years to two; for TSP switch authorization from three years to two.

NJPIRG commented that the information required by this rule helps consumers and should be maintained.

RESPONSE: The back billing and retention timeframes should be consistent with each other, so that claims can be investigated throughout the timeframe specified. Also, the criteria for back billing and record retention are a minimum. Business customers can ask for different standards when negotiating contracts with regulated entities. Further, the Board concurs that service quality recordkeeping can be reduced to 18 months and this is reflected in the Companion Proposal.

In response to AT&T and Embarq's concerns that retail back billing should be reduced, six years for retail customers and 18 months for wholesale customers is consistent with the timeframe for other utilities. TSP switch authorization records should remain at three years to ensure that disputes can be resolved.

In response to NJCTA's concerns regarding the FCC record retention requirements, the Board has set State-specific timeframes for recordkeeping, rather than mirroring the FCC standards, which pertain exclusively to toll records. This will best serve New Jersey ratepayers.

Telephone utilities have an obligation to address and resolve customer issues and billing records generally are required to accomplish this goal.

The Board however, recognizes that there are individually negotiated contracts between Verizon and its customers and that those contracts may address specific records retention provisions. It is not the intention of the Board that the rules impact those contracts. Therefore, the Board is not adopting proposed new *N.J.A.C. 14:10-1.3*. Further, an amendment is proposed in the Companion Proposal, to allow for an exemption when provisions of individual contracts are inconsistent with the rules.

27. COMMENT: *N.J.A.C. 14:10-1.3(b)* requires each "regulated entity" to make all records required available to Board Staff upon request. The term "regulated entity" is not defined in the rules so VNJ is unclear as to whom the rule applies and VNJ feels it is unnecessary. If adopted, VNJ maintains that the requirement be applied to all entities.

RESPONSE: The Board concurs that the term should be replaced with telecommunications carrier. As noted above, the Board is not adopting the proposed new rule. The Board is replacing the term "regulated entity" with "telecommunications carrier" in the Companion Proposal.

28. COMMENT: *N.J.A.C. 14:10-1.3(c)* requires that each telephone utility or telecommunications carrier provide the Board with a link to its website and tariffs. VNJ contended that the Board should be responsible to have the tariffs of the carriers posted on the Board's website to ensure which tariff actually is on file with the Board. NJPIRG strongly supports rules that facilitate consumers' comparative shopping for service providers. NJPIRG supports public disclosure through the internet.

RESPONSE: The Board agrees in part with the comments submitted by VNJ, and will modify the rules to reflect that only carriers who have commercial websites and as a policy post their tariffs should be required to post their tariffs on their web sites. However, as this change is too substantive to make and requires additional notice and

comment; it cannot be made upon adoption. Therefore, this change is proposed in the Companion Proposal.

29. COMMENT: *N.J.A.C. 14:10-1.3(d)* provides Board Staff authority to suspend a tariff when not in compliance with any Board Order or rule. VNJ commented that the Board must act to suspend a tariff not Board Staff. VNJ contends only the Board can make findings of noncompliance.

RESPONSE: The Board agrees, however, this change is too substantive and cannot be made upon adoption. Therefore, this change is proposed in the Companion Proposal.

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30. COMMENT: In N.J.A.C. 14:10-1A.1 the NJCTA recommends adding the statement "unless otherwise noted."

RESPONSE: The Board does not believe that this language is necessary or adds to the clarity of the rule and therefore the rule remains as proposed.

31. COMMENT: Verizon suggests the deletion of N.J.A.C. 14:10-1A.2, which states that carriers are also subject to the Board's rules at *N.J.A.C. 14:3*. In addition, in VNJ's redline they strike the entire section (a)-(c).

RESPONSE: This section merely cross references other Board rules to which telephone utilities are subject. These rules apply to telephone utilities regardless of whether these cross references are included. However, their inclusion assists the regulated entities in understanding the scope of the Board's rule. The Board is not adopting the language of proposed subsection (b) and will be proposing subsection (b) with modifications in the Companion Proposal.

32. COMMENT: Time Warner commented that the maps required under proposed N.J.A.C. 14:10-1A.2(b) will cause unnecessary complexity and customer confusion in certain instances. Time Warner, AT&T and Embarq propose an exception to the map requirement where the competitive carrier affirms on its webpage that its local calling area is identical to the local calling area of the dominant local exchange carrier. VNJ argues that this rule is unnecessary and improper to the extent it compels a company to put information on its website in violation of the First Amendment rights of the company as the information is already available through public tariffs.

NJPIRG supports having access to companies' websites, and a Board managed site where all such tariffs and maps could be displayed and compared.

RESPONSE: The Board concurs that competitive carriers should not be required to post their local calling areas on the web since it is comparable to the local calling area of the dominant local exchange carrier. Therefore, the Board has not adopted proposed N.J.A.C. 14:10-1A.2(b). The Board believes, however, that maps should be available upon request by Board staff. Therefore, the Board has included this requirement in the Companion Proposal.

33. COMMENT: At N.J.A.C. 14:10-1A.2(c), Time Warner supports the Boards proposal to limit access to infrastructure information and suggests that an automatic grant

of trade secret or confidential protection be provided for this in the rules. Verizon suggested deleting the provision, which requires utilities to furnish appropriate information concerning the location of underground facilities.

RESPONSE: This provision merely requires that telephone utilities comply with the requirements of the Board's rules for protection of underground facilities, also known as the "One-Call" rules. The One-Call rules apply to all underground facility operators regardless of whether those rules are cross-referenced in this section. If a telephone utility believes that any information is entitled to confidential treatment under the New Jersey Open Public Records Act (OPRA), *N.J.S.A. 47:1A-1* et seq., a telephone utility may request protection of this information under the Board's Open Public Records Act rules at *N.J.A.C. 14:1-12*. OPRA has very strict limits on the ability of agencies to classify information as automatically confidential.

34. COMMENT: Regarding N.J.A.C. 14:10-1A.3, Embarq states that these rules are unnecessary, and are unfairly applied asymmetrically to regulated entities. The requirement that regulated providers advise consumers of alternative services available is over-regulation and should be deleted. Embarq and AT&T call for the entire elimination of this section.

With regard to N.J.A.C. 14:10-1A.3(a), Embarq suggests that rate and charge information will adequately be provided in a competitive market place.

As to N.J.A.C. 14:10-1A.3(b), NJCTA commented that in subsection (b) the phrase "upon request" should be added at the beginning of this subsection to keep customers apprised of alternative plans and services only upon a customer's request. Competitive providers make plans available through tariffs, their websites and through their customer service departments. Embarq advises that making consumers aware of alternative services is pure over-regulation.

In addressing N.J.A.C. 14:10-1A.3(c), Embarq states that minimum installation and service connection information is not imposed on any of the non-regulated entities.

Regarding N.J.A.C. 14:10-1A.3(d), Embarq claims that estimates of non-tariffed special charges are a remnant of a bygone era.

RESPONSE: The Board agrees that it is not necessary for information to be distributed without a request. The Board disagrees that the rules are unnecessary. The Board applies the rules equally and fairly among all regulated entities. The proposed language is not being adopted as it will be clarified in the Companion Proposal that the necessary information will be available upon request.

35. COMMENT: AT&T and Embarq proposed deletion of N.J.A.C. 14:10-1A.4. The section requires business offices to be staffed to provide customers and others with convenient access to qualified personnel to provide information relating to services and rates, applications and explanations of changes.

RESPONSE: The Board concurs, as these rules are redundant with the rules pertaining to business offices located in *N.J.A.C. 14:3*, which set forth the obligations of utilities who operate in New Jersey. The Board has proposed to delete this provision in the Companion Proposal.

36. COMMENT: At N.J.A.C. 14:10-1A.5, Embarq believes that with the internet and competitive alternatives for directories, this rule should be deleted. AT&T in conjunction with Embarq has submitted additional comments proposing to strike this section. Time Warner commented that the rule should be clarified to make certain that publication and distribution of directories is not required of competitive carriers.

RESPONSE: The Board believes that ILECs should be required to continue to publish and deliver directories on a ubiquitous basis. If this requirement is removed, it is possible that many users of telecommunications will not receive directories and may not have access to the internet to locate needed telephone numbers. Further, the Board concurs that the proposed amendment was inaccurate in stating that directory delivery and publication is required by CLECs. Accordingly, an amendment is proposed to N.J.A.C. 14:10-1A.5 in the Companion Proposal, to require only ILECs to publish and deliver directories. In addition, the Companion Proposal includes proposed amendments that streamline the requirements regarding the contents of directories. Therefore, the proposed amendments to N.J.A.C. 14:10-1A.5 are not adopted.

37. COMMENT Addressing N.J.A.C. 14:10-1A.6, Embarq and AT&T commented that the rule regarding held applications should be deleted as it is unnecessary, unreasonable, inefficient and non-responsive.

RESPONSE: The Board does not believe that these provisions should be deleted, as the primary concern is to ensure that customers are provided with quality service. However, the Board has proposed amendments in the Companion Proposal, which significantly streamline the requirements and will not adopt the language currently proposed.

38. COMMENT: Regarding N.J.A.C. 14:10-1A.7, Embarq and AT&T claim this section should be eliminated since the administrative costs associated with unnecessary trouble reporting do not justify the requirement. The AT&T and Embarq proposals would delete the provision that utilities receive trouble reports from customers at all hours.

RESPONSE: The Board believes that adequate trouble reporting procedures are essential to customer service. However, the Board has proposed amendments in the Companion Proposal, which delete the specific details regarding trouble reporting, but retain the basic requirements to ensure adequate customer service while balancing the concerns of the industry, and will not adopt the language currently proposed.

39. COMMENT: N.J.A.C. 14:10-1A.8 requires that a telephone utility have in each exchange at least one properly maintained and equipped pay telephone. Embarq feels this is unreasonable given the wireless services now offered to consumers. NJCTA commented that the rule as proposed no longer reflects the state of competition in New Jersey. In addition, NJCTA believes the rule may be inconsistent with Federal law because it appears to require CLECs to provide public interest payphones absent a finding of a need for those telephones. NJCTA states that the Board can impose public interest payphone requirements on ILECs to meet the public interest but needs to initiate a proceeding to confirm the phones are necessary. Time Warner strongly opposes the requirement that each "telephone utility" must have at least one pay telephone available to the public at all hours, prominently located and properly maintained, equipped with dialing instructions and lighted at night. Time Warner states that the rules should be

modified to apply only to the ILECs or where an alternative provider has elected to voluntarily provide pay telephone services in New Jersey.

VNJ seeks that the requirement to have at least one pay telephone available to the public in each exchange should expire since payphone equipment is not regulated and reliance on payphones is diminished. If the rule is retained, Verizon suggest that the language be modified to read "telephone utility or one of its affiliates." AT&T in conjunction with Embarq filed additional comments proposing to strike this section.

RESPONSE: As payphone service has been deemed competitive for some time, the Board has proposed to delete this requirement in the Companion Proposal and the proposed language is not being adopted. However, if a carrier chooses to install a public coin telephone, the obligation to maintain the public telephone in accordance with N.J.A.C. 14:10-9 remains.

40. COMMENT: Regarding N.J.A.C. 14:10-1A.9, Embarq stated that the requirements that each telephone utility undertake traffic studies and maintain records and comply with industry best practices and regulation of retail services are not needed. There are also terms which Embarq claims are not understood and are unnecessary, such as "capacity" and "grade of service." Time Warner commented that in subsection (b), the term "industry best practices" should not be replaced by the proposed term "recognized procedures" since the substitution creates ambiguity. Instead, Time Warner suggests the term "recognized industry engineering standards" be used. VNJ believes *N.J.S.A. 48:2-23* adequately addresses the issue of service, so the rule is unnecessary and therefore should expire because LECs are required by statute to provide safe, adequate and reliable service.

N.J.A.C. 14:10-1A.9(b) requires carriers to use industry best practices rather than recognized procedures. Verizon submits that there is no reasonable way of determining the industry best practices appropriate for a certain carrier and that maintaining the current language of recognized procedures will provide the Board with sufficient assurance that reasonable and reliable procedures that have been used in the past are used to determine service quality without unnecessary confusion.

NJCTA has also made similar statements and asks that the phrase be changed to "recognized industry practices."

Time-Warner believes in this section that the term of art should be "recognized industry engineering standards" rather than "recognized procedures."

Verizon suggest the deletion of language in N.J.A.C. 14:10-1A.9(c), which states that where service capacity is inadequate, the telephone utility shall immediately institute corrective measures to return that service to an adequate condition.

Regarding N.J.A.C. 14:10-1A.9(e), Verizon suggests deletion of this section, which provides that a telephone utility shall not connect more customers on any line than are contemplated under the grade of service for which the customers on the line are charged. Embarq separately, and in conjunction with AT&T, requests that this entire section be deleted.

RESPONSE: The Board concurs that the rule requires modification. The Board is proposing provisions to more broadly require proper service while reducing detail, in or-

der to maintain consumer protection while providing more flexibility to carriers. Please refer to the Companion Proposal to review the proposed amendments. Therefore, the currently proposed amendments are not being adopted.

41. COMMENT: AT&T offers that the Board does not need to regulate service quality because customers can change vendors based upon their price and quality values. AT&T also states that the time has come for the Board to relax service quality metrics due to the vibrant competition in the telecom market. However, AT&T adds, the Board proposes to: add new service quality metrics; intensify the standards for some metrics; expand to CLECs the metrics applicable to VNJ; and, increase the granularity for reporting on service quality metrics.

Verizon states that in the light of the competitive nature of the telecommunications marketplace, the Board should allow the service quality standards in N.J.A.C. 14:10-1A.10 in total to expire since the monitoring of service quality that was once appropriate before the Board is now being done by the marketplace.

NJCTA states that the Board continues to retain all its enforcement powers to deal with instances of egregious CLEC conduct, and that this reality together with the market makes it unnecessary to impose burdensome rules, such as quality standards and reporting requirements on CLECs.

Time Warner opposes the concept of minimum standards for service quality, and avers that such standards are not necessary given competition in the marketplace. Time Warner also states that language making it clear that "failure to attain the levels does not by itself indicate poor service and the liability of the telephone utility to its customers or other persons using its facilities for any such failure shall be governed by the applicable provisions of its tariff" should be retained.

Embarq states that the existing rules at N.J.AC. 14:10-1A.10 already impose unnecessary, outdated and burdensome service quality standards on the industry without the proposed augmentation. Rate Counsel states that the consumer will feel the greatest impact of competition if service quality, network reliability and consumer protection are compromised. Rate Counsel also notes an apparent inconsistency in the views of the various industry commentators urging the elimination of retail service quality standards yet recently insisting on regulation of wholesale services provided between them. NJPIRG "strongly supports" the Board's imposition of strict service quality standards because competitive pressures do not ensure that most customers get the service they desire and deserve. Therefore, NJPIRG argues that the Board should therefore retain its rules focusing on protecting consumers from market abuses regardless of the competitiveness of the market.

RESPONSE: As stated above, not all markets, services and geographic areas in New Jersey are sufficiently competitive. There are competitive choices for some consumers - those with the financial and technological ability to seek out such alternatives, that is, cable triple play, wireless packages, etc. However, these alternatives are not within the reach of all consumers in New Jersey. Therefore, absent Board oversight, service quality would be in danger of being reduced to unacceptable levels.

A precondition for effective Board oversight is Board access to results data that allow it to monitor the quality of service provided to consumers. In the increasingly competitive marketplace, cost reductions, and in particular job reductions, are a routine occurrence. The Board Staff's review of service quality reports over the years has shown a trend of lower - in some cases, much lower - performance of service quality functions that require technicians, specifically installations and repairs. The Board has not adopted any of the amendments that were proposed in August 2006, and has instead proposed to retain many of the existing metrics and reporting requirements in the Companion Proposal.

It is important to clearly state the Board's authority to review the results of performance data, and to require notice of failure from affected carriers. This is far from onerous. The Board might well decrease service quality regulation at some point in the future, if conditions improve. But at present, the carriers have not presented the Board with a record of harm from regulation that would justify the Board's reconsideration of these metrics and reporting requirements. The mere presence of competitive alternatives does not, in and of itself, produce high levels of consumer-protecting product quality. The Board has witnessed the exact opposite. If in fact the market is as competitive as the commenters would have the Board believe, current declining service quality results are evidence that their arguments (that is, that the market will discipline service quality and drive carriers to provide high quality services) have no credibility.

42. COMMENT: Rate Counsel submits that the provisions of Chapter 10 standards should apply to VoIP and DSL providers.

RESPONSE: The FCC has defined both VoIP and DSL as information services and as such, at this time, they are beyond the Board's jurisdiction.

43. COMMENT: AT&T states that service quality regulations that apply to only some providers but not others do more harm than good.

RESPONSE: The rules apply to all carriers that are currently under the Board's jurisdiction.

44. COMMENT: Verizon states that some proposed changes would bring service quality standards up to the levels applicable to Verizon under PAR-2, its Plan for Alternative Regulation. This, Verizon opines, is inappropriate because the requirements in PAR-2 were established with Verizon's assent and in exchange for the reduction of other burdensome regulatory requirements. Verizon avers that such increased requirements should not be unilaterally imposed upon carriers that are not receiving some form of regulatory relief that may assist them in satisfying the enhanced requirements. AT&T and Embarq offer, as an alternative, the scrapping of the entire service quality section, to be replaced by Board "review" of the FCC ARMIS metrics for the State. Embarq also suggests that the Board's proposal "blithely" increases the performance standards for four existing service quality metrics and also adds five additional metrics that didn't exist previously. Embarq states that this is a perfect example of how the Board is moving in the wrong direction - against the tide of other states that have recognized intermodal competitive options and relaxed regulatory requirements.

The NJCTA states that the proposed service quality provisions appear to apply to all telephone utilities regardless of the extent to which their services are subject to competition, notwithstanding the Legislature's intent to promote competitive services. The NJCTA also commented that the existing service quality rules coupled with oversight and enforcement, are sufficient to ensure high service quality; therefore, there is no need to increase existing service quality requirements.

NJCTA, AT&T and Embarq jointly recommend deleting the "Customer Complaints per 10,000 lines" metric, the two maintenance metrics and the speed of dial tone metric. Additionally, these parties recommend negating the proposed increase in the metric standard for local call completion and installation of service. Additionally, AT&T and Embarq jointly would delete the existing metric for toll network blockage.

NJCTA would strike the proposed increases in the metric standards for repair service and business office calls, while AT&T and Embarq call for the deletion of the business office calling metric entirely. In addition, AT&T and Embarq jointly recommend deleting the existing metrics for toll assistance operator calls and directory assistance calls.

AT&T and Embarq jointly recommend changing the definition of carrier responsibility in N.J.A.C. 14:10-1A.10(a) from service quality standards that a telephone utility shall meet to "strive to meet."

RESPONSE: The metrics and rules continue the Board's authority to monitor service quality and require reporting in the event that results do not meet minimum service quality standards. As stated previously, there is a continued need for Board oversight with respect to service quality. The Board has no intention of letting competition drive service quality to the lowest common denominator. Multiple providers all offering poor service in the name of "competitive pressures" is not in the public interest. However, the Board does agree with certain commenters who suggest that additional metrics may be unnecessary at this time. Specifically, the Board agrees with the suggestion that the existing service quality rules coupled with oversight and enforcement should be sufficient, and increased metrics and standards are not needed. The Board has a baseline of data and information that, if continue unchanged, should provide sufficient ability to the Board to identify and analyze trends in service quality as the markets continue to change, and will also allow the Board to react quickly if the data shows deterioration in the quality of services provided to New Jersey consumers. Therefore, the Board is satisfied that the currently defined metrics set has been sufficient and continues to be so. The Board similarly agrees that increasing the acceptable minimum standards for the existing metrics is not needed at this time. However, these changes would be substantive and therefore cannot be made on adoption. Instead, amendments are included in the Companion Proposal and the currently proposed amendments are not adopted.

45. COMMENT: Time Warner states, regarding N.J.A.C. 14:10-1A.10, that holding a carrier responsible for events traditionally associated with force majeure, such as seasonality, weather, work stoppage, accident, sabotage, acts of God or nature, is punitive and does not serve the public interest. NJCTA, in its "redline" submission, deleted this provision.

Verizon opines that the Board is proposing a new rule to force carriers to meet service quality standards regardless of seasonality, weather, work stoppage, accident, sabotage, acts of God or nature or any other reason and argues that rather than proposing such an unreasonable rule, the better course would be to drop this rule and simply recognize that force majeure provisions are a generally accepted policy and that well reasoned policy should dictate the Board's actions.

AT&T states that "incredibly," the proposed rules would hold carriers responsible for service quality standards without exception for weather, sabotage, accidents or even acts of God. AT&T and Embarq further state that "unbelievably," regulated telephone utilities are required to comply with expanded and enhanced service quality measurements "without exception regardless of seasonality, weather, work stoppage, accident, sabotage, acts of God or nature, or any other reason."

RESPONSE: In the Board's experience, "force majeure" has become overused through the years and has become an escape hatch for utilities to evade their responsibilities to the public. It is during adverse conditions that the public most needs utility services, Of course, the Board recognizes that there are practical limits to this responsibility; Hurricane Katrina is an example. The Board wishes to be clear that the mere appearance of adverse conditions will not cause suspension of service quality standards and cessation of utility responsibility. The Board's Decision and Order approving Verizon's current Plan for Alternative Regulation, known as PAR-2 (Docket No. TO01020095), clearly articulated this concern as follows: "We note that the performance standards and related reporting requirements that we herein adopt apply without exclusion for any reason. Factors that the Company believes to be related to its performance, including but not limited to seasonality, inclement weather, work stoppage, accident, acts of God or nature, sabotage or other events, may be included and fully discussed by VNJ in its reports to the Board, but shall neither excuse the Company from good faith efforts to comply with the performance standards, nor from reporting to the Board such compliance or lack thereof."

The Board does, however, recognize the commenters' concerns and will not adopt the currently proposed amendments. Therefore, the Board has proposed amendments in the Companion Proposal to articulate the Board's explicit authority to suspend, after investigation, application of any provision of this subchapter during periods of emergency, catastrophe, natural disaster, severe storm or other extraordinary event beyond control of the carrier.

46. COMMENT: Time Warner states that the imposition of geographically granular results reporting is not used in the ordinary course of business of most carriers and such imposition will require costs to deviate from national systems.

AT&T and Embarq additionally offer that N.J.A.C. 14:10-1A.11(e) requires increased geographical granularity in service quality reporting, which is unnecessary because the information currently reported enables the Board to understand the levels of service provided by a particular carrier. Carriers state that one must be mindful of the fact that there are economic costs associated with compiling and reporting additional information and that these costs are ultimately borne by the customers. Further, there has been no

showing of disparate service quality among the geographic regions of the State; therefore, this amendment is unwarranted.

AT&T and Embarq additionally offer that N.J.A.C. 14:10-1A.11(g) requires carriers to report service quality failures at the geographic level of a second level manager, which is unnecessarily onerous.

RESPONSE: Granularity, or disaggregations, in results reporting is not new. The requirements in the previously effective rules at *N.J.A.C. 14:10-1.10(g)* labeled "reporting unit and minimum reporting size" contain disaggregations, which needed to be modified to better reflect changes in the industry. Over the years, management scope in telecom industry field operations has greatly increased. The "district" or "office" upon which the existing disaggregations are based may no longer be relevant. Furthermore, new market entrants could define their organizations on a different basis to evade the rules. The change at N.J.A.C. 14:10-1A.11 to disaggregations by second level management, is merely an updating and generalizing to reflect current realities in the industry. The intention is not to generate new regulatory requirements, but to calibrate the rule's requirements to obtain approximately the same information under conditions currently prevalent. In addition, the rule is intended to minimize the regulatory burden by using the results reporting that carriers already use internally. All carriers manage their operations; these rule requirements are designed to be subsets of the same data. The Board expects that regulated companies already possess disaggregated data. The Board is not attempting to ask for anything new. This requirement is designed to be similar in nature to the scope of the geographic disaggregation that Verizon is now required to compile through its PAR-2 Order. Regarding N.J.A.C. 14:10-1A.11(b), (e), (h) and (i), the Board is not adopting the proposed language at this time pursuant to the response to Comment 47 below. The Board is proposing amendments to subsections (b), (e) and (h) in the Companion Proposal, but as the changes are considered very substantive, they require additional public notice and comment.

47. COMMENT: AT&T states that the proposed rules would introduce more onerous reporting requirements and stiffen record retention policies. Time Warner states that additional quarterly service quality results reporting requirements will not improve competition but will simply place unnecessary costs on regulated providers. Embarq states that N.J.A.C. 14:10-1A.11, Service quality reporting, contains new extensive and onerous reporting requirements imposed on regulated utilities even though there have been no demonstration of necessity. A quarterly reporting requirement is imposed for no apparent reason. A five day turnaround for submission of reports is required, which is unreasonable and impractical. Even a 30-day requirement would be unworkable. AT&T and Embarq jointly offer that N.J.A.C. 14:10-1A.11(i) requires carriers that have experienced reportable service quality failures to submit detailed reports no later than five calendar days after the end of the third consecutive month of non-compliance. This is too short a timeframe; it should be modified to provide carriers 30 days to submit the required information.

RESPONSE: The Board agrees that regular (quarterly) reporting of service quality results could unnecessarily create additional costs for certain carriers. Accordingly, the Board has proposed to revise N.J.A.C. 14:10-1A.11(b)2, in the Companion Proposal, by deleting "In a quarterly report; and." Consistent with the existing rules, reports will be

required upon the request of Board Staff and upon failure to achieve the standard performance for the service quality metrics for three consecutive months; that is exception reporting. With respect to the timing of the submission of reports when required, the Board agrees that five days may not be sufficient time to permit carriers to gather and compile the necessary information; therefore, the Board has also proposed to modify the reporting interval to 30 days in the Companion Proposal.

48. COMMENT: Regarding N.J.A.C. 14:10-1A.12, Measuring devices, Embarq, VNJ and AT&T commented that existing rules should be eliminated as they are unnecessary and the new requirements should not be adopted. In subsection (d), Embarq commented that the company would be required to retrofit their measuring system. Moreover, VNJ commented that subsection (d) as proposed, is not technically feasible and is unnecessary. VNJ opposes the change to the rule regarding impacts of measuring devices utilized in the preparation of customer bills. Existing equipment utilized by VNJ does not provide service quality information.

VNJ states that the costs associated with implementation of this rule are burdensome and unnecessary since the existing measuring devices are of high quality levels.

Also, Embarq does not understand the terms "categories and formats" and "easily evaluate" in the context of this rule. Embarq seeks elimination of this rule.

NJCTA suggests that the word "easily" be removed from this requirement.

AT&T in conjunction with Embarq filed additional comments proposing to delete this entire section.

NJPIRG supports customers' bills being accurate and verifiable by the Board. They state that "devices to record data and prepare customers' bills shall be in good mechanical order and electrical condition, and measuring devices shall display measurements to enable the staff to easily evaluate the utility's compliance." NJPIRG commented that billing accuracy is extremely important and it is not simple for consumers to check the accuracy of bills independently, unlike other types of consumer bills such as credit card statements. An itemized call list is helpful to consumers. The Board's rules concerning measuring devices should be upheld to ensure the accuracy of bills in order to protect consumers.

NJPIRG commented that subsections (c) and (d) are appropriate as written because consumers have no way of preventing overcharges. Consumer interests must be put before the companies interests.

RESPONSE: The Board concurs that the majority of this section, namely subsections (a) and (b) and paragraphs (c)1, 2 and 3 are no longer necessary, as they are outdated. Therefore, the Board is proposing to streamline the rule to preserve what is needed for measuring to ensure accurate bills are rendered to consumers and is not adopting the proposed language. See the Board's Companion Proposal for a detailed description of the proposed amendments.

49. COMMENT: Regarding N.J.A.C. 14:10-1A.13, Embarq recommends that this section, which involves the monitoring of transmission performance of the utility's system, be eliminated, including the testing of equipment.

Verizon also suggests elimination of most of this section, but would retain subsection (f), which requires that utilities perform regular maintenance. AT&T in conjunction with Embarq filed additional comments proposing to strike this entire section.

RESPONSE: The Board agrees that performance can be monitored from service quality standards and, therefore, is not adopting the proposed language. However, rather than eliminate the entire section, as suggested by Verizon, the Board has proposed retention of the substance of the requirement that the telephone utility perform regular maintenance. Please refer to the Companion Proposal for a description of the proposed amendments.

50. COMMENT: Regarding N.J.A.C. 14:10-1A.14, Embarq believes that a disparity exists between regulated and non-regulated entities. Subsection (a) imposes a duty on companies to make provisions to meet emergencies resulting from natural disasters, attacks or similar contingencies, which Embarq believes is unnecessary, and violates the statute requiring the provision of safe adequate and proper service. Time Warner commented that N.J.A.C. 14:10-1A.14(d) is overbroad and should not apply to "any" service interruption but to "significant" outages. Time Warner would like the Board to follow the FCC standards for reporting outages.

VNJ and NJCTA argue that immediate reporting to the Board of any service interruption is unnecessary and impossible and therefore should not be adopted. NJCTA commented that New Jersey's service interruption reporting requirements far exceed the service requirements of adjacent states and recommends deletion. Moreover, VNJ commented that N.J.A.C. 14:10-1A.14(d), Prevention and reporting of service interruptions, is an inefficient rule that requires carriers to notify the Board "immediately" of any service interruption. The rule would apply regardless of the severity of the interruption, which VNJ opposes. VNJ also commented that the level of information sought by the rule, an explanation of the interruption, and steps taken to remedy the problem, and updating the Board are economically burdensome.

AT&T in conjunction with Embarq filed additional comments proposing to strike N.J.A.C. 14:10-1A.14(d).

RESPONSE: The Board understands the commenters' concerns and has proposed modifications to limit service interruption reporting to major service interruptions, which will be defined as 1,000 customers being affected for 30 minutes and therefore, the Board has not adopted the proposed language. Please refer to the Companion Proposal for a description of the proposed amendments.

51. COMMENT: Regarding N.J.A.C. 14:10-1A.15, NJCTA suggests that the wording "standard criteria" be changed to "accepted industry standards." It also seeks to eliminate references to: best management practices and criteria of the regional bell operating company and the telephone utility supplying switching service.

RESPONSE: The Board believes that the "accepted industry standards" provides too much latitude in service provisioning. However, the provision referenced by the NJCTA regarding best management practices appears to be redundant and has been proposed for deletion in the Companion Proposal. Accordingly, the Board is not adopting the proposed language based on the comments. Therefore, the existing language

will remain in this section and the amendments will be proposed in the Companion Proposal to obtain additional comments.

52. COMMENT: AT&T and Embarq, in their additional comments filing, propose to add a new section to the rules, noted as NJAC. 14:10-1A.16, Carrier of last resort. This section suggests:

"(a) A local exchange telecommunications company obligated by this section to serve as the carrier of last resort is not obligated to provide basic local telecommunications service to any customers in a multi-tenant business or residential property, including, but not limited to, apartments, condominiums, subdivisions, office buildings, or office parks, when the owner or developer thereof:

1. Permits only one communications service provider to install its communications service-related facilities or equipment, to the exclusion of the local exchange telecommunications company, during the construction phase of the property;

2. Accepts or agrees to accept incentives or rewards from a communications service provider that are contingent upon the provision of any or all communications services by one or more communications service providers to the exclusion of the local exchange telecommunications company;

3. Collects from the occupants or residents of the property charges for the provision of any communications service, provided by a communications service provider other than the local exchange telecommunications company, to the occupants or residents in any manner, including, but not limited to, collection through rent, fees, or sues; or

4. Enters into an agreement with the communications service provider which grants incentives or rewards to such owner or developer contingent upon restriction or limitation of the local exchange telecommunications company's access to the property."

RESPONSE: The Board believes that it is not appropriate to add the new proposed section. The Board does not have rules regarding "carrier of last resort obligations" and the suggested new rules contain numerous exemptions to the rules that are inappropriate and therefore, are not accepted by the Board at this time. ILECs continue to have the ability to file a petition for relief from the rules, and the Board would consider the petition at the time of receipt.

53. COMMENT: Regarding *N.J.A.C. 14:10-1.16(b)*, Rate Counsel believes the requirement that companies seek a waiver of USOA set forth in *N.J.A.C. 14:10-1.16(b)* should continue. Rate Counsel is concerned that AT&T, MCI and other CLECs are subject to the USOA and therefore the requirement should remain.

RESPONSE: The Board regularly grants waivers to CLECs as part of its local authority approval process. In the interest of efficiency and streamlining unnecessary requirements, this is a more efficient way to proceed. The Board seeks to unburden CLECs when appropriate, and requiring the filing of a waiver is not consistent with that goal.

Subchapter 2. Payments for Service

54. COMMENT: Regarding *N.J.A.C. 14:10-2.2*, Embarq believes regulation of bill content in the wholesale arena is unnecessary and unwarranted and seeks that the reference to wholesale be deleted from the rule. Embarq also maintains that *N.J.A.C. 14:10-2.2(a)*8 and 9 should be eliminated as these provisions impose new billing content rules that breakout the total inter and intra LATA toll calls and non recurring charges and such toll calls must be listed and itemized on the bill and a statement of amounts due before and after a customer's payment is applied. Embarq commented that customer and industry confusion arises from these additions to the rule.

Time Warner opposes the proposed rules to the extent they go beyond the truth in billing requirements, and believes competitive carriers should be allowed to customize the format of their bills to meet customer needs. Per Time Warner, the requirement that separate line items be provided for toll calls supported by an itemized list of calls should contain an exemption when customers choose a bundled single monthly rate plan that includes toll calls.

VNJ commented that the rule that requires that all bills contain an itemized list of toll calls is overly burdensome with respect to business customers as some have in excess of 1,000 lines. According to Verizon, business customers don't want to be burdened with excess information and can always seek an itemized bill per written contract.

RESPONSE: *N.J.A.C. 14:10-2.2(a)*, allows for an exemption of any line item, which is part of a package. The intent is flexibility in billing. The Board also agrees that the term "wholesale" and the language regarding "a statement of accounts due before and after a customer's payment is applied" should be removed from the rules. This is included in the Companion Proposal. The Board will not however, eliminate the need for itemizing toll calls. This requirement is in the existing rules at *N.J.A.C. 14:10-2.1* and does not impose a significant burden. The carrier is afforded the same flexibility with respect to written contracts as any other of the billing provisions. In sum, if an agreement exists between the company and the customer which deals with billing, that agreement prevails. Accordingly, the language proposed will not be adopted and the changes to this section will be reflected in the Companion Proposal.

55. COMMENT: NJCTA commented that *N.J.A.C. 14:10-2.2(a)* should be modified replacing "retail and wholesale telecommunication by using the generic word of customer."

RESPONSE: The Board agrees with the commenter and has so amended the rule in the Companion Proposal; accordingly, the amendments proposed will not be adopted.

56. COMMENT: *N.J.A.C. 14:10-2.2(b)* as proposed limits carriers ability to back bill for services rendered beyond a period of 18 months for wholesale customers, and six years for retail customers. VNJ seeks a six-year back billing period for both types of customers, as there is no basis to treat different classes of customers differently. VNJ contends that the proposed amendment limits an ILEC's commercial right to back bill a CLEC for services provided in only the prior 18 months, while the CLEC can issue bills to an end user for six years for the exact same service, unless the contract with the business end users does not allow for such back billing. Verizon goes on to state that the proposed amendment is misguided because it mandates that carriers back bill whenever an incorrect bill is issued. In cases of under billing or not billing a customer for

a service, the decision to back bill should be left to the carrier. VNJ contends uniform back billing practices for all wholesale customers is entirely inappropriate. Some CLECs provide wholesale services under contract to other CLECs. All terms are negotiated and rules should not interfere with what these type of business customers have negotiated between them. This Board rule, which seeks to circumvent the negotiation and arbitration provisions of Federal law, is unlawful.

Further, VNJ and NJCTA argue that CLECs can negotiate back billing limits in their interconnection agreements. With the service quality metrics adopted in New Jersey ILECs have an incentive to produce accurate bills; therefore, VNJ believes that there is no reason to limit back billing to 18 months. VNJ contends that where VNJ has entered into an interconnection agreement, the terms and conditions set forth in the agreement can only be changed through an amendment and not through a rulemaking. NJCTA commented that the six-year requirement for retail customers far exceeds the 24 month statute of limitations for recovery of overcharges, and the FCC's 18 month record retention period, and would present financial hardship. NJCTA's redlined version eliminated all of the wording changes in subsections (a)-(e). Time Warner commented that it strongly opposes a six year back billing period and suggests a three years back billing requirement for retail customers. Time Warner supports the 18 month back billing for wholesale customers but seeks modification, which allows for back billing and the time for disputes to be identical. Time Warner commented that a more reasonable time period for wholesale back billing among carriers would be one year. The JC opposes the six year back billing limit and support the 90-120 day timeframe. The Joint Commenters noted that AT&T/SBC, Qwest, BellSouth and Sprint agreements in other states limit back billing generally to one year, and frequently to 90-120 days. The Joint Commenters support a back billing period for wholesale customers for a period no longer than 90 days claiming that it will promote competition and is consistent with legal requirements for timely accurate billing and is rooted in negotiated agreements between the parties. Moreover, the Joint Commenters noted that carriers often are unable to collect charges, which were previously unbilled as they no longer have the billable customer in service. The Joint Commenters don't feel it is appropriate to be held responsible for Verizon's faulty billing and accordingly, the Board should factor the back billing issues into the billing performance metrics. The Joint Commenters feel a brief period for wholesale back billing provides a needed incentive for carriers to timely and accurately bill wholesale customers and accordingly, they support 90-120 days back billing for wholesale customers. The Joint Commenters, and AT&T noted that the Illinois Commerce Commission determined a one year back billing period for wholesale customers was appropriate.

The Joint Commenters also noted that the proposed language could be read to allow a carrier to submit a back bill for service that was provided in the past, so long as the discovery was previously made. Thus, the Joint Commenters seek that the rule require an ILEC provide immediate notice of the discovery of any billing error, and that all bills for service be rendered within a specified period after service is supplied. The Joint Commenters seek that the back billing provisions apply where no bill was issued at all and that the rules be tied to the date service is rendered not the date an incorrect bill is issued so to ensure that a carrier is obligated to issue an initial bill or adjust a bill found to be incorrect within a specified period after service is rendered.

One Communications and the JC commented that subsection (b) captures only a fraction of the back-bill situations. One Communications and the JC commented that the back billing time limit should include non-bills, that is, where the wholesale carrier has failed to bill at all. Accordingly, One Communications suggests the following language for subsection (b) (additions to proposed language in boldface): "If a CLEC or ILEC has billed a customer at an incorrect rate, **or has failed to bill a customer for a charge the ILEC or CLEC claims is owed,** the CLEC or ILEC shall adjust the customer's subsequent bills or back bill the customer to make up for the difference between the incorrect rate billed and the correct rate **or to render a bill when the ILEC or CLEC has failed to bill . . ."** AT&T commented that its interconnection agreements limit back billing to wholesale carrier customers to 90 days in several states and 120 days in other states. AT&T believes that the Board's suggested rule change to limit wholesale back billing to 18 months instead of six years under the statute of limitations is a positive development, but does not address fully the scope and extent of the back billing issue. AT&T believes that the Board instead should look to the industry's commercial practices outlined above, and the approach of other states, when reconsidering this serious issue. The Board should limit back billing of wholesale customers to one year or less.

Embarq did not oppose the proposed rules setting forth the 18 month and 6 year back billing requirements.

NJPIRG supports the back billing amendment. NJPIRG commented that the provisions, which require timely credit for over payments and sufficient time to re-pay amounts that have been under-billed, are appropriate and are necessary because the utility controls the billing process.

In commenting on *N.J.A.C. 14:10-2.2(e)*1 and 2, Rate Counsel wants telecommunications companies not to bill for billing errors older than two years. Rate Counsel wants credits to customers to go back 6 years for both retail and wholesale customers.

The Joint Commenters suggested that the language of *N.J.A.C. 14:10-2.2(e)*1 be separated into two sections, with separate rules for (1) back billing and (2) crediting. Specifically, the Joint Commenters said the rule should read as follows: "(1) A telephone utility shall not back bill for service supplied: (a) to a wholesale customer, more than ninety (90) days prior to the invoice date, or (b) to a retail customer, more than six (6) years prior to the invoice date.

(2) A telephone utility shall not refund or credit a customer for service supplied: (a) to a wholesale customer, more than eighteen (18) months prior, or (b) to a retail customer more than six (6) years prior."

AT&T, in its redlined version, suggested changing *N.J.A.C. 14:10-2.2(e)*1 to:

1. For a wholesale customer, more than 12 months prior to the month the billing error was discovered;

However, Embarq and Verizon subsequently commented that they would remove the limitation altogether.

One Communications and the JC commented that back billing limits should apply from the date service is rendered. One Communications commented that the language

in subsection (e) is too subjective and therefore suggests the following language changes (additions in boldface; deletions in brackets):

"(e) A telephone utility shall neither back bill a customer, nor refund or credit a customer, **if the provision of service or facilities that gave rise to the bill** [for incorrect billing that] occurred more than:

1. For a wholesale customer, [more than eighteen] **twelve** months prior to the **date the bill is rendered** [month the billing error was discover for a wholesale customer]; and 2. For a retail customer, more than six years prior to the **date the bill is rendered** [month the billing error was discovered]."

One Communications and the JC propose the 12-month back billing period for wholesale customers as a compromise as they prefer a 90 to 120-day period and strongly oppose the 6-year period recommended by VNJ.

In *N.JAC 14:10-2.2(f)*, as proposed, carriers are required to retain all records necessary to comply with the back billing rules for a period of six years VNJ maintains this is unreasonably burdensome and unnecessary, NJCTA feels that there is an extraordinary financial burden associated with subscriber credits and refunds, especially in light of the fact the creditor refund may be de minimis. NJCTA commented that carriers must have a finite period of time to close their books. Revision of the Boards rules, to mirror the FCC rules with respect to back billing and record retention would alleviate these concerns.

The NJCTA and VNJ red lined version eliminated all of the wording pertaining to the changes to *N.J.A.C. 14:10-2.2(f)*).

RESPONSE: The Board believes that differentiating between retail and wholesale customers is appropriate. However, the Board agrees that if individually negotiated contracts address backbilling, incorrect billing or no billing, the contract provisions should prevail over the rule requirements. The Board's intent is for the rule to apply only where no such contract exists. Therefore, if different back billing requirements and timeframes are articulated by contract, those terms and conditions would apply between the telephone utility and the customer. This is reflected in amendments included in the Companion Proposal at *N.J.A.C. 14:10-2.1*.

The Board concurs that the provisions should also address the situation when a carrier fails to render a bill, and has added this language in the Companion Proposal and has not adopted the proposed language.

The Board must maintain records for a period consistent with the back billing periods in order to ensure that in the event of a billing dispute there are adequate records to allow for the resolution of billing issues, The Board has found that its back billing timeframes are appropriate, and balance the provider's need to receive payment and the customer's right to receive an accurate bill. Therefore, the commenters' suggested changes have not been made.

57. COMMENT: *N.J.A.C. 14:10-2.2(c)* proposes a time limit of two billing cycles to issue credits after an incorrect billing is discovered or should have reasonably been discovered, VNJ states that the carrier should decide whether to provide a credit to a customer even if the credit rectifies a billing mistake that is three of four months old. VNJ

takes issue with the term should" have been discovered. VNJ feels two billing cycles is too restrictive for carriers to deal with the number of issues and circumstances encountered before billing can be corrected.

N.J.A.C. 14:10-2.2(d) provides customers, who have been under billed for services, the ability to pay back the bill over a period of time no shorter than the time period for which the billing was incorrect. VNJ disputes this amendment and claims it is unnecessary since the company already offers customers payment arrangements.

One Communications and the JC propose the following language modifications for subsection (d) (additions in boldface): "If the incorrect rate billed was lower than the correct rate, or the **ILEC or CLEC has failed to bill customer**, the CLEC or ILEC shall allow the customer to repay the amount **in installments** over a period no shorter than the time period for which the billing was incorrect **or absent** or the customer and the CLEC or ILEC may make other payment arrangements by mutual agreement."

NJPIRG believes the rules, as proposed, should be adopted with few or no substantive changes. Specifically, NJPIRG supports *N.J.A.C. 14:10-2.2(c)* and (d), the provisions require the utility to refund to the consumer any overcharged amount within two billing cycles from when the utility discovered or should have discovered the over billing, and when seeking to collect an under-billed amount - not a willfully unpaid amount, the consumer is entitled to have the same length of time available to pay the amount as the length of time the under-billing occurred. These terms requiring prompt refunds and extended payment back-billing - are appropriate because the utility controls the billing process. Consumers have no way to prevent themselves from being over- or undercharged. The risks associated with inaccurate billing must be shouldered by the utility. Thus the language in subsection (c), "reasonably have known," is appropriate; consumers are entitled to prompt credit whenever they are over billed, and the industry needs to have internal controls sufficient to detect incorrect billing promptly. Similarly, the requirement in subsection (d), that under-billed consumers be given a time to pay the balance owed equal to the period of undercharging protects consumers from what in effect would be a surprise, punitive balloon payment.

RESPONSE: The Board appreciates this support for the rules. In addition, the Board concurs with the suggestion to expand the back billing provision to include the language of the commenters, to address a situation in which an ILEC or a CLEC has failed to bill a customer, and has proposed to modify the rule accordingly through the Companion Proposal. The Board agrees that the term "should reasonably have been discovered" is not practicable, and has proposed to remove it in the Companion Proposal. Also, the Board has not adopted the proposed language, and is proposing changes in the Companion Proposal.

58. COMMENT: *N.J.A.C. 14:10-2.3* requires that a carrier issue credits in instances where a customer has been out-of-service for more than 72 hours, VNJ argues that this rule presents an administrative and financial burden to carriers, VNJ argues the existing system of compensating customers has worked. Business customers have written contracts, which cover this situation, per VNJ. Verizon commented that the marketplace is addressing the issue of service in a satisfactory manner and the rules therefore are unneeded. VNJ suggests that the new revision delete the following language: "If the cus-

tomer's service is interrupted for more than 72 hours after being reported or discovered, the telephone utility shall adjust the customer's bill or provide a refund, regardless of whether the customer makes such a request". VNJ also suggests the deletion of "or automatically by the telephone utility if out of service beyond 72 hours."

RESPONSE: The carriers have in the past been required to automatically credit customers, and the proposed amendment merely restates this in terms, which are simple and concise. The Board feels the rule serves customers and avoids payment for service when service is not rendered.

59. COMMENT: NJCTA contends that the revisions potentially could be inconsistent with the force majeure tariff provisions that at times excuse outages if caused by events beyond the control of the telephone utility. NJCTA commented that the proposed rule imposes strict liability standards on CLECs to effect refunds for events beyond their control. NJCTA commented that the rule should be modified to clarify that automatic customer refunds should occur only if the service interruption is not due to customer's neglect or intentional act or any other cause beyond the CLECs control. NJPIRG commented that absent regulation, consumers cannot expect to be protected from a company's charging them for services not rendered so this rule is appropriate.

RESPONSE: The Board appreciates this comment in support of the rules. The rule begins with the following statement "In the event the customer's service is interrupted otherwise than by the negligence or willful act of the customer and it remains out of service for a period of 24 hours or more . . . adjustments shall be made. . ." Accordingly, in response to the comment of the NJCTA, regarding negligence on the part of the consumer, the rule as written takes this circumstance into consideration, and does not require an out-of-service refund in that particular case. The Board does not believe that CLECs should be responsible for refunds for the events resulting from the ILEC's network failure. Provisions in agreements with the ILECs address compensation to the CLEC for network failures and the interruption of service between carriers. Remuneration is also covered in the Carrier to Carrier Guidelines and Incentive Plan which can be found on the Boards website at www.bpu.state.nj.us.

60. COMMENT: Regarding *N.J.A.C. 14:10-2.4*, VNJ commented that this provision should not apply to business customers operating under written contract since business customers should be permitted to terminate and reinstate service pursuant to their contractual obligations.

RESPONSE: The Board concurs and has proposed to modify *N.J.A.C. 14:10-2.1* in the Companion Proposal to allow for exceptions where individually negotiated contracts are in place.

Subchapter 3. Number Reclamation

61. COMMENT: Regarding Number Reclamation, AT&T, Embarq and VNJ believe that the rules are duplicative and unnecessary and should be stricken as the FCC has set forth number reclamation guidelines.

AT&T, Embarq and VNJ believe that the Board should reconsider its approach to number pooling and reclamation since North American Numbering Plan Administrator

(NANPA) administers numbering resources and no other states seek to be involved in the process. AT&T believes that FCC regulations administered by NANPA adequately address number reclamation and reallocation issues.

AT&T added that to the extent the Board seeks to retain these rules, it may wish to revise them to enable reclamation of number blocks in excess of 1,000 or any other allocation quantity established in the future.

RESPONSE: The Board notes that the FCC delegated authority to the states to implement rules at the time the FCC revised its own rules, The FCC delegated additional numbering authority to state commissions to require more efficient management of thousands blocks and to implement mandatory thousands-block pooling under certain conditions (CC Dkt. No. 99-200 (NRO Order), paragraph 81). The NRO Order was released by the FCC on March 31, 2000; *In the Matter of Numbering Resource Optimization*, available at www.fcc.gov/eb/Orders/Welcome.html.

The FCC reasoned that the states may resolve reclamation issues more quickly and decisively than a NANPA-industry consensus process. The FCC reasoned further that this delegation of reclamation authority could increase the effectiveness of number conservation measures adopted by the states. (NRO Order, paragraphs 81 and 237)

It has been the Board's experience that the implementation of these reclamation rules, along with industry cooperation, plays a very important role in deferring once impending area code exhaust and extending the life of the state's existing area codes. The rules have also contributed significantly to maintaining sufficient number supplies for service provider start-ups and business growth needs. Since 2003 over three million numbers have returned to available supplies for reuse.

The proposed rules provide measures needed to help optimize the use of numbering resources, while allowing for adequate inventories, as well as preventing disruption of service to customers. The proposed rules merely update the existing measures, and set forth current practices, as well as changes resulting from the implementation of thousands-block number pooling.

The rules foster assurances that numbers are used optimally and help avoid accelerated depletion that could be caused by large unused inventories held at carriers' discretion. Therefore, the number reclamation provisions are adopted as proposed with the minor clarifications discussed below, in Comments 62 through 64.

62. COMMENT: NJCTA comments that Board rules should be consistent with the FCC numbering rules. NJCTA points to certain definitions found in *N.J.A.C. 14:10-3.1* and acknowledges that although the proposed rules are not substantively inconsistent with the FCC rules, they are not identical.

In *N.J.A.C. 14:10-3.1*, NJCTA suggested a revision of the definition of NANPA, simplifying it to only state that it is the entity responsible to manage the North American Numbering Plan (NANP).

RESPONSE: The number reclamation provisions are consistent with FCC regulations. The Board has not added the commenter's suggested changes to the definition of "NANPA." Although the suggested definition is not inaccurate, it is incomplete in that it does not adequately represent the delegation of authority to state commissions. The

suggested revision ignores the fact that the State and the NANPA interact pertaining to reclamation. See *47 CFR 52.12* and *52.15*. Therefore, the Board modified the definition to include both the fact that NANPA is responsible for managing the NANP, but retains language that indicates that regulatory authorities, including the Board, have a role in this process.

The proposed definition is as follows:

"North American Numbering Plan Administrator" or "NANPA" means the entity selected by the FCC to consult with and provide assistance to regulatory authorities and national administrators to ensure that numbering resources are used in the best interests of all participants in the North American Numbering Plan.

NJCTA suggested definition:

"North American Numbering Plan Administrator' or "NANPA" means the entity selected by the FCC responsible for managing the North American Numbering Plan.

Adopted definition:

"North American Numbering Plan Administrator" or "NANPA" means the entity selected by the FCC to provide assistance to regulatory authorities to ensure that numbering resources are used in the best interests of all participants in the North American Numbering Plan. NANPA is responsible for managing the North American Numbering Plan.

63. COMMENT: NJCTA suggested additional language to the definition of "NXX Code" or "central office code." The suggested language in effect adds a numerical model of an area code, central office code and line number, which represent a standard telephone number.

RESPONSE: The Board believes that the additional language suggested would be more difficult to understand and more complex to interpret for a layperson than the definition as proposed.

64. COMMENT: NJCTA suggested that the definition of "pooling administrator" state only that it is the entity responsible to manage a number pool.

RESPONSE: Although this is one function of the pooling administrator, this simplified definition could lead a reader to believe that the state has no involvement. The suggested revision does not allow for FCC or industry numbering guideline changes or changes in allocation quantities. Therefore, the suggested change has not been made.

65. COMMENT: NJCTA suggested revisions to the term "reclamation" to clarify that the NANPA does not itself require reclamation, and to delete the reference to the Boards reclamation authority under this subchapter.

RESPONSE: The Board has clarified the definition to indicate that the FCC and the Board, not the NANPA, requires reclamation. However, the suggested deletion of the reference to "this subchapter" ignores the delegation of authority to state commissions. Service providers will receive notice of numbering resources eligible for reclamation from the State, not the FCC selected administrator. At the time numbers are candidates

for reclamation the activity becomes a State function and the service provider must respond to the Board, not the FCC-selected number administrator.

66. COMMENT: NJCTA suggested revisions to the term "service provider," which would emphasize that NANPA gives service providers numbers directly, and only for purposes of providing telecommunications services.

RESPONSE: The commenter has provided no explanation of the importance of the changes it suggests to the definition. The Board believes that the definition as proposed adequately conveys the intended meaning of the term and therefore the definition is adopted as proposed.

67. COMMENT: NJCTA commented that the definitions in the number reclamation section should be consistent with the FCC definitions, and that the reference to N.J.A.C. 14:3-1.2 in the definition of "service provider" is confusing regarding whether the citation addresses the definition of service provider or person. NJCTA states that the term service provider is used throughout the rules in short for telecommunications service provider and references in the number reclamation subchapter create an ambiguity because the subchapter refers to wireless services and VoIP services, which are not telecommunications service providers.

RESPONSE: The Board has corrected the citation error in the definition of service provider. The definition of "service provider' for the purpose of number reclamation, is not equivalent to the term "telecommunications service provider." Rather, the term "service provider" was purposely phrased to include all entities receiving number resources from an entity approved by the FCC.

68. COMMENT: Regarding N.J.A.C. 14:10-3.2(a), NJCTA commented that the Board's proposed rule is broader than the FCC numbering rules, and seems to require a service provider's compliance with all FCC numbering regulations, and thus goes beyond the scope of authority delegated by the FCC.

RESPONSE: The Board disagrees. To ensure that numbers are actually in use and not merely "in service" for an indefinite period of time, the FCC defined in service ". . . to mean not just activation but also that the carrier has begun to activate and assign to end users numbers within the NXX code . . ." States were delegated authority to investigate and to reclaim un-activated or unused numbering resources (CC Dkt. No. 99-238). To the extent that non-compliance with these rules results in unactivated and unused numbering resources, these will be subject to reclamation. The focus of the proposed amendment is clearly on reclamation. Accordingly, the definition has been adopted as proposed.

69. COMMENT: Verizon Wireless commented that the provisions in N.J.A.C. 14:10-3.2(d)2, which require written proof that a carrier has activated all of its assigned numbering resources is unnecessarily stringent in that it presumes there is no need for new numbering resources unless the entire requested number block is utilized. Verizon Wireless contends that most carriers are willing to return number blocks that are not needed or give justification as to why they need to retain them, Verizon Wireless suggests that the rule be modified to be consistent with Federal requirements by deleting the word "all" from the text of the rule. Cingular Wireless commented that under the

proposal when a carrier fails to timely submit its Part 4 Form to NANPA, it then triggers a filing to the Board that all numbering resources have been assigned. Cingular Wireless commented that the Code of Federal Regulations provides remedies for noncompliance with NANPA, and they are adequate to address this issue. Also, Cingular Wireless contends that not all carrier numbering resources are linked to Part 4 Forms, that is, NXX codes; therefore, the rule is excessive.

RESPONSE: This provision does not presume there is no need for new numbering resources, It does not require evidence that all assigned numbering resources are assigned to end users; it requires evidence that all assigned resources are activated, and requires a showing that assignment to end users has commenced. Issues of the type described by Verizon Wireless and Cingular Wireless have not occurred.

The Board does not agree that these requirements are excessively stringent. These provisions are not imposing additional filing requirements. The existing requirements provide ample notice and opportunity to prevent reclamation of legitimately needed resources. Thus, the concerns raised by Verizon Wireless and Cingular are adequately addressed. Accordingly, these rules are adopted as proposed.

70. COMMENT: Regarding N.J.A.C. 14:10-3.2(f) and (g), NJCTA contends that the proposed rules provide carriers with the opportunity to explain NXX activation delays under subsection (f) by seeking an extension, under N.J.A.C. 14:10-3.3, prior to reclamation. However, the rules, NJCTA claims, do not provide carriers the right to explain NXX activation delays or use of non sequential numbers under subsection (g) prior to reclamation. NJCTA recommends that the Board extend the FCC protections to both reclamation and circumstances under its revised rules. Verizon Wireless commented that with respect to paragraph (g)1, the FCC has allowed carriers the flexibility to determine the six month inventory levels appropriate for their business and therefore, the Board should only seek to reclaim numbers when a carrier has no plan for the six-month inventory or no known internal controls resulting in number hoarding. Verizon Wireless commented that if Numbering Resources Utilization and Forecast (NRUF) data shows inventory levels greater than six months, the Board should work with carriers to implement internal procedures and controls that will ensure adherence to the six-month inventory requirement. Accordingly Verizon Wireless commented that the Board should only seek to reclaim numbers when 1) there is evidence of number hoarding or 2) when a carrier has no established methodology for six-month inventory management or internal controls. Cingular Wireless commented that subsection (g) is vague and that reliance on NRUF data alone to trigger reclamation is problematic. Also, Cingular Wireless commented that the reference in the rule to "noncompliance with the requirements for sequential number assignments set fort at *47 CFR 52.15(j)*" also includes the defenses listed in section 15(j)(2), and that a determination of noncompliance will factor in FCC policies and interpretations of 52.15(j). Cingular Wireless also commented that the Board should exercise caution before exercising authority under *47 CFR 52.15(i)(3)* and noted that *47 CFR 52.15(i)(4)* requires state commissions to provide carriers a chance to explain a delay in activating and commencing assignment of their numbering resources before reclamation occurs.

RESPONSE: The current number reclamation requirements and practice allow ample opportunity for a service provider to explain mitigating circumstances affecting rec-

lamation, including the opportunity for a hearing when necessary. First, N.J.A.C. 14:10-3.2(c) requires the Board to provide notice to those service providers who have failed to file the Part 4 Form on time, and gives them 14 days to file or to request an extension under subsection (e), which would include the opportunity for explanation sought by the commenter. Only later, after the service provider fails to comply with these deadlines, are the numbers subject to immediate reclamation. However, to accommodate the commenter's concerns, the Board has proposed to amend N.J.A.C. 14:10-3.2(i) to provide an additional opportunity for service providers to explain their noncompliance, prior to reclamation. This change is proposed in the Companion Proposal. Further, it has been and will continue to be the practice of Board Staff to first attempt to obtain an informal and mutually acceptable resolution before proceeding to reclaim numbering resources. However, in the event that a mutually acceptable resolution cannot be achieved informally, then more formal options are available. To date this practice has worked well for the most part resulting in mutually acceptable resolutions. Service providers have agreed to return numbers making resources available when and where needed. The same service providers have also been able to obtain resources at the time the need arises. Further, Board Staff has worked closely with service providers expediting waivers of utilization threshold levels (months to exhaust requirements) and sequential number assignment rules to fill their customers' special needs.

As stated above, the Board, in consideration of the comments, has proposed, in the Companion Proposal, to include a clarification at N.J.A.C. 14:10-3.2(i) stating that: "In the event a service provider is unable to comply with applicable guidelines and any part of this subchapter, the service provider will have the opportunity to explain the reasons it cannot comply."

71. COMMENT: Regarding N.J.A.C. 14:10-3.2(h), Verizon Wireless and Cingular Wireless commented it is unclear how the Board would reduce contamination or justify taking back numbers from consumers, which has unintended consequences that are detrimental to consumers.

RESPONSE: The recourse available in the rules is designed to avoid reclamation actions that could interrupt service to consumers. However, in the event reclamation is warranted, FCC guidelines may be applied whereby resources that have a contamination of 10 percent or less are subject to mandatory pooling. In that case, every effort will be made to avoid interruption of service to any customer. For example, the porting of assigned numbers back to the service provider may be used to avoid the interruption. Other ways of preventing inconvenience to customers can also be used depending on the circumstances. In addition, if there is reason to believe that assignment practices are resulting in hoarding or warehousing of excessive inventories, numbering resources audits may be requested. In any event, explanation and a hearing is available as needed.

Subchapter 4. Non-Financial Reporting Requirements

72. COMMENT: Regarding non-financial reporting requirements, Embarq commented that the rule makes several additional collection and reporting requirements to be provided by zip code, which are not required by Form 477. Therefore, this is excess reporting and Embarq is unable to provide information by zip code. Further, Embarq

commented that the information sought by the Board has no relation to service quality, rate, and facilities or to any other indicia of the utility actually providing service. Embarq claims the programming efforts cause additional hours to be expended to capture the data in the specialized manner required, to sort through the data, and then provide the requested data on a semi-annual basis as part of the March 31st annual report all of which is burdensome, not warranted, unreasonable, ineffective and redundant. In addition, Embarq avers that the rule proposal would be additionally burdensome to carriers because the FCC's Form 477 only requires carriers to report the data through December 31, 2009 and that the Board's reports would be in place an additional five years.

Embarq also contends that the granular reporting will not capture the state of intermodal competition as VoIP providers and cable companies will not be included in the reports. Embarq supports providing to the Board, the same information it provides to the FCC. NJCTA recommends that the Board streamline its reporting requirements to avoid State duplication of the filing requirements contained in FCC Form 477; however, in its red-lined version of the rule it suggests that the rule only apply to ILECs and strikes all of the State-specific data required under section N.J.A.C. 14:10-4.2. AT&T, VNJ and Time Warner commented that they oppose the proposed rules regarding semi annual FCC local competition and Broadband Reporting Form 477 require that companies provide State-specific information in addition to the information required by the FCC and this is unnecessary as the FCC information is sufficient for the Board to determine the extent of services provided by carriers. VNJ stated the proposed rule perpetuates asymmetrical regulation by seeking detailed reporting requirements on only a select group of competitors ignoring data from cable and VoIP providers. According to VNJ, the information provided to the FCC is sufficient for the Board's purposes of understanding the extent of services provided by carriers in New Jersey. Also the rule is economically and administratively burdensome and VNJ systems don't provide that level of detail. VNJ and Time Warner commented they do not maintain information by zip code, and therefore, compliance is labor intensive, overly burdensome and should not be imposed. AT&T and NJCTA commented that the additional more stringent requirements for tracking and reporting are not warranted and are inappropriate.

AT&T and Embarq also provided information on the status of California's deregulatory efforts pointing out that California is eliminating all state-specific monitoring reports in favor the FCC's ARMIS data.

RESPONSE: Subchapter 4 is intended to enable the Board to establish a baseline, measure and track the development of competitive telecommunications markets throughout the State on a more granular level. While the information provided by carriers to the FCC in their Form 477 does provide sufficient data to the FCC to meet Federal objectives and establish Federal policies, it is insufficient to provide the Board with the information needed to establish and monitor pro-competitive policies on a State level. Without these State-specific data, the Board will be unable to determine whether the benefits of its pro-competitive policies are accruing to ratepayers in the State. The information required in this subchapter is virtually identical to that in the FCC Form 477; the only difference is that the data is requested in a more detailed manner.

The additional data that the Board seeks will provide better information to provide the basis for future competitive policies, which may or may not coincide with Federal ob-

jectives. Since there is no guarantee that the Federal policy and timetable will be in sync with the Board's, it is imperative that the Board gather the appropriate information until the Board determines that the telecommunications markets in New Jersey are fully competitive. The subchapter, as proposed and adopted, reduces the number of reports required per year to coincide with the FCC's Form 477. The Board's existing Competitive Services Monitoring Reports, which are being eliminated, have always had a quarterly and annual reporting component. The Board also believes that it is crucial for the Board to receive Form 477s directly, rather than seeking the data from the FCC. Such an approach would limit the Board's ability to use the data internally because each Board Staff member or commissioner would be required to sign a proprietary agreement from the FCC, which would subject the signers to Federal prosecution in the event of improper disclosure. The Board's approach would offer State filers the same protections currently available through existing protective Board Orders. As for the comments that state the Board will have an incomplete picture without data from cable and VoIP providers, the Board, at this time, does not have jurisdiction over the provision of services which have been classified by the FCC as informational services and not telecommunications.

73. COMMENT: Time Warner urges the Board to grant an automatic waiver of the requirements at N.J.A.C. 14:10-4.1 and 4.2 to competitive carriers that submit statistically valid estimates. This will prevent carriers from expending unnecessary resources on developing waiver petitions, Also, the requirement to provide "certified" copies of FCC filings should not be imposed because it is available directly from the FCC.

RESPONSE: As discussed in response to Comment 72, it is important for the Board to have accurate data on the operations of entities regulated by the rules. Such data enables the Board to monitor the impact of its rules and policies, and to respond appropriately to changing conditions in the telecommunications industry. The statistically valid reporting option has been included specifically to reduce reporting costs and relieve any burden that may exist where carriers do not possess the actual data in their systems. The waiver request is not expected to require extensive time or resources to prepare. Therefore, the commenter's suggested change has not been made upon adoption.

74. COMMENT: Rate Counsel wants a new section to require that annual reports include the number of disconnects each month and the reason for the disconnect, with 12 months of the disconnection data and the number of Director Assistance (DA) calls billed and unbilled and the number of directory assistance (DA) calls made by residential and business customers.

RESPONSE: The Board recently reviewed the issue of whether or not Verizon DA services are competitive and in its decision the Board did not require that such data be made available. The information sought by Rate Counsel regarding disconnects is not considered essential in the review of Verizon's DA services and is not required information. The Board's decision on this matter can be found in its Order dated June 28, 2007, Dkt. No. TX06010057.

75. COMMENT: The Board, according to VNJ, should eliminate the policy of requiring retail tariffs. Verizon seeks the detariffing of all eligible services within an implementation period of up to 18 months. The Board, per VNJ, should grant companies the abil-

ity to provide generally available prices, terms and conditions of service to customers by any means permissible under applicable law, including web postings. Competitive neutrality in detariffing would apply to all certificated wireline communications companies in New Jersey under VNJ's plan. VNJ suggests that companies be permitted to cancel individual service tariffs by advice letter at any time during an 18-month transition period. According to VNJ, companies should be allowed to implement detariffing on an individual service basis, not to exceed 18 months, and to develop binding customer contracts.

Verizon suggests the Board adopt the following elements:

"Advice Letter Process for Detariffing. At any time during the 18-month transition period, companies may cancel any retail service tariff except stand alone basic residential service on a service-by-service basis using a 1 day advice letter and 30 days' customer notice

Customer Contracting Flexibility. In lieu of tariffs, companies may substitute any binding agreement permissible under applicable law, ranging from Web site disclosure of terms and conditions and executed agreements for larger business customers.

Public Disclosure of Generally available Terms and Conditions. Companies would be provided flexibility to publicly disclose generally available terms and conditions by any method permissible under applicable law, including on the company's Web site.

Competitive Neutrality in Detariffing. The proposal would apply to all certificate wireline communications companies in New Jersey, including incumbent local exchange carriers, competitive local exchange carriers, and interexchange carriers, consistent with the principle of competitive neutrality."

RESPONSE: Detariffing would remove the responsibility of ILECs and CLECs alike to file tariffs with the Board, and would severely disadvantage the consumer, and the Board's ability to ensure safe, adequate and proper service. Tariffs are important for providing the public with rates, terms and conditions of service offerings. If the tariffing requirement were removed, the Board could not ascertain whether rates were altered or tariffs were offered to customers on a non-discriminatory basis. A tariff, whether for regulated or competitive services, serves as a contract between the company and the customers. Therefore, the tariff sets a level of expectation and liability regarding rates, terms and conditions to not only the company and customer, but also the Board. For these reasons, the commenter's suggested changes have not been made.

Subchapter 5. Competitive Telecommunications Services

76. COMMENT: VNJ suggests deleting the word "competitive" from the heading of Subchapter 5 and *N.J.A.C. 14:10-5.1*, Scope.

Verizon suggests deleting the entire scope section and replacing it with the following paragraph:

"Carriers providing telecommunication services may provide such services pursuant to a publicly filed tariff or a private contract with the customer. Carriers electing to provide telecommunication services pursuant to a publicly filed tariff shall provide such services in accordance with this subchapter."

VNJ also suggested in its comments regarding *N.J.A.C. 14:10-5.1(c)* through *5.5*, that the Board eliminate its tariff requirements. Alternatively, VNJ commented that the rule applies to all LECs including ILECs, CLECs, and IXCs, yet at times certain types of carriers are excluded. VNJ commented that all references to carriers need to be consistent.

RESPONSE: The suggested changes would radically alter the meaning of this subchapter, which was included specifically to address competitive carriers and competitive services. The subchapter does not apply to Verizon's non-competitive services. This subchapter does, however, apply to certain tariffed non-competitive services of CLECs. As described above, the Board has concluded its proceeding during which it reviewed the competitive status of CLECs services. Accordingly, the rule has been adopted as proposed and will continue to include these provisions.

77. COMMENT: Regarding *N.J.A.C. 14:10-5.2(b)*, Verizon suggests replacing "A CLEC or IXC" with "A Carrier."

RESPONSE: The Board agrees and has changed the rule as suggested in the Companion Proposal and therefore, has not adopted the proposed text.

78. COMMENT: Regarding *N.J.A.C. 14:10-5.3*, Verizon suggests adding (additions in boldface): "Tariff **filings or** revisions that **establish or** increase charges" to the heading and to modify the text of subsection (a) in the same manner.

RESPONSE: The Board believes that the heading of the section is sufficiently clear. In addition, under New Jersey law, the heading of a section has no legal effect, and is merely informational in nature. The Board also does not accept the requested changes to subsection (a), as this would change the meaning, purpose and scope of the services impacted by this provision.

79. COMMENT: Regarding *N.J.A.C. 14:10-5.3(a)*, AT&T commented that the Board should streamline tariff filing and customer notice requirements for competitive carriers.

With respect to subsection (b), Verizon suggested deleting CLEC from this subsection and replacing it with "carrier." NJCTA concurred with AT&T and noted that the 1992 Act, *N.J.S.A. 48:2-21.16* et seq., does not require the Board to impose tariff filing requirements on competitive providers. AT&T believes that CLEC tariffs should be presumed lawful when filed.

Verizon comments that notification of the tariff revision should be provided to affected customers who already receive the service and that the carrier should mail notice or publish the newspaper notification.

NJCTA suggested that the CLEC shall notify the public of a proposed tariff revision described by any one of the following means: direct mail to affected customers, bill inserts, or by publication in newspapers of general circulation throughout the affected service area within 24 hours after the filing of the revised tariff pages with the Board.

In addition, Verizon suggested to eliminate the timeframe for newspaper publication, or alternatively for this subsection to be rewritten as follows: "the LEC or IXC shall notify the public of a proposed tariff revision described in (a) above by direct mail to all affected customers or by publication in newspapers of general circulation throughout the

affected service areas. The LEC or IXC shall mail the notice or the newspaper notification shall be published as required by this subsection within 24 hours of the filing of revised tariff pages with the Board."

NJCTA suggests that modifications to existing tariffs that increase rates for competitive service providers shall become effective upon one business day after notice of the proposed revision. Verizon suggests that: Tariff filings or revisions, which establish or increases charges to any customer, shall become effective five business days after notice of the proposed filing or revision without the requirement of prior Board approval.

RESPONSE: The 1992 Act expressly permits tariffs for competitive services (see N.J.S.A. 48:2-21.19e(3)). This provision is intended to apply to tariff revisions of competitive telecommunications services that have been previously approved by the Board and are in effect. The Board is not adopting the proposed language and has proposed, in the Companion Proposal, to use the word "carrier" in subsection (b) as recommended by Verizon.

Regarding NJCTA's comment on notice to customers of tariff revisions to existing services, which propose to increases charges, the Board does not believe that it is appropriate to shorten the existing five-day notice requirement to one day as suggested. The Board believes the existing customer notification requirements serve consumers and do not present a burden to utilities, therefore the rule should remain as proposed.

The Board agrees with the NJCTA recommendation that the notification of the tariff revision should be provided to affected customers who already receive the service by notice in the mail or publication in the newspapers. In addition, the Board has revised this section in the Companion Proposal to reflect that affected customers already receiving the service should be the ones to be notified.

Verizon also suggested deletion of the time frame for newspaper publication. The Board does not believe it is appropriate to remove this requirement, because it provides the time necessary for Board Staff to review carriers' requests and make any needed recommendations.

In response to the suggestion for streamlining customer notice requirements for competitive carriers, these requirements are minimal and provide significant public benefits.

80. COMMENT: In *N.J.A.C. 14:10-5.4*, Verizon suggested the heading read (additions in boldface): Tariff **filings** or revisions that do not **establish or** increases charges.

Regarding subsection (a), Verizon suggests it be changed as follows (additions in boldface): "Tariff **filings or** revisions, which do not **establish or** increases charges to any customer" and deleting: "to existing competitive telecommunications services, or to any CLEC or IXC tariff," and "except that a tariff revision for withdrawal of a service offering shall be governed by *N.J.A.C. 14:10-5.11*." Regarding subsection (a), the NJCTA suggests that all tariff revisions to existing competitive services or to any CLEC or IXC tariff of charges to any customer shall become effective on one day after the filing of revised tariff pages with the Board.

For subsection (b), Verizon suggests removing "Division of Ratepayer Advocate" from this subsection.

Both the NJCTA and Verizon suggest that the rule be modified to eliminate the reference in subsection (c) that "revisions to non-competitive telecommunications service tariffs are governed by the Board's rules for all utilities at *N.J.A.C. 14:3*."

RESPONSE: The Board has not adopted the requested additions because the intent of this provision is to apply to tariff revisions of competitive telecommunications services that have been previously approved by the Board and are in effect. The changes suggested by Verizon would inappropriately expand the scope of this provision to include non-competitive services. Regarding subsection (a), the intent of this provision is to clarify the Board's reporting requirements for tariff revisions that do not increase the rates for competitive services: it is not intended to be a vehicle to open the market in order to reclassify all services as competitive. Therefore, the suggested change has not been made.

The Board disagrees with the recommendation to delete the language in subsection (c) stating that revisions to non-competitive telecommunications service tariffs are governed by the Board's rules. The proposal referenced *N.J.A.C. 14:3* instead of *N.J.A.C. 14:1* since revisions not governed by *N.J.A.C. 14:10* (non-competitive service tariff revisions) are now addressed in *N.J.A.C. 14:3* and have been moved from *N.J.A.C. 14:1*. Accordingly, on adoption the rule states that unless otherwise required in this subchapter or by Board Order, revisions not covered in *N.J.A.C. 14:10* are governed under *N.J.A.C. 14:3*.

The Board disagrees with the suggestion to remove Rate Counsel from the notification process. Rate Counsel are legally charged to represent ratepayers and are an important part of the Board's regulatory policy making process.

81. COMMENT: Regarding *N.J.A.C. 14:10-5.5*, The NJCTA suggests this section should apply only to new competitive telecommunications service offerings by interexchange carriers, and not only to existing interexchange carriers.

RESPONSE: The Board agrees that the rules should apply not only to existing IXC carriers but to all IXC carriers, and has proposed to make this change in the Companion Proposal. Accordingly, the Board has not adopted the proposed amendments.

82. COMMENT: Verizon suggested broadening *N.J.A.C. 14:10-5.5* to apply to all service offerings, not just competitive offerings from IXCs. Verizon also suggests deletion of the requirement for notice to Rate Counsel.

RESPONSE: The commenters suggested change would change the intent of this rule, and would contravene the Board's statutory mandates regarding its oversight of competitive and noncompetitive services. As stated previously, the Board disagrees with the suggestion to remove Rate Counsel from the notification process. Rate Counsel are legally charged to represent ratepayers and are an important part of the Board's regulatory policy making process.

83. COMMENT: Regarding *N.J.A.C. 14:10-5.5*, NJCTA suggests that new competitive telecommunications service offerings by interexchange carriers shall become effective one business day after filing.

RESPONSE: The Board agrees that new competitive service offerings by IXCs should be approved on a one day notice because all IXC's services fall under the com-

petitive category. This change has been proposed in the Companion Proposal. Tariff revisions that increase charges require five-days notice.

84. COMMENT: Regarding *N.J.A.C. 14:10-5.6*, Initial CLEC or IXC tariff, NJCTA suggested that initial tariffs filed by CLECs for local exchange and exchange access services, or by IXCs of interexchange services, should become effective without the requirement of prior Board approval, and additionally suggested deletion of the 30 days submittal to the Board. With regard to subsection (b), the NJCTA suggested that initial tariffs filed by CLECs for local exchange service concurrently with CLEC's petitions for exchange authority shall become effective within one day instead of the 30 days notice in effect.

RESPONSE: The 30 days tariff filing requirement is necessary for the review and correction (if needed) of the submitted tariff, and for the administrative process necessary to finalize the request. Where authority has been previously granted, initial tariffs filed by CLECs or IXCs become effective 30 days following submittal to the Board without prior Board approval. Initial tariffs submitted along with a petition for authority become effective 30 days after authority has been granted by the Board, unless there is some deficiency with the tariff filing. In such case the tariff is not effective until the deficiency is addressed and corrected. Notwithstanding, the Board is not adopting the proposed language in subsection (b) and has proposed to amend this language in the Companion Proposal.

85. COMMENT: Rate Counsel commented that it is appropriate to strike the term "economic" in *N.J.A.C. 14:10-5.7* because it is inconsistent with *N.J.S.A. 48:2-21.19*.

Rate Counsel believes the changes in this section are substantive. Rate Counsel disputes the idea of existing regulatory flexibility afforded to carriers being the criteria to use to assess whether the public interest is no longer served. Rate Counsel argues pricing flexibility is not considered under the statute when considering classification of service.

RESPONSE: Based upon a review of the statute and the existing rule, the Board believes that economic measures are one of the many possible considerations that are appropriate for the Board to review when making a determination about the competitive nature of a particular service.

86. COMMENT: Rate Counsel seeks that the Board add a provision in the rule that the telecommunications service provider submit a copy to the Board and the Rate Counsel for comment two weeks in advance of filing a proposed tariff. Any amendments to the tariff would require an additional two-week review period.

RESPONSE: The rule in effect for new tariff filings is 30 days notice to the Board, increases to competitive services requires a five-day notice and decreases a one-day notice to the Board. The commenters' recommendation adds time to the initial tariff filing and any amendments, beyond these requirements. Such a delay could unnecessarily impede the implementation of a new competitive service, without a clear benefit to the public.

87. COMMENT: Regarding *N.J.A.C. 14:10-5.8*, VNJ disputes the need for this rule since it provides that in certain instances the Board can constrain a provider from with-

drawing a competitive service. VNJ argues this is inefficient and an impediment to the competitive marketplace.

The NJCTA suggests the new revision should include intrastate telecommunications for both subsections (a) and (b). It should state in subsection (a) (additions in boldface): "any carrier providing competitive services may withdraw a competitive **intrastate telecommunications** services from subscribers after 30 days notice to all of its customers and the Board, except as specified under (b) below." Subsection (b) should read (additions in boldface): "Notwithstanding (a) above, if competitive **intrastate telecommunications** service is provided solely by a single carrier, the carrier shall not withdraw the service if Board Staff notifies the carrier that the withdrawal requires prior Board review and approval."

AT&T and Embarq joint comments suggest the 30-day notice to withdraw a competitive service should be given to affected customers and the Board, and suggest modification of subsection (b) as follows:

Notwithstanding (a) above, if a competitive service is provided solely by a single carrier the carrier shall not withdraw the service if Board Staff notifies the carrier that the withdrawal requires prior Board review and approval.

Regarding *N.J.A.C. 14:10-5.9*, VNJ commented that the mandatory grandfathering provision is unnecessary and inefficient. VNJ asserts that after providing reasonable notice to a customer of the discontinuance of a competitive service the carrier should be permitted to discontinue that service. VNJ also seeks clarification whether the rule as proposed requires a carrier to notify all of its customers when a particular competitive service is discontinued even non-subscribers. VNJ seeks the rule be clarified to limit the notification to customers who actually receive the service. NJCTA commented that the rule appears to be internally inconsistent since it allows carriers to deny service to new customers but requires that existing customers continue to receive discontinued competitive services.

The NJCTA suggests the new revision should specify that "a carrier may discontinue offering a competitive intrastate telecommunications service." In addition, it should include that existing subscribers shall continue to receive the service for 30 days pursuant to *N.J.A.C. 14:10-5.8(a)*.

In their joint comments, AT&T and Embarq propose that the discontinuance of service offering should apply to new customers and providing notice only to the Board. It does not give existing customers the option to continue to receive the discontinued service. It suggests the new revision reads as follows: A carrier may discontinue offering a competitive service to new customers after providing one-day notice of the discontinuance to the Board. New customers will not have the option to subscribe to the service.

Regarding grandfathering, AT&T comments that the Board should modify the rule to exclude the requirement that existing customers be directly notified when a service is grandfathered.

RESPONSE: The intent of the proposed revisions was to include separate sections for discontinuance of service to differentiate it from the withdrawal of competitive services offerings from the market. However, various responses from parties indicate that

the provisions are still confusing. In order to eliminate any confusion, the Board has, in the Companion Proposal, eliminated the discontinuance of service provision, currently proposed as *N.J.A.C. 14:10-5.9*, and retained the withdrawal of competitive services provisions; *N.J.A.C. 14:10-5.8*, including the 30-day notice to the Board and affected customers as requested in the comments. In addition, *N.J.A.C. 14:10-5.8(b)* has been proposed for deletion in the Companion Proposal, as the subsection is not necessary since there will not be a single provider offering a competitive service. Furthermore, the current proposed amendments to subsection (b) are not adopted for the reasons stated above.

Subchapter 6. Operator Service Providers

88. COMMENT: Regarding *N.J.A.C. 14:10-6.4*, Rate Counsel opposes operator service rates and seeks a proceeding to ensure the rates are fair. Rate Counsel would like to confirm that the Board completed the 12-month study set forth in this section and would like a copy. AT&T commented that the Board should relax the alternate operator assisted calls rule since consumers have a variety of choices for operator service providers. Imposing rate caps does not take into consideration other payphone costs, such as the compensation to be paid to payphone providers.

Embarq suggests that the Board should reduce requirements and rules for services and functions having ample competitive options from non-regulated entities.

RESPONSE: The Board does not agree with the commenters, and has not adopted the proposed amendments to subsection (b), except for the updated citation change of *N.J.A.C. 14:10-6.7* as 6.8, which was proposed and must be adopted because *N.J.A.C. 14:10-6.7* is recodified as *N.J.A.C. 14:10-6.8*. These rules were enacted by the Board as directed by the Legislature in direct response to significant customer complaints regarding the rates and the practices of alternative operator service providers (AOS). Complaints have been virtually eliminated since the enactment of the rules, and it is the Board's contention that enforcement of these rules is in large part the reason for the decline. While the Board acknowledges that the number of these providers has likely been substantially reduced, thus contributing to fewer complaints, this fact alone does not compel the Board to eliminate the rule in its entirety. The two commenters who suggest the rules are unfair or unnecessary are not materially impacted by the rules, and it is important to note that no AOS provider filed comments requesting any change to the rules. The Board, has proposed in the Companion Proposal, to amend the language to eliminate the requirement for AOS informational tariffs. Since the rates are capped, it is not necessary to receive tariffs. This will reduce the filing requirements placed on AOS providers and will eliminate the need to expend resources on the part of the companies and the Board.

If the Board receives a complaint, the Board retains its current jurisdiction and will investigate the complaint as it would today. In response to the requests of Rate Counsel, the Board declines to initiate a proceeding on the rate caps at this time. As described above it is the Board's belief that the rate caps in place today have in large part eliminated customer complaints. Having a hearing on such an issue would not be an efficient use of resources. While the Board has not conducted a formal review of the effects of these maximum rates on the industry, and therefore, no report is available, the

Board is prepared to review any request submitted based upon a showing that such a review is necessary.

Subchapter 7. Access to Adult-Oriented Information-Access Telephone Service

89. COMMENT: Regarding *N.J.A.C. 14:10-7.3(f)*, AT&T and Embarq suggest in their joint comments that the Board delete - "Telephone utilities shall ensure that subscribers to local telephone service in the State are advised of these rules through inclusion in the informational consumer guide pages in the front of the local telephone directories."

RESPONSE: The Board will retain a requirement that subscribers of local telephone service should be made aware these rules exist, their content and what their rights are. The rules are relevant and necessary in the regulation of access to adult-oriented information via telephone. The Board will, however, revert back to the existing language in the rules and will not adopt the proposed language, as the existing language more clearly states the objectives of the rule.

Subchapter 9. Public Pay Telephone Service

90. COMMENT: Embarq commented generally that new rules regarding pay telephones should not be imposed as there are ample competitive options from non-regulated entities. AT&T and Embarq in their joint comments stated that this subchapter should be deleted in its entirety.

RESPONSE: Although many people have cell phones, payphones remain necessary for many others, and for situations when cell phones are not working or are unavailable. The Board's Companion Proposal lifts the requirements on where payphones must be located. For those that remain, the minimum standards contained in this subchapter continue to be necessary and shall continue,

91. COMMENT: Regarding *N.J.A.C. 14:10-9.4*, Verizon suggests that the limit imposed on the amount of money a customer provided pay telephone service (CPPTS) may charge for directory assistance should be allowed to expire since the FCC's orders have deregulated and detariffed payphone services, and there are many alternatives available to obtain telephone numbers.

RESPONSE: The ability of a consumer at a payphone to obtain a telephone number is limited in most instances to the directory assistance at that instrument, Therefore, some restraint on the rate remains necessary, and this change has not been made.

Subchapter 10. IntraLata Toll Competition

92. COMMENT: Embarq commented that the intraLATA toll was deemed competitive in 1996 and therefore there is no reason to maintain the rules. VNJ suggests deletion of *N.J.A.C. 14:10-10.1(b)*, *10.2*, *10.3*, *10.4*, *10.5* (recodified as *N.J.A.C. 14:10-10.2(a)*, (b), and (d) through (g)), 10.6(b) and (c) and 10.7, except for previously effective *N.J.A.C. 14:10-10.6(a)*, which reclassified toll services as competitive services.

RESPONSE: The Board has not made this change upon adoption. However, in the Companion Proposal, the Board has proposed to substantially eliminate unnecessary

rules. However, the Board retained customer protections that it deems necessary, as described in the responses to the following comments.

93. COMMENT: *N.J.A.C. 14:10-10.1(b)* requires new customers that do not specifically enroll with an intraLATA carrier to be assigned an intraLATA carrier. VNJ believes this is inconsistent with Board Orders as customers can choose no primary exchange carrier (PIC). VNJ states there is no process in place to assign customers to an intraLATA carrier. Also some customers under contract specifically do not wish to be presubscribed. Rate Counsel argues the rule is inconsistent with the customer's right to select a no PIC.

RESPONSE: The Board concurs. The intent of the provision was not to remove the no PIC option from consumers. Upon adoption the Board has clarified this by not adopting the language proposed in *N.J.A.C. 14:10-10.1(b)* regarding when a customer does not enroll with a carrier along with the language citing the Board's past Order on presubscription.

94. COMMENT: Regarding *N.J.A.C. 14:10-10.2*, NJCTA commented that competitive providers should be relieved of presubscription requirements. NJCTA recommends that the language apply only to ILECs.

RESPONSE: In the Companion Proposal, the Board has clarified that the antidiscriminatory safeguards in the rule apply only to carriers that process PIC change orders. All other presubscription requirements apply to CLECs, therefore, the request of NJCTA is not accepted.

95. COMMENT: VNJ suggests that at *N.J.A.C. 14:10-10.2*, the term "responsibility of LECs" be replaced with "responsibility of carriers."

RESPONSE: The Board has retained the existing rule text. However, based upon numerous comments, this heading of *N.J.A.C. 14:10-10.2* is proposed for deletion in the Companion Proposal and the current rule text will be merged with existing *N.J.A.C. 14:10-10.1*.

96. COMMENT: Regarding *N.J.A.C.14:10-10.3*, NJCTA commented that as proposed, the rule would require CLECs to comply with strict imputation requirements that are not relevant to the competitive services that they provide. NJCTA contends that the imputation standards were never meant to apply to CLECs since CLECs do not provide monopoly services and therefore do not have market power or incentives to engage in the anti-competitive behavior that imputation was designed to prevent.

Regarding subsection (d), VNJ supports the Board's proposal to eliminate the specific special access imputation formula. VNJ believes the Board should keep the language regarding "competitive special access services such as HiCap however, imputation is not applicable" since imputation is only applicable where a non-competitive special access service is a component of a competitive service. VNJ suggests that the entire subsection be deleted.

RESPONSE: The Board concurs that competitive access services should not be subject to imputation and has proposed this amendment in the Companion Proposal. The Board does not agree that imputation should be limited to ILECs only. *N.J.S.A. 48:2-21.19* sets forth safeguards to ensure that a provider of both competitive and non-

competitive services does not gain a competitive pricing advantage where a competitor purchases a non-competitive component for a service provided in competition with the LEC. Since there continues to be non-competitive access services offered by both CLECs and ILECs, the imputation provisions must apply to both. If the non-competitive status changes, an amendment to the rule would be considered.

For wholesale services, it is necessary to set a pricing floor to prevent predatory pricing. There is no need to include the language proposed by VNJ because imputation does not cover competitive services. The Board has proposed to amend the rule to re-insert the statement that competitive access services are not subject to imputation in the Companion Proposal.

Subchapter 11. Anti-Slamming Requirements for Tsps

97. COMMENT: Regarding *N.J.A.C. 14:10-11.2*, One Communications commented that the definition of authorized TSP should read as follows (additions in boldface): "Authorized TSP means a TSP that a customer has chosen **or may choose** as its provider of a telecommunications service, through an authorization that has been verified in accordance with this subchapter."

AT&T and Embarq want to amend the definition of "authorized TSP" and "primary TSP" to add intrastate.

RESPONSE: The Board does not agree with the commenter that it is appropriate to limit authorized TSP to only intrastate service. A TSP can also switch local and long distance service in New Jersey. Therefore, since a TSP can provide up to three services, the Board sees no reason to limit authorized TSP to only intrastate service. Regarding the proposed addition of the language of One Communications, it is not possible for a carrier to be authorized if they have not yet been chosen by the customer or verified in accordance with the requisite procedures set forth in N.J.A.C. 14:10-11. Therefore, the commenter's suggested language is not accepted.

98. COMMENT: One Communications suggests that the Board require a carrier to provide customer service records (CSRs) and similar information to another carrier upon request, when the requesting carrier has secured the customer's authorization to obtain such information. To implement this, the commenter suggests that a definition of CSR be added as follows: "Customer service record or CSR" means information showing the services provider by a TSP to a customer including at a minimum: 1. Billing telephone number; 2. Working telephone number; 3. Complete customer billing name and address; 4. Directory listing information including address, listing type, etc.; 5. Complete service address (including floor, suite, unit etc.); 6. Current PICs (inter/IntraLATA toll) including freeze status; 7. Local freeze status, if applicable; 8. All vertical features - e.g. customer calling, hunting etc.); 9. Options - (e.g. Lifeline, 900 blocking, toll blocking, remote call forwarding, off premises extension, etc.); 10. Tracking number or transaction number (e.g. purchase order number); 11. Service configuration information (e.g. resale, UNE-P, unbundled loop); 12. Identification of the new service provider; 13. Identification of any line sharing/line splitting on the migrating end user's line; and 14. All network or technical information relevant to the provision or migration of service, including but not limited to the circuit identification number."

Also, One Communications recommends the definition of "executing TSP" be modified to state: "executing TSP" means any TSP that receives a change order or request for a CSR that complies with this subchapter and carries out a request for such CSR or request that a customer's TSP be switched. Any TSP may be treated as an executing TSP, if it is responsible for any unreasonable delays in the execution of CSR requests or TSP switches, or for the execution of unauthorized TSP switches, including fraudulent authorizations in violation of this subchapter." Also, *N.J.A.C. 14:10-11.4(b)* should include reference to a "request for a CSR" per One Communications. The commenter suggested related changes to several other sections to implement this change.

RESPONSE: The Board believes that the information currently required is adequate, and inclusion of the suggested requirements would add an unnecessary regulatory burden to carriers.

99. COMMENT: Regarding *N.J.A.C. 14:10-11.1*, Time Warner supports the use of the Federal standard term telecommunications service provider or TSP to harmonize the Board's anti-slamming rules with FCC regulations.

NJPIRG commented that it strongly supports these rules as they ensure consumers have full awareness of what they are agreeing to when they choose to switch carriers, and opposes any reduction in rules, which impact a consumer's ability to have all relevant information regarding the switching of carriers.

RESPONSE: The Board appreciates the commenters' support of the rules.

100. COMMENT: AT&T and Embarq suggest that *N.J.A.C. 14:10-11.3(b)* should include the term "intrastate telecommunications service."

RESPONSE: The Board does not believe it is appropriate to include the language suggested by the commenter concerning intrastate service. The type of service affected by the switch may include interstate service, as well as local or regional service. Therefore, the commenters' suggested change has not been made.

101. COMMENT: Regarding *N.J.A.C. 14:10-11.4*, Time Warner commented that it supports the inclusion of the Federal anti-slamming standard in the New Jersey rules and does not oppose the new requirement that a TSP submit primary TSP change orders on behalf of customers within 60 days of obtaining third-party verification for that customer.

RESPONSE: The Board appreciates this comment in support of the rules.

102. COMMENT: Regarding *N.J.A.C. 14:10-11.4(d)*, VNJ commented that requiring service providers to get separate authorization from customers for each separate access line being switched and each separate service sold is unnecessary and does not benefit consumers. Further, VNJ commented that small business customers with several lines would be inconvenienced by such a rule. Similarly, *N.J.A.C. 14:10-11.6(j)* requires separate authorizations for each service on a line being switched from one carrier to another. VNJ feels this is unnecessary and confusing.

RESPONSE: When customers are switching more than one service, it is important that customers understand which services are being switched. Therefore, the Board has maintained this requirement to protect both the customer and the TSP from slamming.

In regard to small or large business consumers, there are alternatives to performing third-party verification (TPV) recordings. If business consumers find the process of stating each line on a TPV too burdensome, TSPs may provide letters of authorization (LOA), which in essence eliminates that burden to the consumer, and the carrier alike. Once again, the option of providing LOAs as opposed to lengthy TPVs has been available to carriers since New Jersey opted in to enforce the FCC slamming regulations.

103. COMMENT: *N.J.A.C. 14:10-11.4(f)* requires a submitting TSP to maintain and preserve customer authorization records for three years. VNJ argues this is unnecessary and exceeds the Federal regulations requiring a two-year record retention period. The rule also requires providers to submit quarterly reports on slamming complaints. The FCC eliminated this requirement and VNJ seeks that the Board eliminate this requirement as well. If not, VNJ suggests the information be submitted to the Board only upon request. AT&T and Embarq seek to change the three-year retention period to two years.

RESPONSE: According to FCC regulations, state agencies have the ability to be more stringent than the FCC guidelines, but not less. In this case, the Board has imposed a three-year requirement as the prudent period for retention based upon experience in this area. The Board believes that the benefit provided to consumers outweighs the minimal administrative burden the three-year retention period may impose.

Regarding quarterly reports, the Board has proposed to eliminate the requirement regarding the submission of quarterly reports in the Companion Proposal.

104. COMMENT: *N.J.A.C. 14:10-11.6(b)* requires persons obtaining a third-party verification be independent of the customers existing primary TSP and the TSP to which the customer may switch. VNJ argues it is difficult to find contractors who do not provide these services to multiple carriers and therefore it is unreasonable for carriers to assure that the third-party verifiers are not affiliated with competitors and since there is a process in place this rule revision should not be adopted. VNJ's redline seeks to strike this provision.

RESPONSE: The Board agrees and has proposed to amend the rule to state that the third-party verification company must be independent of the acquiring TSP only. This modification is proposed in the Companion Proposal.

105. COMMENT: Regarding *N.J.A.C. 14:10-11.6(e)*5, 6 and 7, VNJ believes it is unduly burdensome for all third-party verifications to elicit the names of the TSPs affected by the change, each of the telephone numbers that will be affected by the switch, and, the types of service being switched.

RESPONSE: This requirement is already in effect under existing *N.J.A.C. 14:10-11.3(b)*3iii. The only substantive change proposed is the addition of the date of the verification. This change is not being disputed by the commenter. The Board believes that this information is important for the implementation of the anti-slamming provisions. Therefore, the commenter's suggested change has not been made.

106. COMMENT: *N.J.A.C. 14:10-11.6(h)* and (i) require a third-party verifier to offer to terminate a verification if a customer has questions that the verifier is not qualified to answer. VNJ believes that terminating the entire verification because a customer may

have a question regarding one service or one aspect of the verification is unnecessary and should only apply to the service specifically related to the question. VNJ's redline seeks to strike subsections (h) and (i).

Embarq believes that terminating the verification over a customer asking a question is unnecessary, burdensome and negatively impacts the customer. Embarq states that the FCC does not have such requirements.

RESPONSE: The Board Staff sees many cases in which a customer was confused during the TPV process. The rule does not require that the call be terminated in all of these cases. Instead, the verifier must respond to customer inquiries by informing the customer: "I'm just a third party verifier, but I can give you a number to call to answer that question, or we can continue with the verification." In that case, it is up to the customer to continue with the verification process, or to have the questions answered by a sales representative. The TPV agent is not qualified to answer questions regarding rates, services, or the promptness of switching services.

This rule protects customers who are uncertain from agreeing when they are not clear on what is taking place. The TSPs have an obligation to make sure the marketing is informative and clear to ensure that consumers are fully aware of the choice they are about to make. The rules safeguard both the customer and the company, making sure that any switch will be made with the customer being fully informed, and without hesitation or buyer's remorse. Therefore, the commenter's suggested change has not been made.

107. COMMENT: *N.J.A.C. 14:10-11.6(j)* requires separate authorizations for each service on a line being switched from one carrier to another. AT&T and Embarq wish to add that separate authorizations may take place on the same verification call.

RESPONSE: The rule already provides that separate services can be authorized during the same verification call. See *N.J.A.C. 14:10-11.4(d)*.

108. COMMENT: *N.J.A.C. 14:10-11.7* requires that the TSP change orders for intraLATA and interLATA be executed within three business days. VNJ argues that there is no need for a time frame on these orders. If the Board requires a timeframe VNJ suggests five days. VNJ seeks to strike the three-day provision and replace it with the term "reasonably possible." Also VNJ seeks to delete subsections (c) and (d).

Regarding *N.J.A.C. 14:10-11.7(a)*, AT&T and Embarq state that it is burdensome to place a 30-day limit on the executing carrier to make a switch in local service. AT&T and Embarq requests the time frame be a more abstract term, like "prompt execution." AT&T and Embarq believe imposing a 30-day timeframe is administratively burdensome. AT&T and Embarq also oppose a three-day time frame for executing the switching of toll service.

RESPONSE: The Board believes both the 30-day and three-day time frames are reasonable. To allow a five-day time frame, as opposed to a three-day time frame, is unsupportable based on the limited facts presented and lack of justification.

Further, the Board believes it is reasonable to allow for a 30-day time frame because based on the information currently available, anything more than 30 days could not be considered "prompt." The commenters have not provided any data to support the claim

that a switch in local service should take more than 30 days. More importantly, if the switch is not done within 30 days, that negatively impacts the customer. For these reasons, the commenters' suggested change has not been made.

109. COMMENT: AT&T and Embarq seek to change the heading of this subchapter to "Willful or Intentional Unauthorized Service Termination and Transfer." VNJ, AT&T and Embarq seek to strike *N.J.A.C. 14:10-11.8(d)*, which requires the filing of slamming activity reports. Verizon, AT&T and Embarq also suggested limiting penalties to intentional violations under N.J.A.C. 14:10-11.10.

RESPONSE: Subchapter and section headings have no legal effect. Therefore the suggested change would not change the legal effect of the rules, and would furthermore be inconsistent with the definition of "unauthorized switch" contained in the FCC rules. However, upon review of the comments, the Board agrees that the slamming activity report is not necessary, as the FCC no longer requires this report to be filed. Therefore, subsection (d) and N.J.A.C. 14:10-11 Appendix are deleted upon adoption.

110. COMMENT: Verizon suggests deletion of a portion of *N.J.A.C. 14:10-11.8(d)*1i, which reads: "The submitting TSP shall maintain and preserve records of verification of customer authorization for a minimum period of three years after obtaining such verification. The record retention period provides customers three years within which to file a slamming complaint."

RESPONSE: Records are a vital source in the investigation of slamming complaints. The benefit provided to consumers outweighs the minimal administrative burden created by retaining such records for one year longer than prescribed by Federal statute.

111. COMMENT: Verizon suggests deletion of *N.J.A.C. 14:10-11.8(d)*2 which states: "Where a TSP is selling more than one type of telecommunications service (for example, local exchange, intraLATA toll, and interLATA toll), that TSP shall obtain separate authorization from the customer for each service sold, although the authorizations may be made within the same solicitation. Each authorization shall be verified separately from any other authorizations obtained in the same solicitation. Each authorization shall also be verified in accordance with the verification procedures prescribed in this subchapter."

RESPONSE: This language is in the existing rule and protects the customer by allowing them to understand everything that is being switched separately, which avoids confusion. The rule also protects the TSP because they can serve to establish that a consumer agreed to everything in cases which a consumer claims that they agreed to one service, but not all. Accordingly, the rule will remain unchanged, however, paragraph (d)2 has been relocated to *N.J.A.C 14:10-11.6(j)*.

112. COMMENT: Regarding *N.J.A.C. 14:10-11.8(e)*, AT&T and Embarq commented that the requested report of all slamming complaints received by a TSP be made only once per year and to provide the companies with at least 90 days notice.

RESPONSE: This report is currently only required when there is a request made (see *N.J.A.C. 14:10-11.8(e)*). If the Board was conducting an investigation into a TSP's conduct, the Board must not be limited to requesting this report only once per year. Since TSPs are only required to furnish this report upon request, the Board does not

believe TSPs are overly burdened by providing this report. Therefore, no change has been made on adoption. However, since there is no time frame in the rules as to when the report is due, the Board has proposed an amendment to *N.J.A.C. 14:10-11.8(e)* to require that the report be submitted within 15 days of request. This proposed amendment appears in the Companion Proposal.

113. COMMENT: *N.J.A.C. 14:10-11.9(d)* requires that a TSP freeze apply to each end user regardless of whether the end user is the customer of record. VNJ is unclear about the rule, and believes this revision should not be adopted. Service provided to households or businesses may be used by multiple end users and it is not possible to have a different TSP freeze for each individual user of the same service. VNJ suggests the provision read as follows: "A TSP freeze applies to a particular phone number."

RESPONSE: The Board agrees and will propose an amendment, in the Companion Proposal, to state that the TSP freeze applies to each access line, provided the end user authorizes the freeze. The rule is intended to prevent resellers, or CLECs, from imposing TSP freezes on their customer accounts without the approval of the end user. The CLEC may be the customer of record to the ILEC, but end users should not have a freeze placed on their accounts by their local provider unless the end users expressly indicate that they request a PIC freeze on their own account.

114. COMMENT: *N.J.A.C. 14:10-11.9(e)* imposes penalties where (1) a submitting TSP fails to obtain necessary authorizations and (2) a primary TSP allows a submitting TSP to switch the end user without verification. VNJ argues the Board would penalize two carriers for one single instance of slamming. VNJ strikes this language in it's redline.

RESPONSE: The rules require two separate authorizations, one for imposing or lifting a PIC freeze if the end user has requested one, and one for authorizing a switch. Therefore, two actions are required in order to ensure that consumers are protected from slamming. If not complied with, this would result in two violations. However, the Board does agree that a primary TSP should not be responsible for making sure the submitting TSP has obtained authorization to switch the account. The Board has proposed this amendment in the Companion Proposal.

115. COMMENT: Verizon suggests deletion of a portion of *N.J.A.C. 14:10-11.9(f)*3iii, which states "Written authorization that does not conform with this section is invalid and shall not be used to impose a primary TSP freeze."

RESPONSE: The suggested modifications would be insufficiently protective of customers since a separate authorization is needed to make the switch and another authorization is needed to place a PIC freeze on an account if the end user requested one. An invalid authorization would mean that imposing the freeze is also not authorized.

116. COMMENT: NJCTA commented that in N.J.A.C. 14:10-11.10 the violation categories appear arbitrary. NJCTA contends that the Board classifies certain violations related to slamming and third-party verification, yet it is unclear how penalties will be determined for other types of violations not mentioned in the proposed rules. NJCTA recommends modification of the proposed rules to require the Board to consider a pattern of violations and degree of culpability in assessing penalties against carriers. NJCTA

also commented that market forces are sufficient to deter violations of the slamming rules.

NJCTA further commented that the FCC's slamming rules require compliance with state-enacted verification procedures applicable to intrastate preferred carrier change orders only. The proposed rules, NJCTA commented, should be clarified to state that they only apply to intrastate primary interexchange carrier PIC changes.

RESPONSE: The Board believes the rules as proposed address the issue of culpability with respect to a pattern of violations. See N.J.A.C. 14:10-11.11(b). Further, the rules establish how penalties will be determined at N.J.A.C. 14:10-11.11. Accordingly, these provisions have been adopted as proposed. The comment regarding intrastate primary interexchange carrier PIC changes was mentioned and responded to in Comment 100.

117. COMMENT: VNJ suggested deletion of a portion of N.J.A.C. 14:10-11.10(f), which currently reads, "The Board may investigate, upon its own initiative or upon complaint, any allegation of a violation of this subchapter." Verizon wishes to change this to read "The Board may investigate, upon complaint by a customer, any allegation of a violation of this subchapter."

RESPONSE: It is important not to tie the Board's hands regarding the type of information it receives regarding violations of its rules. A violation is no less damaging to the public if the Board discovers it through sources other than a complaint.

118. COMMENT: Regarding N.J.A.C. 14:10-11.10(a), AT&T and Embarq commented that the rule should add "willful or intentional misconduct" and take out "adhere to a standard of due care." They also wish to remove "There shall be a rebuttable presumption that any violation of this standard is 'willful or intentional.'" The burden of proof shall be upon the submitting or executing TSP to rebut the presumption. They also wish to add, "For purposes of this subchapter, the willful or intentional unauthorized change of more than one service as part of an overall carrier change shall be considered as one violation. Penalties will only be assessed for willful or intentional violations."

Regarding N.J.A.C. 14:10-11.10(b)2, AT&T and Embarq commented that in subparagraph (b)2i, the following should be added "A penalty of at least $ 100.00, but not to exceed $ 7,500." Also, in subparagraph (b)2ii, they wish to add "A penalty of at least $ 200.00, but not to exceed $ 15,000."

RESPONSE: The Board disagrees with the proposed changes of the commenters as they serve to change the meaning and intent of the rule(s). It is up to the company that has committed the slam to rebut the presumption that the action was willful or intentional. The way to rebut the presumption is to prove that a standard of due care was followed (see N.J.A.C. 14:10-11.10(a)). The TSP has control over the TSP transfer process. A failure on the part of the TSP to conform to the standard of due care is an appropriate basis for the finding of civil liability. Regarding N.J.A.C. 14:10-11.10(b), the commenters' suggested language no longer applies because the provisions for a minimum penalty of $ 100.00 have not been adopted.

119. COMMENT: Regarding N.J.A.C. 14:10-11.10(h), AT&T, Embarq, and Verizon suggest deletion of subsection (h), which reads "The remedies provided for in this sub-

chapter are in addition to any other remedies available under any Board order, rule, or finding; and in addition to remedies provided by any other applicable law."

RESPONSE: In accordance with the Board's statutory authority, the Board retains the authority to use any and all remedies at its disposal, and use of one remedy does not limit the Board's authority to apply another.

120. COMMENT: Regarding N.J.A.C. 14:10-11.11, NJCTA commented that the Board should not increase its penalties against providers and that market forces are sufficient to deter violations by CLECs. VNJ commented that the penalty matrix proposed is unnecessary as it prescribes a fixed penalty and deprives the Board of its ability to seek a remedy that is appropriate under the specific circumstance.

The NJCTA urged that the Board refrain from imposing increased penalties on competitive providers and to clarify its rule by eliminating its proposed violation categories. At a minimum, NJCTA recommends that the Board consider, among other things a pattern of violations and the degree of culpability in accessing penalties.

AT&T and Embarq suggest deletion of the penalty matrix.

RESPONSE: The rules as proposed do not increase the Board's existing penalties. The rules do not serve to increase the penalties for a slamming violation. However, in light of the numerous comments regarding the difficulties in understanding the matrix and the categories of violations, the Board has not adopted the matrix at this time. Accordingly, proposed N.J.A.C. 14:10-11.11(a) and (c) through (j) have not been adopted.

121. COMMENT: Regarding N.J.A.C. 14:10-11.11(l), AT&T and Embarq suggested the addition of the following: "The Board shall not undertake to assess any penalty under these rules unless and until the Attorney General joins in such action or commits in writing not to subject the same activities that gave raise to the enforcement action to a separate penalty or action under authority of any law."

NJCTA stated carriers should be afforded a notice and hearing prior to assessment of penalties.

Verizon suggested several changes to N.J.A.C. 14:10-11.11, primarily limiting or decreasing penalty amounts.

In subsection (a), VNJ suggested deletion of "or its designee," as well as "as set forth in (e, g, and i below.)" (Sic) VNJ suggests deletion of subsections (e), (g) and (i). Verizon suggested amending subsection (c) by adding "penalties at its discretion but within the ranges."

Verizon suggested amending subsection (d) by adding "Minor violations may be subject to a penalty up to but not exceeding $ 1,000. Moderate violations may be subject to a penalty up to but not exceeding $ 3,000. Major violations may be subject to a penalty up to but not exceeding $ 5,000."

Verizon wishes to add "All other violations not specifically designated as moderate or major" to paragraph (d)8.

Verizon suggested deletion of the minor violations penalty matrix.

Verizon suggests several changes to subsection (f), one of which is the deletion of the following: "Failure to obtain a separate authorization for each service to be switched."

Verizon suggested deletion of "Any violation not classified as minor or major."

Verizon suggests deletion of subsection (g), which sets forth the penalty ranges for moderate violations.

In subsection (h), Verizon suggested deleting "Failure of the TSP to provide proof of authorization to the Board within thirty days after being notified of an alleged violation, as required under *N.J.A.C. 14:10-11.8*:" and "When purchasing a customer base, the acquiring carrier provides no notice to customers of the transfer; and."

In subsection (j), Verizon suggested deletion of "adjust a penalty determined in accordance with this section within the ranges set forth at (a) through (h) above, on the basis of one or more of the following factors" and added, "consider the following circumstances when determining a penalty."

RESPONSE: Based on many comments, the Board has determined that the matrix is confusing and should be reconsidered and/or revised. Therefore, the Board has not adopted the matrix at this time.

Accordingly, proposed N.J.A.C. 14:10-11.11(a) and (c) through (j) are not adopted.

Regarding NJCTA's comments pertaining to notice and opportunity to be heard during an investigation of an alleged slamming complaint, N.J.A.C. 14:10-11 always provided for a notice of Board Staff's findings regarding a violation before a notice regarding penalties is sent. A notice of penalties is sent when there is an enforcement action being taken. If a TSP disputes Board Staff's finding, a hearing can be requested.

122. COMMENT: Regarding N.J.A.C. 14:10-11, Embarq commented that the rules as proposed are expanded, create unnecessary requirements and allow the Board to assess penalties for nonwillful or intentional infractions and therefore go beyond the Board's authority. Embarq commented that the statute requires notice and opportunity to be heard to make a determination a carrier acted willfully and intentionally, yet the rule delegates to Board Staff the authority to make key statutory determinations and to impose penalties over and above statutory limits. Also, Embarq commented that there is no process in the rules for making a finding of violation, and the rules improperly delegate authority to Board Staff. The rules require TSPs to adhere to a standard of due care but impose a presumption that any violation of this standard is willful or intentional. The standard of care hinges on whether the carrier has failed to comply with anti-slamming rules rather than a determination of willfulness or intention of the carrier relative to the compliance with anti-slamming laws. Embarq commented that the new penalties are not limited to intrastate services. Embarq commented that the Board Staff has discretion to find penalties in excess of the $ 15,000 provided in the statute for a second offense. Further Embarq reads the rule regarding subsequent violations as not expressly limited to a specific access line, such that the penalty is applied only if the alleged second and third offense occurred to a specific access line. For these reasons, Embarq commented the rule does not comply with the statute. AT&T and Embarq jointly commented that the proposed penalties concern offenses that are neither willful nor in-

tentional and serve to permit the Board to impose automatic penalties for unintended and nonsubstantive errors. AT&T characterizes the rules as requiring a due process hearing and a finding that the unauthorized switch by a carrier was done knowingly without the subscriber's consent. AT&T believes that the rules present an unlawful strict liability standard for carrier changes. AT&T seeks that the Board consider the level of good faith or intent on the part of the carrier when a slam is being investigated. AT&T urges the Board not to adopt a stringent liability standard or the penalty matrix proposed since there is no proof the conduct of the carrier making the switch rose to the level of willful intent.

AT&T feels the proposed rules delegate to Board Staff the authority to determine whether a slam has occurred and then set the requisite penalty. AT&T commented that this authority rests with the Board. AT&T also asserted that a penalty matrix with such wide ranges presents a situation of overly broad discretion, and that the matrix should be deleted.

RESPONSE: The penalty amounts in the rules do not exceed the Board's statutory penalty authority. The Board has the authority to assess a penalty for one violation per access line of up to $ 7,500. However, if there is more than one violation on a particular access line, the subsequent violations are not to exceed $ 15,000. Therefore, one violation could result in a penalty equal to $ 7,500, and two violations could result in a penalty equal to $ 22,500 ($ 7,500 for the first violation and $ 15,000 for the second). If there are three violations (the most that can be associated with one access line), the total fine could not exceed $ 37,500, which is comprised of the first violation, which did not exceed $ 7,500, and the second and third violations, which did not exceed $ 15,000 each. Therefore, for one access line, the highest penalty that can be levied against a carrier is $ 37,500. The rules as proposed are consistent with the statutes and do not exceed the statutory limits for slamming violations, which are capped at $ 37,500 for one access line, which incurs three separate violations.

Regarding Embarq and AT&T's comments concerning a willful and intentional standard, a fine may be issued when a customer's service is switched without permission depending upon the circumstances. A carrier can present information to dispute that a slam occurred and that all rules were complied with as written. A carrier may choose to negotiate a settlement, or choose to contest the fine by applying for a formal hearing with the Board. In that instance, at the conclusion of the hearing, it will be determined whether or not the violation occurred.

Regarding Embarq and AT&T's comments on notice and opportunity to be heard during an investigation of an alleged slamming complaint, TSPs are always provided with a notice of Board Staff's findings if there was a violation of the Board's slamming rules before a notice of penalties is sent. This is required under N.J.A.C. 14:10-10 and 11.

The rules permit the Board or its designee to determine whether or not a slam has occurred and may issue a notice indicating that the customer is entitled to absolution from charges incurred as a result of a slam. However, upon adoption, N.J.A.C. 14:10-11.10(b) and 14:10-11.11(b) have been changed to indicate that the Board conducts the hearing and final determination regarding a finding of slamming and associated reme-

dies as required by statute. Regarding the penalty matrix, as stated previously, the matrix has not been adopted.

123. COMMENT: NJCTA recommended that the Board clarify its proposed amendments to ensure that they do not exceed the scope of the Board's authority over intrastate telecommunications and thereby impinge on the FCC's plenary authority.

RESPONSE; The rules do not apply to entities and services that are not under the Board's jurisdiction.

124. COMMENT: NJCTA commented that this proceeding is not the appropriate forum to determine whether ILECs should be granted additional regulatory relief regarding pricing and the provisioning of wholesale services as suggested by some ILEC commenters at the Board's public hearing in this matter.

RESPONSE: ILEC services are not under review at this time.

125. COMMENT: Rate Counsel commented that the Board should add a section precluding companies from collecting interest on disputed charges for wholesale and retail customers, and requiring that carriers should provide a refund to customers whenever a tariff is successfully challenged. Further, Rate Counsel suggested that the rules state "All petitions and tariffs must be filed by New Jersey Counsel."

RESPONSE: This request is beyond the scope of this rule. Bills in dispute are governed not by this chapter but by *N.J.A.C. 14:3*, All Utilities. Tariffs and petitions are governed by *N.J.A.C. 14:1*.

126. COMMENT: Rate Counsel submitted general comments regarding: net neutrality, consumers' access to internet content of their choice, consumers' applications and connections of choice; consumers' entitlement to competition among network providers, application and service providers and content providers. Rate Counsel also commented that structural separation and affiliate transaction requirements should be included in the rules, and that all reports required to be provided to the Board under Chapter 10 should be filed with Rate Counsel.

RESPONSE: These comments address issues that are not within the scope of these rules. With respect to reports, where appropriate, the rules provide that Rate Counsel receives them.

Federal Standards Analysis

Executive Order No. 27 (1994) and *N.J.S.A. 52:14B-22* through 24 require State agencies that adopt, readopt or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis.

The Federal rules that correspond to *N.J.A.C. 14:10* are promulgated and implemented by the FCC. The Board has incorporated several FCC rules by reference in *N.J.A.C. 14:10*, including the FCC Uniform System of Accounts for Telephone Companies, 47 CFR Part 32.

The adopted new non-financial reporting requirements adopted are more stringent than the FCC's reporting requirements at 47 CFR Part 43. The new requirements enable the Board to evaluate the success of its policies and local competition for both

residential and business customers on a geographic basis over time. Because of the high population density and small geographic area of New Jersey, the ability to track telecommunications use in detail is important to enable the Board to further refine its policies to ensure that it can effectively carry out its legislative mandate.

The readopted provisions relating to adult-oriented information access telephone service are in some ways more stringent than those of the FCC. At 47 CFR Part 64, the FCC requires that local exchange carriers offer to their subscribers an option to block access to services offered on the 900 access code. Pursuant to *N.J.S.A. 48:17-22*, the Board in N.J.A.C. 14:10-7 requires blocking not only of 900 number services, but also of 700 NXX adult-oriented lines. Unblocked access to adult-oriented 700 NXX and 900 NXX may be obtained by written authorization of the subscriber. Further, customers have the ability to block all 900 calls, consistent with 47 CFR Part 64.

The FCC anti-slamming regulations are found at *47 CFR §§64.1100* et seq. The rules readopted at N.J.A.C. 14:10-11 contain the substance of the FCC rules. The rules also include new requirements that a TSP submit a change order within 60 days after obtaining a verified authorization, and that the date of the verification be noted on the change order. The FCC does not impose these requirements, and therefore these provisions are more stringent than the Federal ones. The Board believes, based on its experience with change orders, that this additional stringency is necessary to protect consumers.

N.J.A.C. 14:10-11 includes a verification mechanism, which requires that when a consumer initiates a change of telecommunications service provider, the new TSP must verify the change according to the process set forth in the rules. This confirmation procedure is designed to safeguard the rights of the consumer.

In addition to incorporating the FCC's letter of agency requirements from *47 CFR 64.1130*, the rules require that the TSP notify consumers of the rates, terms and conditions of service and advise them of the amount of the maximum charge to change a TSP.

The FCC's rules address PIC freezes at *47 CFR 64.1190*. The Board rules are consistent with FCC rules, with the addition that the Board rules specify that end users must initiate or lift a PIC freeze. The Board's rules require that all TSPs responsible for the implementation of changes of primary TSPs adopt a primary TSP freeze plan which provides for the imposition and lifting of freezes at no cost to the customer. The Board notes that the State's local exchange carriers already provide a primary TSP freeze at no charge to customers when requested. These consumer protection features continue the Board's policy of protecting the consumer at minimal cost to the TSP. The public policy of consumer protection outweighs the minimal cost to the TSP.

Summary of Agency-Initiated Changes:

1. *N.J.A.C. 14:10-1.1(c)* is changed to reflect the citation of the statute to provide the location of the provisions of the statute, which set forth the obligations for carriers with respect to extensions of service.

2. At *N.J.A.C. 14:10-2.3*, "to the customer's bill," as it pertains to adjustments or refunds being made, is being deleted. This language inadvertently appeared in the proposal as existing rule text, but it was not and therefore, the Board is removing the text from the section.

3. In N.J.A.C. 14:10-4.1(a), General provisions for Non-Financial Reporting Requirements, upon adoption, the term resellers was removed as it was misplaced in that section.

4. The reference to UNE and UNE Platform in N.J.A.C. 14:10-4.2(b)4 and 5 and (d)2 is removed as the UNE Platform is no longer available, and the term "with switching" was added to paragraph (b)5 to replace the term UNE Platform to be more accurate. A further change to paragraph (d)1 adds "and" at the end of the paragraph as the language of subsection (d) requires all of the elements of paragraph (d)1 and 2 to be followed.

5. At *N.J.A.C. 14:10-6.4(b)*, the rule text being adopted, which is the original "pre-proposal" rule text, contains a cross-reference to "(h) and (i) above." This crossreference is being changed upon adoption to "(a) above" as the maximum rates are now described in *N.J.A.C. 14:10-6.4(a)* as subsections (h) and (i) no longer exist as codified subsections of *N.J.A.C. 14:10-6.4*.

6. At *N.J.A.C. 14:10-7.3(f)*, which is a provision requiring certain information in to be included in telephone directories, a cross reference to N.J.A.C. 14:10-1A.5 is added, to merely cross-reference the location of this requirement elsewhere in the rules, and does not add a new requirement.

7. *N.J.A.C. 14:10-10.2(c)* is revised to update the citation to *N.J.A.C. 14:10-10.5(c)* to accurately reflect that *N.J.A.C. 14:10-10.2(b)* contains the provisions that resale customers must comply with.

8. *N.J.A.C. 14:10-11.1(a)* has been modified to reflect the proper citation. Since there is no *N.J.A.C. 14:10*:1-1.2, the extra ":1" reflected in the proposal has been removed, and the proper citation is reflected, *N.J.A.C. 14:10-1.2*.

9. In *N.J.A.C. 14:10-11.2*, the definition of "executing TSP" has been modified to remove the reference to "or for the execution of unauthorized TSP switches" to more accurately reflect the carriers covered under this section.

10. In *N.J.A.C. 14:10-11.8(e)*, the language referencing the slamming activity report was not adopted, as subsection (d) is not adopted and contains this report information. Therefore, the statement would no longer be accurate if it contained the statement.

11. In *N.J.A.C. 14:10-11.9*, the section concerning TSP freezes was modified to remove the phrase "over and above the requirement for verified authorization for a TSP switch" in order to avoid confusion in understanding the intent of the provision.

12. In N.J.A.C. 14:10-11.10(b)2, the cross-reference to N.J.A.C. 14:10-9 has been eliminated because the cross-reference is no longer necessary. The civil penalty ranges are set forth in N.J.A.C. 14:10-11.10.

13. In *N.J.AC. 14:10-12.1* and *12.3* and Appendix B, changes are made to update cross references to other rules that have been recodified.

Full text of the readopted rules can be found in the New Jersey Administrative Code at *N.J.A.C. 14:10*.

Full text of the adopted amendments, recodifications and new rules follows (additions to the proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 10
TELECOMMUNICATIONS

SUBCHAPTER 1. GENERAL PROVISIONS

14:10-1.1 Applicability

(a) This chapter applies to the following:

1. A public utility, as defined at N.J.S.A. 48:2-13a, that operates a telephone system;

2. A telecommunications carrier, as defined at *N.J.A.C. 14:10-1.2*;

3. An aggregator;

4. Providers of adult-oriented information access telephone service; and

5. Any person that is subject to the numbering guidelines of the FCC. N.J.A.C. 14:10-3, Number Reclamation.

(b) This chapter applies only to intrastate telecommunications service. Interstate telecommunications service is governed by the Federal Communications Commission.

(c) *[All extensions]* ***Extensions*** of telephone service, including service connections, shall be governed by the provisions for extensions set forth at *N.J.A.C. 14:3-8* ***and *N.J.S.A. 48:5A-28****.

(d) The act of any person, as defined at *N.J.A.C. 14:10-1.2*, acting as an agent *[or representative]* of an entity that is subject to this chapter, shall be deemed to be the act of that entity.

14:10-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this chapter can be found at *N.J.A.C. 14:3-1.1*.

"Access code" means a sequence of numbers that, when dialed, permits a telephone caller to obtain a connection to the carrier associated with that code. All access codes take the form of 10XXX or 101XXXX, with X meaning any numerical value from 0 to 9.

"Adult-oriented information-access telephone service" means a telephone service to which a customer can subscribe, through which, for a charge, sexually explicit messages are furnished to a caller.

"Agent" means any person, as defined at *N.J.A.C. 14:3-1.1*, including, but not limited to, employees, servants or marketers, acting on behalf of another person, in order to bring about, modify, affect performance of, or terminate obligations between the other person and a third party.

"Aggregator" means a person, as defined at *N.J.A.C. 14:3-1.1*, that, in the ordinary course of its business, makes PPTS, as defined in this section, available to the public or to transient users, and that provides operator-assisted services through either automated store and forward technology or through an operator service provider. This term includes but is not limited to hotels, motels, hospitals, and universities.

"Alternate operator service provider" or "AOS" means a carrier that leases lines from a LEC and/or an IXC, and uses the leased lines and its own operators to provide operator-assisted services for intrastate calls. An AOS is a type of OSP, as defined in this section.

"Automated intervention" means automated store and forward technology, through which the placement or charging of a telephone call is provided without human involvement in each call or charge.

["Basic service" means up to three lines of dial tone service provided to a customer with no lines in service.]

"Branding" means verbal identification of the OSP prior to connection of a call and starting the timing of the call for charging purposes.

"Carrier" or "telecommunications carrier" means a telephone utility, including an ILEC, an IXC, or a CLEC, and/or a reseller, as those terms are defined in this section.

"Clear" means, in regards to a problem or request for assistance with telecommunications service, to resolve the problem or satisfy the request.

"Competitive local exchange carrier" (CLEC) means a local exchange telecommunications carrier, other than an incumbent local exchange carrier, to which the Board has granted authority to provide telecommunications services.

"Competitive telecommunications services" means any telecommunications service that the Board has determined to be competitive pursuant to *N.J.S.A. 48:2-21.19*.

"Correctional facility" means an institution, including a prison, jail or detention center, operated by a governmental entity, which is dedicated to the treatment, rehabilitation or confinement of criminal offenders.

"Customer provided pay telephone service" or "CPPTS" means telephone service furnished to the public, for a per-use fee, by *[a private entity]* ***an individual, business or partnership or corporation*** that is a reseller.

"Customer provided pay telephone service provider" or "CPPTS provider" means the customer of record that purchases a CPPTS line and is responsible for the pay telephone instrument.

"Exchange access" means the provision of exchange services for the purpose of originating or terminating interexchange telecommunications. Such services are provided by facilities in an exchange area for the transmission, switching or routing of interexchange telecommunications that originate or terminate within the exchange area.

"FCC" means the Federal Communications Commission, which is a United States government agency.

"Facilities-based carrier" means a carrier or TSP that owns some portions of the telephone *[distribution]* system, and that uses its own facilities for some portion of its provision of telecommunications service. Examples of facilities are local loop, transport and switches.

"Incumbent local exchange carrier" (ILEC) means a facilities-based telecommunications carrier with a Board-approved tariff in effect prior to February 8, 1996, which authorizes the carrier to provide telecommunications services in New Jersey. An ILEC may also operate as an OSP.

"Information provider" means an entity that uses LEC or IXC telecommunications services to provide information to callers for a fee, for example, adult-oriented information-access telephone services to provide sexually explicit messages.

"Interexchange carrier" or "IXC" means a carrier, other than a local exchange carrier, that is authorized by the Board to provide long-distance telecommunications services.

"InterLATA toll call" means a toll call that originates in one LATA and terminates in another.

"IntraLATA toll call" means a toll call that originates and terminates in a single LATA.

"Intrastate telecommunications service" means a telecommunications service which remains within the boundaries of New Jersey, regardless of the specific routing of the call.

"Local Access Transport Area" or "LATA" means a geographic area, outside of which a Bell Operating Company does not carry telephone calls. (See *United States v. Western Electric, 569 F. Supp. 990 (D.D.C. 1983).)*

"Local call" means a call within a local calling area, as defined in this section.

"Local calling area" is a group of exchange areas in which an end-user can call without an extra fee, over and above the monthly local calling fee. The local calling area is delineated in *[a LEC's]* ***an ILEC's*** tariff. A local calling area is a subset of a LATA.

"Local exchange carrier" or "LEC" means an ILEC or a CLEC, as defined in this section.

"Operator-assisted services" means services that assist callers in placing or charging a telephone call, either through live intervention or automated intervention.

"Operator service provider" or "OSP" means a facilities-based telecommunications carrier that provides operator-assisted services.

"Presubscribed OSP" means an OSP that a customer has chosen to provide operator assisted services for intrastate calls from a telephone that the customer owns, so that an end-user can place a call from the telephone using the OSP, without having to dial an access code.

"Primary interexchange carrier" or "PIC" means an interexchange carrier, as defined in this section, that a customer has chosen to provide interexchange service, so that the customer can place a toll call from its landline using the PIC without having to dial an access code.

"Public pay telephone service" or "PPTS" means telephone service provided in an area used by the transient public, for public use for a per-use fee. This term includes customer provided pay telephone service, as defined in this section.

"Public pay telephone service provider" or "PPTS provider" means a person, as defined at *N.J.A.C. 14:3-1.1*, that provides PPTS.

["Rate" means the total charge to a caller for the completion of a call utilizing operator-assisted service, including all surcharges, premises-imposed fees and other charges, collected from the caller.]

"Reseller" means a non facilities-based carrier that leases lines or other physical infrastructure from a facilities-based carrier for use in providing telecommunications services to customers.

"Retail customer" is an end user that purchases telecommunications services for their own use and not for resale.

"Slamming" means an unauthorized change of a customer's primary interexchange carrier or the failure to execute an authorized change in a customer's primary interexchange carrier.

"Splashing" means the practice of a carrier calculating the charge for a long distance call initiated at a public pay telephone based on the location from which the long distance carrier picks up the call, rather than on the call's point of origin. Splashing typically occurs when a PPTS call is routed to a call center, and the carrier picks up the call from the call center. Then the carrier charges the caller as if the call originated at the call center, rather than at the public pay telephone. If the call center is located at a substantial distance from the PPTS where the call originated, the carrier's charges could be substantially increased by the use of the call center rather than the initiation point of the call.

"Subscriber" means a *[telephone]* ***telecommunications service*** customer of a LEC or IXC.

"Telecommunications" means the transmission, between or among points specified by the user, or information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

"Telecommunications service provider" or "TSP" has the same meaning as "carrier," as defined in this section.

"Telephone utility" means a public utility, as defined at *N.J.A.C. 14:3-1.1*, as well as any person, as defined at *N.J.A.C. 14:3-1.1*, that provides telecommunications services to the public for a fee.

"Toll call" means a call that terminates outside the local calling area in which the call originated. The local calling area is defined in the *[LEC's]* ***ILEC's*** tariffs filed with and approved by the Board.

"Toll service" means the provision of toll calls.

"Type of service" means the category of telephone services provided to customers by *[local exchange or interexchange]* ***telecommunications*** carriers. Examples of such types of service include, but are not limited to, toll, wide area telephone service, toll free, operator services, channel services, virtual private networks and optional services.

"Wholesale customer" means a person that purchases telecommunications services for resale to others.

*[14:10-1.3 Recordkeeping; general provisions

(a) Notwithstanding *N.J.A.C. 14:3*, all records that a telecommunications carrier is required to keep under this chapter shall be preserved for the following minimum periods, as applicable:

1. Eighteen months if the record relates to wholesale customers;

2. Six years if the record is necessary to ensure compliance with requirements for back billing of retail customers at *N.J.A.C. 14:10-2.2*;

3. Five years if the record is required under N.J.A.C. 14:10-1A.11, service quality reporting; and

4. Three years if the record is of a verification of a TSP switch authorization in accordance with N.J.A.C. 14:10-11.

(b) Each regulated entity shall make all records required under this chapter available to Board staff upon request.

(c) Each telephone utility or telecommunications carrier that maintains a commercial website shall provide the Board with a link to its website. The site shall include the carrier's tariff and tariff revisions as filed with the Board.

(d) Board staff may investigate a carrier's compliance with this chapter and/or with its tariff at any time, and may suspend a tariff if it finds noncompliance with any Board order or rule, or any other applicable law.]*

14:10-1.3 (Reserved)

SUBCHAPTER 1A. TELEPHONE UTILITIES

14:10-1A.1 Applicability

This subchapter applies to telephone utilities, as defined at *N.J.A.C. 14:10-1.2*.

14:10-1A.2 General provisions

(a) In addition to the requirements in this chapter, telephone utilities are subject to all applicable requirements of the Board's rules for all utilities at *N.J.A.C. 14:3*.

[(b) A telephone utility shall make available on its website, maps showing exchange, base rate area and zone boundaries (if applicable). The maps shall be of sufficient size and detail so that most customer locations can be determined and mileage or zone charges quoted. The telephone utility shall provide the maps to Board staff at the Board's offices upon request.]

(b) (Reserved)

(c) A telephone utility shall, when requested, furnish appropriate information concerning location of underground facilities, as necessary to comply with the Board's rules for protection of underground facilities at *N.J.A.C. 14:2*.

14:10-1A.3 Rate and special charges information

(a) Upon the request of any customer or applicant, each telephone utility shall provide an explanation of the rates, charges and provisions applicable to the service furnished or available to such customer or applicant, and shall take reasonable steps to provide any information and assistance necessary to enable the customer or applicant to obtain the most economical communications service conforming to the needs of such customer or applicant. *[(b)]* The customer or applicant shall be advised as to alternative services available to meet *[their]* ***the*** communications requirements ***of said customer or applicant*** in accordance with N.J.A.C. 14:11-7.4. Such information may include printed explanations of alternative services and rates. *[(c)]* When requested, the telephone utility shall notify the customer or applicant of the minimum installation and service connection charge to be applied to the bill of such customer or applicant prior to undertaking any action and shall inform the customer or applicant of the estimated initial bill for local service.

[(d) If] ***(b) The customer shall be provided with an estimate of the charges where*** special charges, not specifically set forth in a telephone utility's tariff, are levied on the basis of actual cost for such items as extraordinary construction, maintenance or replacement costs or expenses, overtime work at the customer's request and special installations, equipment and assemblies*[, the telephone utility shall provide the customer with an estimate of these charges]* ***for which the tariff does not prescribe a rate***. This estimate need not be furnished if the customer specifically requests that the special equipment and services be provided before the charges for those services and equipment are available.

14:10-1A.4 (No change in text.)

14:10-1A.5 Directories

(a) (No change.)

(b) Upon *[publication, the telephone utility shall distribute]* ***issuance,*** a copy of each directory ***shall be distributed*** to all customers within the service area covered by the directory and *[shall furnish two copies]* ***a copy*** of each directory ***shall be furnished*** to the *[Board's Secretary]* ***board***.

(c)-(d) (No change.)

(e) The opening pages of the directory shall contain a conspicuous notice advising customers that should the *[telephone utility]* ***company*** fail to satisfactorily resolve telephone service or billing problems, customers may refer their problems to the board. The address*[, customer service telephone number and the website for]* ***of*** the *[Board]* ***board*** shall be shown.

(f) The directory shall contain instructions concerning placing local and long distance calls, calls to repair and directory assistance services, and location and telephone numbers of telephone *[utility]* ***company*** business offices as may be appropriate to the area served by the directory. Rate schedules or representative rates for toll calls shall be included.

(g) (No change.)

(h) Each telephone *[utility]* ***company*** shall list its customers in the directory assistance directory as necessary for the directory assistance operators to provide the requested telephone numbers (except those not published at customer request) based on customer name and location to minimize "not found" numbers.

(i)-(k) (No change.)

(l) The informational consumer pages in the front of each local telephone directory shall include information regarding restrictions on access to adult-oriented services, in accordance with N.J.A.C. 14:10-7.*

14:10-1A.6 Held applications

(a) *[When a]* ***During such period of time as the*** telephone utility may not be able to supply *[basic]* ***regular telephone*** service to an applicant *[for service]* within five working days or to upgrade an existing customer within 30 days or to provide special communication service within a reasonable period after the date *[the]* applicant desires service, the telephone utility shall *[hold the application, and shall]* keep a record by business office showing the name and address of each applicant for service, the date of application, the date service was desired, *[and the]* class and grade of service applied for, together with the reason for the inability to provide the new or higher grade service to the applicant.

(b) When, because of shortage of facilities, a telephone utility is unable to supply *[basic service]* ***main telephone service*** on dates requested by applicants, priority shall be given to furnishing those services which are essential to public health and safety. In cases of prolonged shortage or other emergency, the Board may require establishment of a priority plan subject to *[Board staff's]* ***its*** approval for *[fulfilling held applications]* ***clearing held orders***, and may request periodic reports concerning the progress being made.

(c) (No change.)

14:10-1A.7 Customer complaints and trouble reports

(a)-(b) (No change.)

(c) Except when unavoidable, *[each telephone utility shall keep]* all commitments to customers ***shall be kept***. Every reasonable effort shall be made to notify customers of unavoidable changes. If unusual repairs are required, or other factors preclude *[clearing]* ***cleaning*** of reported trouble promptly, reasonable efforts shall be made to notify affected customers.

14:10-1A.8 Public Telephone

In each exchange the telephone utility shall have at least one *[pay]* ***coin*** telephone available to the public at all hours, prominently located and properly maintained, equipped with dialing instructions, and lighted at night. *[Public telephones are also subject to N.J.A.C. 14:10-9.]*

14:10-1A.9 Adequacy of service

(a) Each telephone utility shall make traffic studies and maintain records as *[necessary]* ***required*** to determine *[whether its]* ***that sufficient*** equipment and ***an adequate*** operating force are *[sufficient to provide adequate service]* ***provided*** at all times.

(b) Each telephone utility shall employ recognized *[industry best practices]* ***procedures*** to determine the adequacy of service *[capacity]* provided for customers.

(c) Where service *[capacity]* is found to be inadequate, the telephone utility shall immediately institute corrective measures to return that service to an adequate condition.

(d) (No change.)

[(e) A telephone utility shall not connect more customers on any line than are contemplated under the grade of service for which the customers on the line are charged.]

14:10-1A.10 Service quality standards

*[(a) This section establishes service quality standards that a telephone utility shall meet. These standards apply without exception, regardless of seasonality, weather, work stoppage, accident, sabotage, acts of God or nature, or any other reason.

(b) A telephone utility shall meet the following service quality standards regarding installations of service:]*

(a) These standards establish service levels, which should generally be provided by a telephone utility. Failure to attain these levels does not by itself indicate poor service and the liability of the telephone utility to its customers or other persons using its facilities for any such failure shall be governed by the applicable provisions of its tariff. Each telephone utility shall make measurements to determine the level of service for each item included in these standards. Each telephone utility shall provide the Board or its staff with the measurements and summaries thereof for any of the items included herein on request of the Board or its staff. Records of these measurements and summaries shall be retained by the utility as specified by the Board and monthly reports on all service measurements may be required by the Board. When a utility fails to meet any of the minimum service levels listed below in a reporting entity for three consecutive months the service data for the standard not met in that entity shall be reported to the Board.

(b) The following are the minimum service levels referred to in (a) above:

1. Installation of service:

[1.] ***i.*** *[Eighty-eight]* ***Seventy-five*** percent of *[basic]* ***regular*** service installations shall be completed within five working days *[after the utility receives the request for service,]* unless a later date is requested by the applicant***. The interval commences with the receipt of the application.***;

[2.] ***ii.*** *[Ninety-six]* ***Eighty-eight*** percent of the commitments made to customers***, with the exception of customer-caused delays,*** as to the date of installation of *[basic]* ***regular*** service***,*** shall be met*[, unless the customer causes a delay; and]* ***.***

[3.] ***iii.*** *[An]* ***A regrade request shall be filled no later than 30 days after the customer has made*** application for *[a regrade (that is, a change to]* a different grade of service*[) shall be filled within 30 days after the utility receives the regrade request,]* except where the customer requests a later date. In the event the telephone utility is unable to *[meet this deadline, the utility shall notify]* ***so fill such an order,*** the customer *[of]* ***will be advised and furnished*** the date or approximate date the order will be filled.

[(c)] ***2.*** *[A telephone utility shall meet the following requirements regarding operator]* ***Operator*** handled calls: ***Each telephone utility shall maintain adequate personnel to provide an average operator answering performance as follows, on a monthly basis:***

[1.] ***i.*** Eighty-*[eight]****five*** percent of repair service calls *[that the telephone utility receives]* shall be answered within 20 seconds*[;]* ***or equivalent.***

[2.] ***ii.*** Eighty-five percent of toll assistance operator calls *[(that is, toll calls assisted by an operator)]* shall be answered within 10 seconds*[;]****or equivalent.***

[3.] ***iii.*** Seventy-eight percent of directory assistance calls shall be answered within 10 seconds*[; and]* ***or equivalent.***

[4.] ***iv.*** *[Eighty-three percent of calls to the utility's business office shall be answered within 20 seconds. For the purposes of this section, an]* ***An*** "answer" shall mean that the operator or representative is ready to render assistance and/or ready to accept the information necessary to process the call. An acknowledgment that the customer is waiting on the line shall not constitute an "answer."

[(d)] ***3.*** *[A telephone utility shall]* ***Dial service: Sufficient central office capacity and equipment shall be provided to*** meet the following requirements *[regarding dial service, measured as Statewide monthly averages]*:

[1.] ***i.*** Ninety-*[eight]* ***five*** percent of dialed local calls shall be completed without the caller encountering an all trunk busy or equipment irregularity*[;]*.*

[2.] ***ii.*** Ninety-five percent of originating direct ***distance dialing*** *[-dialed toll]* calls shall reach the toll network without experiencing blockage or failure*[; and]*.*

[3. Ninety-eight percent of switching offices shall supply dial tone within three seconds.]

[(e)] ***4.*** *[Each telephone utility shall ensure that its Statewide]* ***Customer trouble reports: The*** average rate of customer trouble reports *[to the utility]* shall not *[exceed eight complaints]* ***be in excess of 8.0*** per 100 *[lines]* ***telephones*** per month.

*[(f) Each telephone utility shall ensure that it meets the following requirements for clearing trouble reports:

1. Seventy-five percent of out of service trouble reports shall be cleared within 24 hours after the utility receives the report; and

2. Eighty percent of commitments negotiated with customers to clear troubles shall be met.]*

[(g)] ***5. Transmission requirements:*** All customer loops shall meet the *[industry best practices for]* resistance *[and]* ***design standards and trunk facilities shall conform to the*** transmission design ***factors required for meeting the objectives of direct distance dialing***.

(c) The following refer to reports and records required in (a) above and the standards set forth in (b) above:

1. Record keeping and reporting are to be in accordance with the following table.

Service Measure	Reporting Unit and Minimum Reporting Size
Held Primary Service Orders.	**Plant Installation District or Business Office**
Installation Commitments	**Plant Installation District or Business Office**
Held Regrade Service Orders.	**Plant Installation District or Business Office**
Toll Assistance Operator Answering Time	**Traffic Office handling toll assistance calls--average business day call volume of 2,000 or more.**
Directory Assistance Operator Answering Time	**Traffic Office handling directory assistance calls--average business day call volume of 2,000 or more.**
Dialed Local Calls	**Central Office entity**
Direct Distance Dialing.	**Toll Recording Center or Area**
Customer Trouble Reports	**Plant Maintenance Center -- Central Office under 1,000 lines need not be included in performance reports.***

[(h) Customer complaints to the Board concerning a telephone utility's service shall not exceed eight complaints per 10,000 lines per month, Statewide.]

14:10-1A.11 Service quality reporting

(a) Each telephone utility shall take measurements of its performance in relation to the standards in N.J.A.C. 14:10-1A.10, and shall compile summaries of the measurements.

*[(b) Each telephone utility shall retain records of the measurements and summaries required under this section for five years, and shall provide the measurements and summaries to Board staff as follows:

1. Upon request of Board staff;

2. In a quarterly report; and

3. If a telephone utility fails to meet a service standard for three consecutive months, in accordance with (h) and (i) below.]*

(b) (Reserved)

(c) Each telephone utility shall report its performance in relation to these standards on a monthly average (arithmetic mean) basis.

(d) For the purpose of reports submitted under this section, each telephone utility shall provide Statewide totals of its performance measurements relating to all quality service standards set forth at N.J.A.C. 14:10-1A.10.

*[(e) In addition to the Statewide totals required under (d) above, each telephone utility shall sort and/or aggregate its performance measurements regarding the following service quality standards by the applicable reporting unit described below:

1. The additional reporting unit for measurements relating to the standards for installation of service under N.J.A.C. 14:10-1A.10(b), and for trouble reports under N.J.A.C. 14:10-1A.10(e) and (f), shall be the geographic area for which a second level manager in charge of installation and maintenance is responsible. For the purpose of this section, a second level manager is a person supervising one or more first level managers, where first level managers are supervisors of crews actually performing work on telephone physical plant;

2. The additional reporting unit for measurements relating to the standards for operator handled calls at N.J.A.C. 14:10-1A.10(c)1 through 3 shall be the call center. The reporting unit for measurements relating to the standards for operator handled calls at N.J.A.C. 14:10-1A.10(c)4 shall be the telephone utility's business office; and

3. The additional reporting unit for measurements relating to the standards for dial service at N.J.A.C. 14:10-1A.10(d) shall be the geographic area for which a second level manager in charge of switching is responsible.]*

(e) (Reserved)

(f) All reports submitted under this section shall set forth the following:

1. Reporting unit name, and further identification if name does not convey geographic location;

2. Service quality standard being measured;

3. Results of measurements, and summaries of the results; and

4. Months being reported on.

(g) If any service quality standard set forth in this subchapter has not been met, the report shall include, in addition to the information required in (f) above, the following information:

1. The cause of performance at the reported level;

2. If the standard not met involved an installation commitment or customer trouble report, the specific reporting units affected;

3. Corrective action taken by the utility; and

4. Completion date, or expected completion date, of the corrective action.

*[(h) If a telephone utility fails to meet one or more service quality standards for three consecutive months, the telephone utility shall submit to the Board the measurements and summaries required for that service quality standard. The utility shall submit this information without the need for a request from the Board. The submittal shall address all of the standards not met in that reporting entity during the three consecutive months.

(i) The submittal required under (h) above shall be made no later than five calendar days after the end of the third consecutive month of noncompliance. Failure to submit, as required by (h) above, shall be a violation. It shall not be a defense to Board enforcement action that the Board did not request the telephone utility to submit the information.]*

14:10-1A.12 Measuring devices

(a) *[This section governs the]* ***When*** mechanical and/or electronic measuring and *[recordkeeping]* ***record keeping*** devices ***are*** used at *[a]* ***the*** telephone utility's premises in connection with telecommunication service*[.]* ***, the measured data and related customer records from which the customer's bills are prepared shall show:***

1. Identifying number or means to determine readily the customer's name, address and service classification;

2. Measuring device readings;

3. Date of reading;

4. Multiplier or constant, if used.*

(b) As nearly as practicable, measuring devices *[covered by this section]* shall be read at intervals *[that]* ***to*** correspond to customer billing periods.

(c) All measuring and/or *[recordkeeping]* ***record keeping*** devices used to record data and prepare customers' bills shall be in good mechanical and electrical condition, *[shall accurately count the item being measured, shall]* be accurately read and shall not involve approximations. ***All such devices shall accurately perform the following:***

1. For message rate service, the device shall accumulate the number of message units used.

2. For toll service, when in addition to counting the calls, it is necessary to time the calls, the device shall show the number of calls and the chargeable time involved in each call.

3. Where the measuring equipment provides coded information that is used to automatically prepare customer bills, accurate interpretation of such coded information is required.*

[(d) A measuring and/or recordkeeping device shall display measurements in the categories and formats required to enable Board staff to easily evaluate the utility's compliance with this chapter, and in particular with the service quality standards at N.J.A.C. 14:10-1A.10.]

14:10-1A.13 Inspections, tests and maintenance

(a) (No change.)

(b) The *[telephone utility shall monitor the]* actual transmission performance of the telephone utility's system*[, and shall ensure that the utility is in compliance with this chapter.]* ***shall be monitored in order to determine if the established objectives and operating requirements are met.*** This monitoring function *[shall consist]* ***consists*** of circuit order tests prior to placing trunks in service, routine periodic trunk maintenance tests, tests of actual switched trunk connections, periodic noise tests of a sample of customer loops in each exchange, and special transmission surveys of the system.

(c) (No change.)

(d) Each telephone utility shall maintain or have access to the necessary facilities, instruments, and equipment for testing its measuring and record keeping equipment and shall adopt appropriate practices for the periodic testing of such equipment.

[(d) Each telephone utility shall keep a] ***(e) A*** record of all measuring device tests and adjustments, and data sufficient to allow checking of the results ***shall be recorded***. Such record shall include the identifying number of the device, its type, the data and kind of test, and the results of each test.

[(e) Each telephone utility shall perform regular maintenance,] ***(f) Maintenance shall include*** keeping all plant and equipment in a good state of repair consistent with safety and adequate service performance. Broken, damaged, or deteriorated parts which are no longer serviceable shall be repaired or replaced. Adjustable apparatus and equipment shall be readjusted as necessary when found by preventive routines or fault location tests to be in unsatisfactory operating condition. Electrical faults, such as leakage or poor insulation, noise induction, cross-talk or poor transmission characteristics, shall be corrected to the extent practicable.

***(g) A telephone utility shall not connect more customers on any line than are contemplated under the grade of service for which the customers on such line are charged.**

(h) Telephone utilities shall, when requested, furnish appropriate information concerning location of underground facilities, in order to prevent any interruption of service to telephone customers. Nothing in this rule is intended to affect the responsibility, liability, or legal rights of any party under applicable laws or statutes.*

14:10-1A.14 Prevention and reporting of service interruptions

(a) Each telephone utility shall take all appropriate measures to minimize service interruptions. Each telephone utility shall make provisions to meet emergencies resulting from failure of power, sudden and prolonged increases in traffic, absences of employees or from fire, storm, natural disasters, attacks or similar contingencies. Each telephone utility shall inform its employees as to procedures to be followed in the event of such contingencies in order to prevent or mitigate interruption or impairment of service.

(b) Each central office, and each remote central office that carries inter-community calls without routing them to the main central office, shall contain sufficient battery reserve to keep the office operational until auxiliary power can be placed into service.

(c) In exchanges exceeding 5,000 lines, the telephone utility shall install a source of permanent auxiliary power.

*[(d) A utility shall inform Board staff immediately, by telephone at a telephone number posted for the purpose on the Board's website, of any service interruption. The utility contact person shall:

1. Explain the cause of the service interruption;

2. Describe the measures the utility is taking to remedy the problem;

3. Provide Board staff with the telephone number of a utility contact that Board staff can reach at all times in order to monitor the situation; and

4. Keep Board staff apprised of the situation, and especially of any changes in the situation, through telephone contact hours, until all customers are back in service.]*

(d) (Reserved)

(e) Each utility shall submit to Board staff all reports submitted to the FCC in accordance with 47 CFR Part 63, Notification of service outage.

14:10-1A.15 Construction

(a) *[Each telephone utility shall ensure that all of its plant and facilities are]* ***Telephone plant shall be*** designed, constructed, maintained, and operated in accordance with provisions of the current National Electrical Safety Code, the National Electrical Code***, and such other appropriate regulations as may be prescribed***.

(b) Telephone utilities shall not provide switching service to lines or facilities that do not meet ***standard*** technical *[best management practices (BMPs) for the industry, including the input/output criteria of the regional Bell operating company and the telephone utility supplying switching service. Each telephone utility]* ***criteria and*** shall eliminate ***nonconforming*** switching services *[that do not conform to these practices]*.

14:10-1A.16 Adoption by reference of the Uniform System of Accounts

All carriers that are required by the FCC to use the Uniform System of Accounts for Telephone Companies found in 47 CFR Part 32 shall use that system of accounts for intrastate reporting purposes. The FCC Uniform System of Accounts for Telephone Companies is incorporated herein by reference, as amended and supplemented.

SUBCHAPTER 2. PAYMENTS FOR SERVICE

*[14:10-2.1 Applicability

(a) This subchapter applies to any bill for telecommunications service, whether presented to a customer by a telephone utility or a reseller.

(b) In addition to the requirements of this subchapter, a telephone utility is subject to requirements for billing set forth in the Board's rules for all utilities at *N.J.A.C. 14:3*.]*

14:10-2.1 (Reserved)

14:10-2.2 Contents of bills, back billing

(a) *[Regardless of whether a bill is for retail or wholesale telecommunications services, each]* ***The**** customer's bill shall include *[the items listed in (a)1-13 below, except if the customer's calling plan or package of services makes an item inapplicable]* ***as applicable****:

1.-5. (No change.)

6. A separate line item*[, calculated]* on a monthly basis, for basic residential local telephone service (BRLTS), as defined at *N.J.A.C. 14:3*-*[7.17(a)]* ***3.17(a)****, and a separate line item*[, calculated]* on a monthly basis, for nonbasic residential telephone service, as defined at N.J.A.C. 14:3-3.17(a), if any*[. Each line item shall be]* ***,**** supported by a statement which reflects amounts due and payable before and after application of payment;

7. A separate line item*[, calculated]* on a quarterly basis, for each optional service provided, if any;

8. Total charges for intraLATA and interLATA toll calls, supported by *[an itemized list of the calls, and a]* statement *[of amounts due and payable before and after the customer's payment is applied]*;

9. Total nonrecurring charges for service and equipment, supported by *[a]* statement *[of amounts due and payable before and after application of payment]*;

10.-13. (No change.)

*[(b) If a CLEC or ILEC has billed a customer at an incorrect rate, the CLEC or ILEC shall adjust the customer's subsequent bills, or "back bill" the customer, to make up for difference between the incorrect rate billed and the correct rate, in accordance with (c)-(e) below.

(c) If the incorrect rate billed was higher than the correct rate, the telephone utility shall credit or refund the customer for the amount overcharged. The CLEC or ILEC shall refund or credit the full amount within the next two billing cycles after the incorrect billing was discovered or should reasonably have been discovered.

(d) If the incorrect rate billed was lower than the correct rate, the CLEC or ILEC shall allow the customer to repay the amount over a period no shorter than the time period for

which the billing was incorrect, or the customer and the CLEC or ILEC may make other payment arrangements by mutual agreement.

(e) A telephone utility shall neither back bill a customer, nor refund or credit a customer, for incorrect billing that occurred more than:

1. For a wholesale customer, more than 18 months prior to the month the billing error was discovered; and

2. For a retail customer, more than six years prior to the month the billing error was discovered.

(f) A telephone utility shall ensure that it retains all records necessary to ensure that it can comply with the back billing requirements in this section.]*

14:10-2.3 Out of service refund

In the event the customer's service is interrupted otherwise than by the negligence or willful act of the customer and it remains out of service for a period of 24 hours or more after being reported to be out of service, appropriate adjustments or refunds *[to the customer's bill]* shall be made upon request of the customer. If the customer's service is interrupted for more than 72 hours after being reported or discovered, the telephone utility shall adjust the customer's bill or provide a refund, regardless of whether the customer makes such a request.

14:10-2.4 Voluntary suspension

Telecommunications service shall, at the request of a customer, be temporarily suspended. The suspension period may be for any period exceeding one month or such lesser period as specified in the tariff. Each telephone utility's tariff shall provide a suspension of service rate chargeable during such period.

SUBCHAPTER 3. NUMBER RECLAMATION

14:10-3.1 Number reclamation definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this subchapter can be found at *N.J.A.C. 14:3-1.1* and *[10]* ***14:10***-1.2.

"Guidelines" means, as regards NXX codes, the FCC Industry Numbering Committee's Central Office Code Assignment Guidelines (COCAG); and as regards thousands-blocks, the Thousands-Block Pooling Administration Guidelines (TBPAG); both of which are incorporated herein by reference, as amended and supplemented, and are available at: www.atis.org/inc/docs.asp.

"North American Numbering Plan Administrator" or "NANPA" means the entity selected by the FCC to *[consult with and]* provide assistance to regulatory authorities *[and national administrators]* to ensure that numbering resources are used in the best interests of all participants in the North American Numbering Plan. ***NANPA is responsible for managing the North American Numbering Plan.***

"NXX code" or "central office code" means the fourth, fifth, and sixth digits in a 10-digit telephone number. This term also means a group of 10,000 sequential telephone numbers, which all share the same fourth, fifth, and sixth digits. The NXX code denotes the exchange area within an area code. One central office code contains ten thousands-blocks, as defined in this section.

"Part 4 Form" means the FCC's Central Office Code (NXX) Assignment Request and Confirmation Form-Part 4. It also means the TBPAG Thousands-Block Application Form - Part 4. The FCC requires each service provider to submit the Part 4 Form to the NANPA or pooling administrator to confirm that the numbering resources allocated to the service provider have been placed in service. The Part 4 Form is required by the Guidelines.

"Pooling administrator" means an entity or entities selected by the FCC to administer those thousands-blocks in an NXX code that are subject to pooling, in accordance with the Guidelines. The pooling administrator allocates thousands-blocks to service providers through thousands-block number pooling.

"Reclamation" means the process through which *[NANPA or a pooling administrator requires]* a service provider ***is required*** to return numbering resources in accordance with FCC requirements at 47 CFR*[,]* §§52.7 through 20, and this subchapter.

"Service provider" means a person, as defined at *N.J.A.C. 14:3-**[1.2]* ***1.1***, that receives numbering resources from the NANPA, the pooling administrator, or another entity approved by the FCC. Examples of service providers are carriers, and persons who provide wireline or wireless telephone service, voice over internet protocol service, paging service, or similar services.

"Thousands-block" means a group of 1,000 sequential telephone numbers, which all share the same central office code, as defined in this section, and which follow that central office code with a number from X000 to X999, where X is a value from 0 to 9.

"Thousands-block number pooling" means the process by which the pooling administrator allocates to service providers those thousands-blocks in an NXX code that are subject to pooling.

14:10-3.2 General provisions

(a) The Board may, in accordance with this section, investigate and determine whether a service provider has complied with FCC requirements regarding the use of numbering resources, set forth at *47 CFR §§52.7* through 20.

(b) Each service provider shall ensure that the NANPA, the pooling administrator, and Board staff have up-to-date contact information for the service provider at all times, including contact name, telephone number, fax number, street address and electronic mail address.

(c) When the Board receives from NANPA or a pooling administrator a list of service providers that have failed to file a Part 4 Form, as defined at *N.J.A.C. 14:10-3.1*, within the deadline set forth in the Guidelines, Board staff shall send written notice to the listed service providers, requiring submittal of the Part 4 Form to the Board.

(d) Within 14 days after receiving the notice required under (c) above, the listed service providers shall submit to the Board all of the following:

1. A properly completed Part 4 Form;

2. Written proof that the service provider has activated all of its assigned numbering resources, so that the numbers are serving end-users or are programmed and ready to serve end-users. Examples of proof that Board staff may require include, without limitation, a list of telephone numbers assigned, or service orders; and

3. The number of end users to which the service provider has assigned numbers in the NXX code or thousands-block.

(e) A service provider may request an extension of the 14-day deadline in (d) above in accordance with N.J.A.C. 14:10-3.3.

(f) If a service provider does not submit the information required under (d) above, and does not request an extension under (e) above, within the 14-day deadline, the service provider's numbering resources shall be subject to immediate reclamation, in accordance with the Guidelines.

(g) A service provider's numbering resources shall be subject to reclamation, after notice to the service provider, if either of the following conditions are met:

1. If Numbering Resources Utilization and Forecast (NRUF) reports provided to Board staff by NANPA show that a service provider has inventories that are greater than a six-month supply; or

2. If NRUF reports show noncompliance with the requirements for sequential number assignments set forth at *47 CFR 52.15(j)*.

(h) If either of the conditions in (g) above are met, the Board may require the service provider to reduce contamination levels of its numbering resources, in accordance with 47 CFR 52.15i(3), so as to facilitate any reclamation that is required.

14:10-3.3 Extension of Part 4 Form submittal deadline

(a) If a service provider meets the requirements of this section, Board staff shall grant an extension to the 14-day deadline set forth in N.J.A.C. 14:10-3.2(d). Board staff shall grant only one extension to the service provider, of up to 90 days from the date the service provider's Part 4 Form was initially due.

(b) To obtain an extension under this section, a service provider shall submit an extension request to Board staff in writing. The request shall include all of the following:

1. The reason for the delay in activating the service provider's numbering resources;

2. The projected date upon which the service provider will activate the numbering resources;

3. The duration of the extension requested;

4. The role played in causing the delay, if any, of the act or omission of a person other than the service provider during the six months after the service provider was assigned the numbering resources;

5. A list of the numbering resources that are the subject of the extension request;

6. A list of all of the numbering resources assigned to the service provider in the same exchange area as those that are the subject of the extension;

7. A copy of any prior extensions that the service provider has obtained from the Board; and

8. The service provider's current deadline under the Guidelines for placing the numbering resources that are the subject of the extension in service.

(c) Board staff shall grant an extension only upon a determination that the subject numbering resources were not placed in service due to reasons beyond the service provider's control. The Board shall not grant additional extensions to that service provider for the thousands-block that is the subject of the extension.

(d) If a service provider receives an extension and fails to file the information required under N.J.A.C. 14:10-3.2(d) by the end of the extension period, the service provider's numbering resources are subject to immediate reclamation at the end of the extension period.

SUBCHAPTER 4. NON-FINANCIAL REPORTING REQUIREMENTS

14:10-4.1 General provisions

(a) This section sets forth the non-financial reporting requirements for ILECs*[,]* ***and*** CLECs *[and resellers]* that provide intrastate telecommunications services to end-users in New Jersey.

(b) Each carrier shall submit to the Board an unredacted copy of its semi-annual FCC Local Telephone and Competition and Broadband Reporting Form 477, with the modifications detailed in this subchapter. The carrier shall submit the form to the Board annually, within five days after the carrier files the form with the FCC.

(c) Each carrier shall retain all background and supporting documentation used to develop the information required by this subchapter, and shall make the documentation and information available for inspection by Board staff upon request.

(d) A carrier may submit a confidentiality claim with regard to any information required under this subchapter, in accordance with the Board's OPRA rules at *N.J.A.C. 14:1-12*.

(e) Board staff may require an audit of some or all of the data collected from carriers on an annual basis.

[(f) The annual report required under this section shall be filed on or before March 31 of each year.]

(f) (Reserved)

(g) The submittal to the Board shall include all proprietary data required and provided to the FCC with respect to Wireline and Fixed Wireless Local Telephone service.

(h) The submittals required under this section shall be certified to be accurate by an officer of the carrier, and shall be submitted in both electronic and paper form to the Board Secretary, with a copy sent to the Director of the Division of Telecommunications.

(i) If a carrier is unable to obtain detailed actual data in order to fully comply with this section, or if compiling the required data would place an undue burden on the carrier, the carrier may instead submit detailed, statistically valid estimates of the required data, together with a request for an exemption from the actual data requirements for future filings. A request for an exemption shall contain a detailed description of the methodology used to estimate the data, and a comprehensive explanation of why actual data is not currently available, and why future collection of actual data would result in an undue burden to the carrier. If the actual data becomes available the carrier must notify the Board that estimated data is no longer required for future filings.

(j) If a carrier obtains an exemption under (i) above, and then revises its estimation methodology in a later filing, Board staff may, if necessary require the carrier to restate all previously estimated data using the revised estimation methodology in order to provide a valid comparison.

14:10-4.2 State-specific data for reports

(a) In place of Parts II and V of the carrier's FCC Form 477, the carrier shall submit the data required in this section.

(b) Voice telephone service provided to end user***s***: The following data are required from ILECs and CLECs regarding voice telephone service provided to end users:

1. Total number of lines and channels that the ILEC or CLEC or its affiliate provides to end users:

i. Total number of voice-grade equivalent lines and voice grade equivalent wireless channels in service in each zip code;

ii. Of the lines and channels described in (b)1i above:

(1) Total number of residential lines by zip code;

(2) Total number of single line business lines by zip code; and

(3) Total number of lines for which each of the following is provided:

(A) Interstate long distance service without also providing intrastate long distance service;

(B) Intrastate long distance service without also providing interstate long distance service; and

(C) Both interstate and intrastate long distance service;

2. Total number of residential lines for which each of the following is provided:

i. Interstate long distance service without also providing intrastate long distance service;

ii. Intrastate long distance service without also providing interstate long distance service; and

iii. Both interstate and intrastate long distance service;

3. Total number of single line business lines for which each of the following is provided:

i. Interstate long distance service without also providing intrastate long distance service;

ii. Intrastate long distance service without also providing interstate long distance service; and

iii. Both interstate and intrastate long distance service;

4. For the lines and line equivalents described in (b)1i above, provide the total number provided over UNE loops that are obtained without *[UNE]* switching;

5. For the lines and line equivalents described in (b)1i above, provide the total number provided *[over UNE-Platform]* ***with switching****;

6. For the lines and line equivalents described in (b)1i above, provide the total number provided by reselling another carrier's service (including Centrex or channelized special access service);

7. For the lines and line equivalents described in (b)1i above, provide the total number provided over coaxial cable, fiber optic or any other facility type using VoIP or cable telephony; and

8. For the lines and line equivalents described in (b)1i above, provide the total number provided over fixed wireless at the end user premises.

(c) Voice telephone service provided to carriers that are not affiliated with the reporting ILEC or CLEC: The following data are required:

1. Total number of lines and channels provided under Total Service Resale arrangements;

2. Of the lines and channels listed in (c)1 above provide the following:

i. Total residential lines by zip code;

ii. Total single line business lines by zip code; and

3. Total number of lines and channels, by zip code, provided under other resale arrangements, such as resold Centrex or resold channelized special access service.

(d) UNE loops: Each wholesale telecommunications provider shall provide the following data regarding UNE loops that it provides to carriers that are not affiliated with it:

1. The total number of lines and channels provided under a UNE loop arrangement under which switching for the line is not provided, sorted by zip code; ***and****

2. The total number of lines and channels provided under a UNE loop arrangement under which switching for the line is also provided *[(UNE-Platform)]*.

(e) In addition to other information required in this section, the ILEC or CLEC shall submit any further information that Board staff deem***s*** necessary to fulfill the mandates of *N.J.S.A. 48:2-21.16*.

SUBCHAPTER 5. COMPETITIVE TELECOMMUNICATIONS SERVICES

14:10-5.1 Scope

(a) This subchapter governs the provision of competitive telecommunications services, as defined in *N.J.A.C. 14:10-1.2*, that are subject to the jurisdiction of the New Jersey Board of Public Utilities.

(b) This subchapter applies to the following:

1. Local exchange carriers and intrastate interexchange carriers offering competitive services;

2. Competitive services offered by CLECs, IXCs and ILECs; and

3. Non-competitive services offered by CLECs under *N.J.A.C. 14:10-5.7*.

(c) The subchapter also applies to tariff revisions, for existing non-competitive services offered by CLECs, which do not increase rates.

14:10-5.2 Informational tariff filings

(a) (No change.)

(b) *[A CLEC or IXC may include in its tariff cross-references]* ***Cross-references*** to Federal Communications Commission interstate tariffs ***are permitted*** for volume discounts, optional features and other provisions not specifically required to be included in intrastate tariffs pursuant to (a) above.

14:10-5.3 Tariff revisions that increase charges

(a) Tariff revisions regarding existing competitive telecommunications services, which create increased charges to any customer, shall become effective five business days after notice of the proposed revision as described in (b) below, without the requirement of prior Board approval.

(b) The *[CLEC]* ***notice requirement for a tariff revision, as described in (a) above,*** shall *[notify the public of a proposed tariff revision described in (a) above]* ***be*** by direct mail to all affected customers or by publication in newspapers of general

circulation throughout the affected service area***,****[. The CLEC shall mail notice required by this subsection]* within 24 hours *[after the]* ***of*** filing of revised tariff pages with the Board.

(c) Proposed *[tariff]* revisions ***as*** described in (a) above shall be served on the *[Public]* ***Division of the Ratepayer*** Advocate within 24 hours of filing with the Board.

14:10-5.4 Tariff revisions that do not increase charges

(a) Tariff revisions to existing competitive telecommunications services, or to any CLEC or IXC tariff, which do not increase charges to any customer, shall become effective one day after the filing of revised tariff pages with the Board, without the requirement of prior Board approval; except that a tariff revision for withdrawal of a service offering shall be governed by *N.J.A.C. 14:10-**[5.11]* ***5.8***.

(b) Proposed revisions described in (a) above shall be served on the Public Advocate within 24 hours of filing with the Board.

(c) Revisions to non-competitive telecommunications service tariffs are governed by the Board's rules for all utilities at *N.J.A.C. 14:3*.

14:10-5.5 New competitive telecommunications service offerings by *[existing]* interexchange carriers

(a) New competitive telecommunications service offerings *[by]* ***of*** existing interexchange carriers shall become effective five business days after *[the IXC files a tariff revision covering the new service offering with the Board,]* ***filing*** without the requirement of prior Board approval.

(b) An IXC shall file a tariff revision for a service offering described in (a) above on the Public Advocate within 24 hours of filing with the Board.

(c) A proposed tariff revision filing for new competitive telecommunications services offerings by existing interexchange carriers shall include a letter describing the new service and tariff pages with all rates, terms and conditions.

14:10-5.6 Initial CLEC or IXC tariff

(a) Initial tariffs filed by CLECs for local exchange and exchange access services, or by IXCs for interexchange services, shall be effective as filed 30 days following submittal to the Board, without the requirement of prior Board approval*[, except for a tariff covered under (b) below]*.

[(b) If a CLEC files an initial tariff for a local exchange service concurrently with the CLEC's petition for local exchange authority, the tariff shall become effective 30 days after Board staff grant local exchange authority to the CLEC.]

(b) (Reserved)

(c) All initial tariff filings made by a CLEC or IXC shall be certified to be accurate, and in compliance with existing law, by an officer of the CLEC or IXC.

(d) Should an initial tariff filing be inconsistent with existing laws, Board staff shall forward a letter of deficiency to the submitting CLEC or IXC. The deficiency letter shall:

1. List the deficiencies in the initial tariff as submitted;

2. Identify the submittals required to correct the deficiencies;

3. Provide a deadline for the submittals required under (d)2 above; and

4. Notify the submitting CLEC or IXC that the initial tariff is suspended until the Board receives the necessary submittals required under (d)2 above.

(e) If Board staff receive the submittals identified in (d)2 above within the deadline in (d)3 above, the initial tariff shall be effective immediately following the Board's receipt of the submittals.

(f) If Board staff do not receive the submittals required under (d)2 above within the deadline, the CLEC or IXC petition shall be considered withdrawn. The CLEC or IXC may subsequently submit a new tariff filing and begin the review process again.

14:10-5.7 Board monitoring of competitiveness

(a) In monitoring the competitiveness of rate regulated and competitive telecommunications services and/or providers of those services, the Board may request any information necessary from a carrier. In addition, the Board may use information collected pursuant to *N.J.A.C. 14:10-4* to conduct an analysis as to whether individual services and/or the markets for telecommunications services are becoming more or less competitive.

(b) In conducting the analysis described under (a) above, the Board may:

1. Monitor the market shares of carriers as measured by number of calls, minutes of use, number of customers and customer complaints;

2. Use an economic measure of concentration or any other appropriate economic indicator, statistical technique or analytical tool to measure existing or projected market share and the competitiveness of individual services and providers; and/or

3. Use a customer survey to solicit information related to the perception of the level of competition by telecommunications end users.

(c) The Board may reclassify a service that had previously been found to be competitive, if, after notice and hearing, the Board finds that one or more of the following conditions are met:

1.-5. (No change.)

6. That the public interest is no longer served by the existing regulatory flexibility afforded to carriers.

14:10-5.8 Withdrawal of a competitive service from subscribers

(a) Any carrier providing competitive services may withdraw a competitive service from subscribers after 30 days notice to all of its ***affected*** customers and the Board, except as specified under (b) below.

(b) *[Notwithstanding (a) above, if a competitive service is provided]* ***Service offerings provided*** solely by a single carrier, *[the carrier shall not withdraw the service if]* ***may be discontinued, unless the*** Board *[staff]* notifies the carrier that *[the withdrawal requires prior]* ***it will postpone the discontinuance of the service pending*** Board review and approval.

SUBCHAPTER 6. OPERATOR SERVICE PROVIDERS

14:10-6.1 Scope

(a) This subchapter shall apply to the following, as these terms are defined at *N.J.A.C. 14:10-1.2*:

1. Operator service providers;

2. Alternate operator service providers; and

3. Aggregators, including those that offer similar services to an operator service provider, from an instrument other than a public pay telephone.

(b) In addition to this subchapter, those aggregators who are also public pay telephone service (PPTS) providers are subject to N.J.A.C. 14:10-9.

14:10-6.2 Operator service providers and aggregators

(a) Any person may hire an OSP to complete intrastate operator-assisted calls, subject to the requirements of this subchapter.

(b) Board staff may investigate the conduct of any OSP or aggregator to evaluate compliance with this subchapter, and may take appropriate enforcement action in accordance with N.J.A.C. 14:10-6.9.

(c) Operator service providers and aggregators are responsible for conformance with all rules as specified in this subchapter. The Board may, after notice and an opportunity to be heard in conformance with the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq. and *N.J.S.A. 52:14F-1* et seq., and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*, take such action against an OSP and/or aggregator as is necessary to rectify any non-conformance with the rules or to protect the general public interest. If the Board finds that an OSP or aggregator is not in compliance with a Board rule or order, the Board's actions may include the imposition of penalties for violations as described in N.J.A.C. 14:10-6.9, disconnection of intrastate service to individual aggregator locations experiencing persistent violations, as well as the restriction of certain billing and collection activities subject to the Board's regulation.

14:10-6.3 Informing callers about the OSP

(a) Each aggregator or other regulated entity that hires or otherwise utilizes an OSP shall place directly on the telephone instrument, in plain view of consumers:

1. The name, address, and toll free number of the OSP;

2. A clear and precise description of the geographic area served by the LEC;

3. A clear description of the geographic area served by the OSP;

Recodify existing 3.-7. as 4.-8. (No change in text.)

9. All information required by the Federal Communications Commission at *47 CFR 64.703*, as amended and supplemented, which is incorporated herein by reference.

(b) Operator service providers shall verbally inform callers, audibly and distinctly, prior to connecting the call and prior to starting the timing of the call for charging purposes, of all of the following information:

1. That the presubscribed OSP is handling the operator-assisted call, this shall be done by verbal identification of the OSP. Accordingly, branding is required;

2. Prior to connecting any intrastate, 0+ call, how the caller can obtain the actual, or maximum possible, total cost of the call, including any aggregator surcharge and/or location specific charges;

3. That the caller may obtain applicable rate and surcharge quotations, and how to do so. It shall be the option of the OSP whether the rates or quotations are obtainable by dialing one or two digits, or by remaining on the line; and

4. For calling card or any other OSP assisted call that will be billed to the calling party, that the call will be billed to the calling party.

(c) For collect or third-party billed calls, an OSP shall comply with (b)1 though 3 above, and shall, in addition, verbally inform the party being called or the third-party, audibly and distinctly, prior to connecting the call and prior to starting the timing of the call for charging purposes, that the call will be billed to the called party or third party, as applicable.

(d) Each operator services provider shall ensure, by contract, that each aggregator for which such OSP is the presubscribed OSP is in compliance with this section. The OSP shall provide Board staff with a copy of the contract upon request.

14:10-6.4 AOS rates for intrastate operator-assisted calls

(a) An alternate operator service provider may charge the following maximum rates:

1. For a local or non-local intrastate calling card call that does not require the intervention or use of a live operator (that is, an "0+" calling card call at a transient location), and is no longer than five minutes, the maximum rate shall be $ 2.75;

2. For a local or non-local intrastate call that requires a live operator (that is, an "0-" operator assisted call at a transient location), and is no longer than five minutes, the maximum rate shall be $ 4.25;

3. For a collect call that does not use a live operator, but uses a voice prompt, the rate shall be the same as for an operator assisted call under (a)2 above;

4. For a call described at (a)1-3 above, that is greater than five minutes, an additional per minute rate may be charged, in addition to the charges under (a)1-3 above. The per minute rate shall equal the applicable per minute rate in the AT&T tariff on file with the Board at the time of the call. The AT&T rate is posted on the Board's webpage at *[http://www.njin.net/njbpu]*
http://www.bpu.state.nj.us/bpu/pdf/telecopdfs/njac_rates.pdf; and

5. Notwithstanding (a)4 above, an AOS's rate for a call described in (a)2 or 3 above shall be capped at $ 5.25 ($ 4.25 plus $ 1.00). The AOS shall not charge more than $ 5.25 without prior Board approval. A request for Board approval of a higher rate shall conform to the requirements for petitions at *N.J.A.C. 14:1-5.12*.

(b) Alternate operator service providers shall file informational tariffs *[for intrastate services]* ***showing the applicable maximum rates and any subsequent rate adjustments*** with the Board, *[which meet the requirements of]* ***as required by*** *N.J.A.C. 14:10-6.8****, for intrastate services. The Board will permit rate changes in response to a rate change request from an AOS provider, if* *[**(c) An AOS may request Board

authorization of a modification of its rates. The Board shall authorize such a modification in one of the following ways: 1. If]* the new rate *[is lower than the rate in effect at the time the tariff modification is submitted, the AOS may modify the rate in accordance with the procedure for a tariff modification that does not increase charges, set forth at *N.J.A.C. 14:10-5.5*; 2. If the new rate is higher than the rate in effect at the time the tariff modification is submitted, but is no higher than]* ***remains below*** the maximum rates described in *[(a) above, the AOS may modify the rate in accordance with the procedure for a tariff modification that increases charges, set forth at *N.J.A.C. 14:10-5.4*; and 3. If the new rate is higher than the maximum rate described in (a) above, the AOS shall petition the Board for approval of a rate increase.]* ***(a) above. Such filings shall conform to and be governed by *N.J.A.C. 14:10-5.4* or *5.5*, as may be applicable.***

(c) (Reserved)

(d) Surcharges associated with non-pay telephones, which are not part of the actual telephone bill or imposed by an OSP, but are add-on charges imposed by hotels, motels, hospitals, universities and/or other CPPTS providers, are not prohibited by these rules. However, notice of any surcharge shall be displayed by the aggregator in accordance with *N.J.A.C. 14:10-6.3(b)*2.

(e) (No change in text.)

(f) For the purpose of this subchapter, "rate" means the total charge to a caller for the completion of a call utilizing operator -assisted service, including all surcharges, premises-imposed fees and other charges, collected from the caller.

14:10-6.5 Access to all operator service providers

(a) The aggregator that utilizes an OSP shall ensure that all callers have free access to all operator service providers, including the LEC operator serving that geographical area, from all instruments connected to operator service providers, with the exception of government controlled correctional facilities.

(b) Each aggregator shall ensure that each of its telephones in service, that utilizes a presubscribed OSP, allows the caller to obtain access, without charge, to the OSP desired by the consumer. This subsection does not apply to the use of access code dialing sequences that result in billing to the originating telephone.

(c) Each OSP shall:

1. Ensure, by contract, that each aggregator for which such provider is the presubscribed OSP complies with (a) and (b) above; and

2. Withhold payment to aggregators of any compensation, including commissions, on a location-by-location basis, if the OSP reasonably believes that the aggregator is blocking access to other operator service providers in violation of (a) and (b) above.

(d) No operator service provider shall transfer a call to another OSP unless that transfer is accomplished at, and billed from, the point of origination of the call. To do otherwise results in splashing, as defined in *N.J.A.C. 14:10-1.2*. If such a transfer is not technically possible, the OSP shall inform the caller that the call cannot be transferred as requested and that the caller should hang up and attempt to reach another operator service provider through the means provided by that other OSP.

(e) A carrier shall calculate charges based on a call's point of origination, unless:

1. The caller requests to be transferred to a different carrier's OSP; or

2. Both of the following requirements are met:

i. The caller is informed, before timing of the call for billing purposes begins, that the call may be billed as if it originated somewhere other than the location from which the call actually originated; and

ii. The caller consents to the change in billing location.

14:10-6.6 "0-" and emergency call handling

(a) All "0-" calls, which are calls originated by dialing "0" and no other digits within four seconds, shall be sent promptly and directly to the incumbent LEC operator serving the geographic area where the instrument is located, unless the presubscribed operator service provider has certified to the Board, as described in (b) through (e) below, its ability to provide such service.

(b) An operator service provider may petition the Board for authority to provide "0-" and emergency call completion. The OSP shall certify that it is capable of meeting the technical parameters in (c) through (e) below.

(c) The Board shall authorize an OSP to offer "0-" services only if the OSP also offers both free public access to the incumbent LEC operator serving that geographical area and emergency call handling. Incumbent LEC access must be available and be accomplished by either a direct dialing sequence or by direct connection to the incumbent LEC operator upon request.

(d) To obtain Board approval to offer "0-" and emergency call completion under (b) above, an OSP shall meet the following technical standards:

1. (No change.)

2. Require by contract that all connecting users provide free access to all other operator service providers upon request, in accordance with *N.J.A.C. 14:10-6.5*, including the incumbent LEC operator service and, in addition, that all connecting users:

i.-ii. (No change.)

3.-6. (No change.)

7. Make traffic studies and maintain records as required to ensure that sufficient equipment and an adequate operating force are provided at all times to ensure compliance with the performance requirements set forth herein. These studies and records shall be made available to the Board's staff upon request for review purposes. Further, the OSP shall submit certified reports upon request to the Board's staff showing that grade of service and response time are within the performance limits described in this subchapter; and

8. (No change.)

14:10-6.7 Penalties for violations

(a) Any AOS provider which violates this subchapter shall be subject to the applicable penalty set forth in Table A below.

(b) Each violation of this subchapter shall constitute a separate and distinct violation, for which the Board may assess a separate penalty.

(c) If a violation is of a continuing nature, the Board may deem each day that the violation continues to be a separate and distinct violation, for which a separate and distinct penalty may be assessed.

(d) The penalty amounts for violations of this subchapter are set forth in Table A below:

TABLE A

Penalties for Violations

Violation	**Penalty**
Exceeding maximum rates authorized under N.J.A.C. 14:10-6.4(a)	$ 5,000
Noncompliance with emergency call procedures set forth at N.J.A.C. 14:10-6.6	$ 5,000
Slamming, in violation of N.J.A.C. 14:10-11	$ 3,000
Noncompliance with the free access requirements at N.J.A.C. 14:10-6.5	$ 2,500

TABLE A

Penalties for Violations

Noncompliance with branding, rate quote and reporting requirements at N.J.A.C. 14:10-6.3(b) and (c), and 6.8	$ 2,000
Splashing or billing for uncompleted calls, in violation of N.J.A.C. 14:10-6.5(d) and 6.4(e)	$ 2,000
Noncompliance with any other provision of this subchapter	$ 1,000

14:10-6.8 Alternate operator service provider informational tariffs

(a) AOS providers, as defined in *N.J.A.C. 14:10-*[1.2]* **6.2***, shall file informational tariffs with the Board. These tariffs shall contain:

1. The name, address and telephone number of the *[contact person]* ***party*** responsible for the resolution of customer complaints *[regarding the performance of the AOS provider. This information shall be kept up to date]*;

2. (No change.)

3. The total charge for each category of service, including, but not limited to, collect calls, credit or calling card calls and person-to-person calls, as well as the individual rate elements that comprise the total charge, such as operator surcharges, premises imposed fees, mileage and time of day charges, *[applicable maximum rates,]* and every other surcharge or fee; ***and***

4. An acknowledgment that penalties for violations of *[this chapter]* ***the conditions of operator service*** may result in the imposition of fines, as set forth in *N.J.A.C. 14:10-*[6.7]* ***6.6***, or disconnection of intrastate service, as set forth in *N.J.A.C. 14:10-*[6.2(c); and]* ***6.3(c).***

***(b) In addition to the requirements contained in (a) above, the following information shall be submitted with the initial informational tariff filing, and annually thereafter:**

1. A comparative balance sheet for the most recent two year period on either a calendar or fiscal year basis;

2. A comparative income statement for the most recent two year period on either a calendar year or fiscal year basis;

3. A balance sheet as of the most recent date available;

4. A statement of the amount of revenue, expenses, number of calls completed, and number of complaints filed against the company with any regulatory agency, in the last preceding calendar year;*

5. A list of all principals of the firm, ***with the following information:**

i. The* *[including the]* name, address and telephone number of each principal*[.]* ***;** **and**

ii. The percent ownership interest of the principals owing more than five percent; and

6. The qualifications and the business or technical experience of the officers, directors or other principal management and operating personnel with particular respect to their ability to carry out the AOS provider's obligation to render safe, adequate and proper service.*

14:10-6.9 LEC billing for operator assisted services

(a) If *[a]* ***an*** LEC provides billing and collection services to other operator service providers, the LEC shall include a statement on the other OSP's portion of each customer's bill advising the customer that the other OSP is not affiliated with the LEC.

(b) If an LEC provides billing and collection services to a billing agent, as defined in *N.J.A.C. 14:10-1.2*, the LEC shall, in addition to meeting the requirements in (a) above, clearly identify on the bill the name, address and telephone number of the OSP who furnished operator service to the consumer.

SUBCHAPTER 7. ACCESS TO ADULT-ORIENTED INFORMATION-ACCESS TELEPHONE SERVICE

14:10-7.1 Scope

(a) This subchapter applies to any entity that elects to provide subscribers with access to adult-oriented information-access telephone service in the State.

(b) This subchapter shall apply to both "976" services, which are accessed by a seven digit telephone number of the form NXX-XXXX, and "900" or "700" services, which are accessed by a 10 digit telephone number of the form 900-NXX-XXXX or 700-NXX-XXXX, as well as any future access arrangement for adult-oriented information access telephone service.

14:10-7.2 (Reserved)

14:10-7.3 Restrictions on access to adult-oriented services

(a) No telephone utility shall provide a subscriber with access to adult-oriented information-access telephone service in the State without written authorization from the subscriber.

(b) LECs offering seven digit adult-oriented information-access telephone service shall assign all lines providing such service to the same Central Office code, or codes (NXX).

(c) LECs and IXCs offering 10 digit adult-oriented information-access telephone service shall assign all lines accessing such service to the same 900-NXX or 700-NXX code or codes.

(d) An LEC or IXC that offers adult-oriented information access telephone service shall do one or more of the following to ensure that non subscribers do not obtain access to the service:

1. Ensure that all lines used for that service are blocked, except as necessary to provide service to subscribers enrolled pursuant to *N.J.A.C. 14:10-7.4(a)*;

2. Require as a condition of service that adult-oriented information providers restrict access to the service for all callers except subscribers enrolled pursuant to *N.J.A.C. 14:10-7.4(a)*. Such LECs or IXCs shall be responsible for assurance that information providers restrict access in accordance with this rule; or

3. Require as a condition of service that an adult-oriented information provider scramble its transmissions, and supply audio descramblers to subscribers, so as to ensure that inadvertent or unauthorized access will not result in intelligent transmission.

(e) No telephone utility offering adult-oriented information-access telephone service originating in the State shall permit access of such service from telephone operators or pay telephones.

(f) *[Telephone utilities shall ensure that subscribers]* ***Subscribers*** to local telephone service in the State are ***to be*** advised of these rules through inclusion in the informational consumer guide pages in the front of local telephone directories ***in accordance with N.J.A.C. 14:10-1A.5***.

14:10-7.4 Subscriber requests for service; charges

(a) Telephone utilities or information providers offering intrastate adult-oriented information-access telephone service shall require submittal of the following prior to granting a subscription to the service:

1. A written and signed subscriber request; and

2. An appropriate means of proof (such as a photocopy of a birth certificate or a valid State driver's license), in the same name as the customer of record listed on the telephone account, that the requesting subscriber is over 18 years of age.

(b) The telephone utility or adult-oriented information provider offering the adult-oriented information-access telephone service shall maintain the hard copy signed subscriber request with proof of age for the duration of the subscription.

Recodify existing (b)-(e) as (c)-(f) (No change in text.)

SUBCHAPTER 9. PUBLIC PAY TELEPHONE SERVICE

14:10-9.1 Scope

This subchapter shall apply to the provision of public pay telephone service (PPTS) as defined in *N.J.A.C. 14:10-1.2*, in New Jersey.

14:10-9.2 The PPTS instrument

(a) Each PPTS instrument shall provide a dial-tone without requiring the caller to insert payment into the instrument.

(b) Each PPTS instrument shall allow consumers free access to the following calls, without use of coin or credit cards to originate such calls:

1. (No change.)

2. Access to toll-free service, including all 800 numbers and 950 numbers;

3. Calls using access codes necessary to enable the caller to obtain access to the consumer's desired provider of operator services;

4. Completion of collect, third party billed, and carrier calling card calls;

5. Telecommunications Relay Service calls for the hearing disabled; and

6. Dialing and completion of 9-1-1 calls.

(c) The keypad of each PPTS instrument shall feature both numbers and letters in the standard arrangement typically provided on telephone sets.

(d) PPTS providers shall prominently display the following information directly on each telephone instrument, in plain view of consumers:

1. All of the information required under *N.J.A.C. 14:10-6.3(a)*;

Recodify existing 8.-9. as 2.-3. (No change in text.)

4. The telephone number of the PPTS instrument unless the notice requirement contained in (d)3 above is present;

Recodify existing 11. and 12. as 5. and 6. (No change in text.)

14:10-9.3 Public pay telephone service (PPTS)

(a) (No change in text.)

(b) PPTS shall include local and intrastate toll calling.

(c) (No change in text.)

(d) PPTS providers shall designate a person, as defined in *N.J.A.C. 14:3-1.1*, within the State of New Jersey, that is responsible for processing refunds to consumers. All refunds shall be in the form of cash, a check, or a credit on the customer's telephone bill. The PPTS provider shall provide contact information for the person to Board staff, and shall update the contact information if it changes.

(e) The Board or its staff shall investigate the conduct of any PPTS provider following receipt of a customer complaint to the Board concerning the PPTS provider. The Board shall, after notice and opportunity to be heard in conformance with the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq. and *N.J.S.A. 52:14F-1* et seq., and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*, take appropriate action against a PPTS provider as is necessary to rectify any non-conformance with these rules or to protect the general public interest.

(f) (No change in text.)

14:10-9.4 Additional regulation of customer provided pay telephone service

(a) In addition to the requirements at *N.J.A.C. 14:10-9.3*, CPPTS providers, as defined in *N.J.A.C. 14:10-1.2*, are subject to the following:

1. CPPTS providers shall not charge more for directory assistance calls than the rate which the LEC charges the CPPTS provider for directory assistance service;

2. More than one CPPTS instrument may be connected per CPPTS exchange access line, such as behind a PBX or other types of call concentration equipment, provided that such arrangements ensure user privacy;

3. A CPPTS provider shall ensure that any extension of CPPTS exchange access lines is either technically unable to monitor the CPPTS instrument, or the CPPTS provider

shall prominently display notice to end users that the CPPTS is subject to monitoring by an extension;

4. CPPTS providers shall provide to the Board the address and telephone number of each CPPTS instrument, by location, separated by municipality. Such information shall be submitted to the Board at the time of installation of CPPTS service and shall be updated as additional instruments are installed; and

5. CPPTS providers shall provide a list to Board staff of all principals of the firm, including the name, address and telephone number of each principal.

(b) In addition to the provisions of *N.J.A.C. 14:10-9.3* and (a) above, incumbent LECs, as defined in *N.J.A.C. 14:10-1.2*, shall permit customer retention of telephone numbers that are associated with a customer's incumbent LEC public telephone for use with CPPTS.

(c) Each incumbent LEC shall submit quarterly reports of CPPTS installation in their service territories to Board staff. Such report shall include the number of installations and disconnections as well as a list containing the name and address of each CPPTS provider by location. Such list shall indicate CPPTS connections separated by municipality. This information will be afforded confidential treatment.

14:10-9.5 Placement and repair of PPTS

(a) Installation of all PPTS instruments shall be in accordance with any applicable local, municipal, county and State requirements.

(b) Upon receipt of a complaint from any authorized local, municipal, county or State official, that a PPTS instrument is in violation of any applicable installation requirement, including, but not limited to, municipal ordinances or State legislation, Board staff shall direct the PPTS provider to comply with such requirements or remove the PPTS instrument within 48 hours. Such removal shall ensure that all necessary repairs are performed so that the street, sidewalk, building, or any other structure where the PPTS was located, is restored to its exact condition prior to the PPTS installation.

(c) This section shall not affect the authority of the affected local government entity or the PPTS provider to seek available judicial remedies.

(d) PPTS providers shall make every reasonable effort to repair instruments within 48 hours of notification of a service outage.

14:10-9.6 Special provisions for inmate pay telephone service

(a) Providers of PPTS for use by inmates in government controlled correctional facilities are exempt from the requirements of the following:

1. *N.J.A.C. 14:10-9.2(a)* through (g) and (i), which set forth minimum requirements for non-inmate PPTS telephone instruments; and

2. *N.J.A.C. 14:10-9.3(a)*, which sets forth the requirement that every PPTS instrument provide an initial dial-tone.

(b) A PPTS provider shall ensure that the installation of inmate telephone service in government controlled correctional facilities complies with any applicable local, municipal, county and/or State requirements imposed by the appropriate governing entity.

14:10-9.7 (No change in text.)

SUBCHAPTER 10. INTRALATA TOLL COMPETITION

14:10-10.1 Scope; general provisions

(a) This subchapter applies to any carrier that completes toll calls in New Jersey.

(b) Presubscription is a customer's enrollment with a particular intraLATA telecommunications carrier. *[If a customer does not enroll with an intraLATA carrier, the customer will be assigned an intraLATA carrier. The Board's Order Approving Presubscription and Proposal of Rules dated December 14, 1995, issued in Docket No. TX94090388, provides that presubscription is the policy of the State of New Jersey. These rules are intended to implement that policy as fully set forth in the Order.]*

(c) LECs shall adhere to the following business practices:

1. (No change.)

2. LECs shall not encourage or attempt to persuade customers to subscribe to their own intraLATA service, and shall not discourage or attempt to dissuade customers from selecting another carrier.

(d) A customer may presubscribe to a different intraLATA carrier than the consumer's interLATA PIC.

14:10-10.2 Responsibilities of LECs

(a) LECs shall not engage in any discriminatory or anti-competitive practices when processing PIC service orders.

(b) All carriers shall comply with the requirements of N.J.A.C. 14:10-11, Anti-slamming.

(c) All local exchange carriers shall provide in their tariffs a requirement that resale customers must comply with the provisions of *N.J.A.C. 14:10*-*[10.5(c)]***10.2(b)***.

(d) LECs shall maintain customer service statistics and records regarding customer change requests, in accordance with applicable recordkeeping requirements in this chapter, and shall provide such information to Board staff upon request.

14:10-10.3 Imputation standard

(a) The rates that an LEC charges customers for toll service and/or interexchange private line service shall equal or exceed the total applicable switched access rates set forth in the LEC's tariff.

(b) Notwithstanding (a) above, and subject to the condition set forth in (d) below, for a customer which has entered a customer-specific pricing arrangement with the LEC, the LEC may substitute its FCC tariff rates for special access (using the term discount rate that corresponds to the term of the customer specific pricing arrangement) including applicable non-recurring special access rate elements levelized over the term of the contract, for either originating switched access for WATS and toll services or terminating switched access for dedicated 800 services.

(c) The special access rate to be imputed in accordance with (e) below shall apply to each equivalent circuit (for example, DS1). For every 2,000 hours, or portion thereof, per month of intraLATA toll calling at a location, the LEC must impute the cost of one circuit (except where a particular customer's usage demonstrates that more traffic could be completed over the facility). The mileage will be rated at 10 miles.

(d) If an LEC provides a service under a customer-specific pricing arrangement in accordance with (b) above, the LEC's revenues from all customers of that service shall, in the aggregate, satisfy the requirements in this section.

(e) The price charged for each service for which the LEC uses special access shall be the total special access rate set forth in the LEC's tariff.

(f) If the Board orders or approves any changes in the LEC's access rate structure, the LEC shall seek Board approval of appropriate changes in the imputation formulas in this section.

(g) Where the LEC structures a package of services to include discounts and/or packaging of noncompetitive services in addition to interexchange calling, the LEC's price for the package of services shall be greater than the amounts described in this section.

(h) The LEC shall, within 14 calendar days of a request from the IXCs or Board staff, provide information adequate to show compliance with the imputation requirement. The information shall reflect usage data for a one year period, or, if such data is unavailable, for the longest available time period for which the LEC has data.

(i) Pursuant to the imputation requirement, the LEC shall retain interexchange usage data for a rolling 24-month period. The LEC shall not be required to respond to any such

request more frequently than once annually, except that the LEC shall be required to respond to any such request that is made in conjunction with the LEC proposing changes to an interexchange service or with the LEC proposing a customer-specific pricing arrangement. As part of any such showing, the LEC shall provide all supporting documentation including dates, data sources and calculations.

(j) The IXCs and Board staff shall have rights to examine the documentation and computations underlying the LEC's data. To the extent that the LEC's data includes information it deems proprietary, the LEC may make a request for a confidentiality determination under the Board's OPRA rules in *N.J.A.C. 14:1-12*.

(k) Should the data demonstrate that the LEC is not in compliance with the imputation requirement, upon receipt of notice from the IXCs or Board staff, the LEC shall, within 30 days, either increase the price(s) for its interexchange service to bring the LEC into compliance, or petition the Board for a compliance ruling. In any such proceeding, *[the]* the Board shall not accept or consider any argument that this imputation requirement should be changed.

SUBCHAPTER 11. ANTI-SLAMMING REQUIREMENTS FOR TSPS

14:10-11.1 Scope; general provisions

(a) This subchapter is intended to protect against unauthorized changes or "switches" in a customer's primary telecommunications carrier, also called a telecommunications service provider, as these terms are defined at N.J.A.C. *[14:10:1-1.2]* ***14:10-1.2***. This subchapter utilizes the term "telecommunications service provider" or "TSP" in place of the term "telecommunications carrier" in order to be consistent with FCC anti-slamming rules. The two terms have the same meaning.

(b) This subchapter applies to all TSPs, including LECs, telephone utilities, and resellers, as these terms are defined at *N.J.A.C. 14:10-1.2*.

(c) If a TSP has reasonable notice that a person representing or acting on behalf of the TSP has violated this subchapter, the TSP shall immediately take measures sufficient to prevent any further violations. For the purpose of this subsection, "reasonable notice" includes, but is not limited to, receipt by the TSP of one or more complaints of a violation.

14:10-11.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Agent" means any person, as defined at *N.J.A.C. 14:3-1.1*, including, but not limited to, employees, servants or marketers, acting on behalf of a TSP in order to bring about,

modify, affect performance of, or terminate mutual obligations between a TSP and the customer.

"Authorized TSP" means a TSP that a customer has chosen as its provider of a telecommunications service, through an authorization that has been verified in accordance with this subchapter.

"Customer" means a person that meets any one or more of the following criteria:

1.-3. (No change.)

"Executing TSP" means any TSP that receives a change order that complies with this subchapter and carries out a request that a customer's TSP be switched. Any TSP may be treated as an executing TSP, if it is responsible for any unreasonable delays in the execution of TSP switches, *[or for the execution of unauthorized TSP switches,]* including fraudulent authorizations in violation of this subchapter.

"Primary TSP" means the customer's chosen, TSP for a telecommunications service for which there are multiple providers. To the extent permitted by statute, rule or Board order, a customer may select a primary TSP for intrastate interLATA, intraLATA toll, and local exchange telecommunications services, and may select the same or different TSP for each type of service.

"Submitting TSP" means any TSP that:

1. Submits a change order on behalf of a retail or wholesale customer, in order to request a switch in the customer's primary TSP; and

2. Seeks to provide retail telecommunications services to the customer.

"Unauthorized switch" means a change in a customer's selection of a TSP, that was made without an authorization that was verified in accordance with this subchapter.

14:10-11.3 Solicitation of authorization to change TSPs

(a) All solicitations by a TSP for a customer's authorization to terminate that customer's existing primary TSP and to transfer said customer to a new primary TSP shall include a clear and conspicuous statement of the following:

1. The identity of the soliciting TSP;

2. That the solicitation seeks the customer's authorization to switch the customer's TSP from the customer's existing primary TSP to the soliciting TSP;

3. The types of services that will be affected by the switch; for example, local, regional, and/or long distance;

4. The soliciting TSP's current complete rates, fees, terms and conditions; and

5. All information that the soliciting TPS will require from the customer in order to assume accurate billing for the particular services involved in the switch.

(b) When soliciting a customer's authorization to switch TSPs, a reseller shall not disclose the identity of the TSP whose telecommunications service is being resold, unless the information is provided in a truthful, non-misleading manner in accordance with this subchapter. The reseller shall identify itself as a reseller, disclose that it is not the customer's primary TSP, and advise the customer that accepting the reseller's offer will change the customer's primary TSP.

14:10-11.4 Obtaining verified customer authorization; submitting a change order

(a) To switch a customer from one primary TSP to another, the acquiring TSP shall submit a change order, which complies with this subchapter, to an executing TSP.

(b) No TSP shall submit a change order on behalf of a customer without first obtaining a verified authorization from the customer in accordance with this subchapter. Such an authorization may be obtained through any of the following means:

1. The customer's signature, either written or electronic, on a letter of agency, in accordance with *N.J.A.C. 14:10-11.5*;

2. The customer's verbal authorization obtained by telephone in accordance with *N.J.A.C. 14:10-11.6*; or

3. A third-party verification that meets the requirements at *N.J.A.C. 14:10-11.6*.

(c) The requirements in this section and *N.J.A.C. 14:10-11.5* and *11.6* are in addition to the FCC slamming requirements at *47 CFR §64.1100* through 1190, incorporated herein by reference, as amended or supplemented. Should there be a difference between the FCC regulations and these rules, the more stringent provision shall govern.

(d) If a TSP sells more than one type of telecommunications service (for example, local exchange, intraLATA toll, and interLATA toll), that TSP shall obtain separate authorization from the customer for each separate access line being switched and each separate service sold, although the authorizations may be verified within the same solicitation. Each authorization shall be verified separately from any other authorizations obtained in the same solicitation, even if the same primary TSP is chosen to provide two or more telecommunications services.

(e) A TSP shall submit a primary TSP change order on behalf of a customer within 60 days after obtaining the verified authorization for that customer.

(f) Notwithstanding *N.J.A.C. 14:10-1.3*, a submitting TSP shall maintain and preserve records of all verifications of customer authorization for a minimum of three years after obtaining the verification.

14:10-11.5 Letters of agency

(a) A TSP that elects to use a letter of agency to obtain a verified authorization for a change in a customer's TSP shall ensure that the letter of agency complies with all requirements of the FCC rules governing letters of agency at *47 CFR §64.1130*, incorporated herein by reference, as amended and supplemented. As of *[(the effective date of these amendments)]* ***September 17, 2007***, the substance of *47 CFR §64.1130* is set forth at 1 through 12 below:

1. (No change in text.)

2. The letter of agency shall be a separate (or an easily separable) document or located on a separate screen or web page containing only the authorizing language described in (a)5 below having the sole purpose of authorizing a TSP to initiate a primary TSP change. The letters of agency shall be signed and dated by the customer who subscribes to the telephone line(s) requesting the primary TSP change;

3. (No change in text.)

4. Notwithstanding (a)2 and 3 above, the letter of agency may be combined with check(s) that contain only the required letter of agency language as prescribed in (a)5 below and the necessary information to make the check(s) a negotiable instrument. The letter of agency check(s) shall not contain any promotional language or material. The letter of agency check(s) shall contain, easily readable boldface type on the front of the check(s), a notice that the customer is authorizing a primary TSP change by cashing the check(s). The letter of agency language shall be placed near the signature line on the back of the check;

5. At a minimum, the letter of agency shall be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

Recodify existing (1)-(5) as i.-v. (No change in text.)

Recodify existing vi.-xii. as 6.-12. (No change in text.)

(b) A submitting TSP may also obtain a customer's electronic authorization to submit the primary TSP order in accordance with *47 CFR §64.1120(c)(2)*.

14:10-11.6 Third party verification of authorization

(a) A submitting TSP may obtain a customer's authorization to submit a change order on the customer's behalf through an independent third-party verification in accordance with this section.

(b) *[The person that obtains a third party verification shall be independent of both the customers' existing primary TSP and the TSP to which the customer may switch.]* ***An appropriately qualified independent third party has obtained the customer's oral authorization to submit the primary TSP change order which confirms and includes appropriate verification data (for example, the customer's date of birth or social security number).*** The ***independent*** third party shall not be owned, managed, controlled, or directed by the TSP or the TSP's marketing agent; shall not have any financial incentive to confirm primary TSP change orders for the TSP or the TSP's marketing agent; and shall operate in a location physically separate from the TSP or the TSP's marketing agent. ***The content of the verification shall include clear and conspicuous confirmation that the customer has authorized primary TSP change.***

(c) A TSP may use third-party verification systems and three-way conference calls for verification purposes, so long as, the requirements of this section are satisfied. Automated systems shall provide customers with the option to speak with a live person at any time during the call.

(d) A TSP or a TSP's sales representative initiating a three-way conference call or a call through an automated verification system shall drop off once the three-way connection has been established, unless the third-party verifier obtains a waiver for this requirement from the FCC.

(e) All third-party verification methods shall elicit, at a minimum, all of the following:

1. Confirmation of the identity of the customer (for example, the customer's date of birth or social security number);

2. The date of the verification;

3. Confirmation that the person on the call is authorized to make the TSP switch;

4. Confirmation that the person on the call wants to make the TSP switch;

5. The names of the TSPs affected by the change;

6. Each of the telephone numbers that will be affected by the switch; and

7. The types of service being switched.

(f) Third-party verifiers shall not market the TSP's services by providing additional information during the verification call, including information regarding preferred TSP freeze procedures.

(g) All third-party verifications shall be conducted in the same language that was used in the underlying sales transaction and shall be recorded in their entirety.

(h) If a customer has any questions regarding the switching of telecommunications service, the rates, or any other matter; which a third-party verifier is not qualified or not authorized to answer under this subchapter, the third-party verifier shall:

1. Inform the customer that the third-party verifier is not qualified or authorized to answer the question;

2. Offer to terminate the verification and instruct the customer on how to contact the TPS's sales agent to answer the question; and

3. Terminate the verification if the customer requests it, or, if the customer clearly consents to continue the call without having the question answered, continue the call.

(i) If a verification is terminated in accordance with the verification, a new verification may be started only after the TSP's sales agent has fully responded to the customer's questions.

(j) Each customer selection of a primary TSP for local, intraLATA toll, or interLATA telecommunications service shall be verified separately, in accordance with this subchapter, even if the same primary TSP is chosen to provide two or more telecommunications services. For example, a single authorization for changes of local, intraLATA, and long distance service is not valid. The TSP must obtain a separate authorization for change of local service, a separate authorization for change of intraLATA service, and a separate authorization for long distance.

(k) A TSP may acquire, through a sale or transfer, either part or all of another TSP's customer base, without obtaining each customer's authorization and verification, by complying with the rules set forth at *47 CFR §64.1120(e)*, as amended and supplemented, which are incorporated herein by reference.

(l) Copies of letter notifications filed with the FCC pursuant to *47 CFR §64.1120(e)(1)* and (2) shall also be filed with the Board.

14:10-11.7 Requirements for the executing TSP

(a) A TSP that receives a primary TSP change order that has been solicited and verified in compliance with this subchapter shall execute the requested TSP change as soon as possible, and in no case later than three business days after a change order for toll services is submitted, whether intraLATA or interLATA; and no later than 30 business days after a change order for local exchange service is submitted.

(b) An executing TSP is not responsible for verifying whether or not a switch is authorized. The executing TSP merely performs the switch in a timely manner after receiving a change order from the submitting TSP.

(c) The 30-day deadline set forth in (a) above for executing local exchange service change orders may be extended for good cause by Board staff. The extension shall last for 30 days, unless a different time period is agreed to by the customer and the TSPs involved in the switch; or if a different time period is required by Federal law or rule.

(d) The 30-day deadline set forth in (c) above for local exchange service may also be shortened by order of the Board pursuant to *N.J.S.A. 56:8-88*.

(e) When an authorized change of a TSP is made, the acquiring TSP shall notify the customer of the change within 30 days of submitting the primary TSP change order to the executing carrier that serves the customers.

(f) The notice required under (e) above shall be separate from the acquiring TSP's billing statement and shall clearly and conspicuously include at least the following information:

1. That the information is being sent to confirm a primary telecommunications service provider change order, and to confirm the type of service being changed, that is, local, intraLATA or interLATA services;

2. The name of the customer's former telecommunications service provider, if that information is known to the acquiring TSP;

3. The name of the acquiring telecommunications service provider, with telephone number and address;

4. A description of any and all terms, conditions or charges that the customer will pay for the change and for service from the new TSP; and

5. The telephone number and address of both the Board of Public Utilities Division of Customer Assistance, at Two Gateway Center, Newark, New Jersey 07102, 1 (800) 624-0241; and the Division of Consumer Affairs Consumer Service Center, at 124 Halsey Street 7th Fl, PO Box 45027, Newark, New Jersey 07102 (973) 504-6200.

(g) The submitting TSP shall make available to any customer, upon written or verbal request, for the period records are maintained, the TSP's verification of that customer's TSP change order. However, if the customer is unable to obtain the verification from the submitting TSP, then the executing TSP shall provide it to the customer, if such information is in its possession.

14:10-11.8 Unauthorized service termination and transfer (slamming)

(a) (No change in text.)

(b) Reimbursement procedures and TSP liability for slamming shall be in conformance with FCC rules at *47 CFR §64.1140*, and *§§64.1160* and 1170 as amended or supplemented. As of *[(the effective date of these amendments)]* ***September 17, 2007***, the substance of those regulations is as follows:

1. Any submitting TSP that violates the procedures prescribed in this subsection shall be liable to the primary TSP in an amount equal to 150 percent of all charges paid to the submitting TSP by such customer after such violation, as well as for additional amounts as prescribed in (b)4 below. The remedies provided in this subsection are in addition to any other remedies available by law;

2. Any customer whose selection of a primary TSP is switched without authorization verified in accordance with the procedures set forth in this subchapter is absolved from liability for charges as follows:

i. If the customer has not already paid charges to the unauthorized TSP, the customer is absolved of liability for charges imposed by the unauthorized TSP for service provided during the first 30 days after the unauthorized switch. Upon being informed by a customer that an unauthorized switch has occurred, the recipient of the call, that is, the authorized carrier, the unauthorized TSP, or the executing TSP, shall inform the customer of this 30-day absolution period. Any charges imposed by the unauthorized TSP on the customer for service provided after this 30-day period shall be paid by the customer to the authorized TSP at the rates the customer was paying to the authorized carrier at the time of the unauthorized switch in accordance with (b)3v below;

ii. If the customer has already paid charges to the unauthorized carrier, and the authorized TSP receives payment from the unauthorized TSP as provided for in (b)1 above, the authorized carrier shall refund or credit to the customer any amounts determined in accordance with the provisions of (b)4vi below; and

iii. If the customer has been absolved of liability as prescribed by this subsection, the unauthorized TSP shall also be liable to the customer for any charge required to return the customer to his or her properly authorized carrier, if applicable;

3. Absolution procedures where the customer has not paid charges are as follows:

i. This paragraph shall only apply after a customer has alleged that an unauthorized switch has occurred and the customer has not paid charges to the allegedly unauthorized TSP for service for 30 days, or a portion thereof, after the unauthorized switch is alleged to have occurred;

ii. An allegedly unauthorized TSP shall remove all charges incurred for service provided during the first 30 days after the alleged unauthorized switch from a customer's bill upon notification that such unauthorized switch is alleged to have occurred;

iii. An allegedly unauthorized TSP may challenge a customer's allegation that an unauthorized switch has occurred. An allegedly unauthorized TSP choosing to challenge such allegation shall immediately notify the complaining customer that: the unauthorized TSP is required to file the challenge with the Board within 30 days of the date of removal of charges from the complaining customer's bill in accordance with (b)3ii above. The TSP, upon investigation, is required to provide the Board with the name, address, phone number of the customer, the date of the alleged slam, the name of the unauthorized TSP to which service was switched, the type of services that were switched, and any evidence to substantiate the TSP's position. The alleged unauthorized TSP may reinstate charges to a customer's bill which were removed pursuant to the provisions of (b)3ii above upon notice that an investigation was completed by the Division of Customer Assistance that determined the switch was authorized;

iv. If it is determined after reasonable investigation that an unauthorized switch, as defined by *N.J.A.C. 14:10-11.1*, has occurred, the Board or its designees will issue a notice indicating that the customer is entitled to absolution from the charges incurred during the first 30 days after the unauthorized TSP switch occurred, and neither the authorized nor unauthorized TSP may pursue any collection against the customer for those charges;

v. If the customer has incurred charges for services provided for more than 30 days after the unauthorized TSP switch, the unauthorized TSP shall forward the billing information for such services to the authorized TSP, which may bill the customer for such services using either of the following means:

(1) The amount of the charge may be determined by a re-rating of the services provided based on what the authorized TSP would have charged the customer for the same services had an unauthorized switch not occurred; or

(2) The amount of the charge may be determined using a 50 percent proxy rate as follows: Upon receipt of billing information from the unauthorized TSP, the authorized TSP may bill the customer for 50 percent of the rate the unauthorized TSP would have charged the customer for the services provided. However, the customer shall have the right to reject use of this 50 percent proxy method and require that the authorized carrier perform a re-rating of the services provided, as described in (b)3v(1) above;

vi. If the unauthorized TSP received payment from the customer for services provided after the first 30 days after the unauthorized switch occurred, the obligations for payments and refunds provided for in this subsection shall apply to those payments; and

vii. If the Board or its designee determines after reasonable investigation that the TSP switch was authorized, the TSP may re-bill the customer for charges incurred; and

4. Reimbursement procedures where the customer has paid charges are as follows:

i. The procedures in this paragraph shall only apply after an unauthorized switch has occurred and the customer has paid charges to an allegedly unauthorized TSP;

ii. If the Board or its designee had determined after reasonable investigation that an unauthorized switch has occurred, it shall issue a notice directing the unauthorized carrier to forward to the authorized TSP the following:

(1) (No change.)

(2) Copies of any telephone bills from the unauthorized carrier to the customer;

iii. A copy of the notice under (b)4ii above shall be sent to the customer, the unauthorized TSP, and the authorized TSP;

iv. Compliance with (b)4ii and iii above does not preclude the Board from seeking additional administrative remedies where deemed appropriate;

v. Within 10 days of receipt of the amount provided for in (b)4ii(1) above, the authorized TSP shall provide a refund or credit to the customer in the amount of 50 percent of all charges paid by the customer to the unauthorized TSP. The customer has the option of asking the authorized TSP to re-rate the unauthorized carrier's charges based on the rates of the authorized TSP and, on behalf of the customer, seek an additional refund from the unauthorized TSP, to the extent that the re-rated amount exceeds the 50 percent of all charges paid by the customer to the unauthorized TSP. The authorized TSP shall also send notice to the Board Secretary and the Director of Customer Assistance that it has given a refund or credit to the customer;

vi. If an authorized TSP incurs billing and collection expenses in collecting charges from the unauthorized TSP, the unauthorized TSP shall reimburse the authorized TSP for reasonable expenses;

vii. If the authorized TSP has not received payment from the unauthorized TSP as required by (b)4v above, the authorized TSP is not required to provide any refund or credit to the customer. The authorized TSP shall, within 45 days of receiving the notice or decision as described in (b)4ii and iii above, inform the customer and the Director of Customer Assistance if the unauthorized TSP has failed to forward to it the appropriate charges, and also inform the customer of his or her right to pursue a claim against the unauthorized TSP for a refund of all charges paid to the unauthorized TSP; and

viii. Where possible, the properly authorized TSP shall reinstate the customer in any premium program in which that customer was enrolled prior to the unauthorized switch, if the customer's participation in that program was terminated because of the unauthorized switch. If the customer has paid charges to the unauthorized TSP, the properly authorized TSP shall also provide or restore to the customer any premiums to which the customer would have been entitled had the unauthorized switch not occurred. The authorized TSP must comply with the requirements of this paragraph regardless of

whether it is able to recover from the unauthorized TSP any charges that were paid by the customer.

(c) All investigation procedures are as follows:

1. When an executing or primary TSP is informed of an unauthorized TSP switch by a customer, it shall immediately notify both the authorized and allegedly unauthorized TSP of the incident. This notification shall include the *[identify]* ***identity*** of both TSPs;

2. Any TSP, executing, authorized, or allegedly unauthorized, that is informed by a customer or an executing TSP of an unauthorized TSP switch*[. The TSP]* can attempt to resolve the complaint to the satisfaction of the customer. If the TSP is unable to resolve the complaint, the TSP must send the complaint to the Board. The complaint must include the name, address and telephone number of the customer; the date the alleged unauthorized switch occurred; and the name of the alleged unauthorized TSP to which the customer was switched; the type of service switched; and any evidence to substantiate the TSP's position. Nothing in this subsection shall prevent an allegedly unauthorized TSP from resolving the complaint by providing the customer with all relief to which the customer is entitled under this subchapter;

3. Upon receipt of an unauthorized TSP switch complaint, the Board or its designee will notify the allegedly unauthorized TSP of the complaint and require the TSP to remove all unpaid charges for the first 30 days after the slam from the customer's bill pending a determination of whether an unauthorized switch, as defined by *N.J.A.C. 14:10-11.1*, has occurred, if it has not already done so; and

4. Not more than 30 days after notification of the complaint, the alleged unauthorized TSP shall provide to the Board or its designee a copy of any valid proof of verification of the TSP switch. This proof of verification shall contain clear and convincing evidence of a valid authorized TSP switch. The Board or its designee will determine whether an unauthorized switch has occurred using such proof and any evidence supplied by the customer. Failure by the submitting TSP to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation.

[(d) Each TSP shall submit to the Division of Customer Assistance three copies of the TSP slamming activity report form identified in the subchapter Appendix, incorporated herein by reference. By each March 1, the report shall cover the preceding period between July 1 and December 31. Each September 1, the report shall cover the preceding January 1 through June 30. Reporting shall commence on September 1, covering September 2 through June 30 of the following year. Reports filed on March 1 shall cover the period between July 1 and December 31.]

(d) (Reserved)

(e) *[In addition to the TSP slamming activity report required under (d) above, each]* ***Each*** TSP shall, upon request, submit to the Board and the Division three copies of a report of all slamming complaints received, and the resolution thereof indicating the customers' name, address, telephone number, the type of service that was slammed, and the submitting TSP or agent that requested the alleged unauthorized switch of the customer's primary TSP.

14:10-11.9 TSP freezes

(a) A TSP freeze is an additional restriction*[, over and above the requirement for verified authorization for a TSP switch,]* that prevents a switch in an end-user's primary TSP without the end-user's verified authorization for both of the following:

1. The lifting of the TSP freeze; and

2. The switch itself.

(b) All TSPs responsible for implementing changes of primary TSPs shall offer a plan to freeze and lift the freeze of the customer's local, intraLATA toll or interLATA primary TSPs upon the customer's request.

(c) (No change.)

(d) A TSP freeze applies to each end-user, regardless of the customer of record.

(e) An end-user's authorization to lift a freeze does not satisfy the requirement for a separate verified authorization to make a TSP switch. Therefore, if an end-user has a TSP freeze in effect, both of the following shall apply:

1. A submitting TSP that fails to obtain both authorizations required under (a) above shall be subject to penalties or other enforcement under this subchapter; and

2. A primary TSP that allows a submitting TSP to switch the end-user's TSP without both verifications required under (a) above shall also be subject to penalties or other enforcement under this subchapter.

(f) All TSPs responsible for the imposition or lifting of primary TSP freezes shall, in addition to complying with this chapter, also comply with FCC regulations at *47 CFR 64.1190*, preferred carrier freezes, incorporated herein by reference, as amended or supplemented. As of *[(the effective date of these rules)]* ***September 17, 2007****, the substance of those regulations is as follows:

1. A primary TSP freeze (or freeze) prevents a change in a customer's primary TSP selection unless the customer gives the TSP from whom the freeze was requested his or her express consent to make the switch. All TSPs responsible for the imposition or lifting of primary TSP freezes shall comply with the provisions of this section;

2. All TSPs responsible for the imposition or lifting of primary TSP freezes shall offer freezes on a nondiscriminatory basis to all customers, regardless of the customer's TSP selections;

3. Primary TSP freeze procedures, including any solicitation, shall clearly distinguish among telecommunications services (for example, local exchange, intraLATA toll, and interLATA toll) subject to a primary TSP freeze. The TSP offering the freeze shall obtain separate authorization for each service for which a primary TSP freeze is requested;

4. The following apply to solicitation and imposition of primary TSP freezes:

i. All TSP provided solicitation and other materials regarding primary TSP freezes shall include:

(1) (No change.)

(2) A description of the specific procedures necessary to lift a primary TSP freeze; an explanation that these steps are in addition to the verification rules in *N.J.A.C. 14:10-11.3* for changing a customer's primary TSP selections; and an explanation that the customer will be unable to make a change in TSP selection unless he or she lifts the freeze;

ii. No TSP responsible for the imposition or lifting of primary TSP freezes shall implement a primary TSP freeze unless the customer's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

(1) The TSP responsible for the imposition or lifting of primary TSP freezes has obtained the customer's written or electronically signed authorization in a form that meets the requirement of (f)4iii below;

(2) The TSP responsible for the imposition or lifting of primary TSP freezes has obtained the customer's electronic authorization, placed from the telephone number(s) on which the primary TSP freeze is to be imposed, to impose a primary TSP freeze. The electronic authorization shall confirm appropriate verification data (for example, the customer's date of birth or social security number) and the information required in (f)4iii(2)(A) through (C) below. TSPs electing to confirm primary TSP freeze orders 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 primary TSP freeze request, including automatically recording the originating automatic numbering identification; or

(3) An appropriately qualified independent third party has obtained the customer's oral authorization to submit the preferred TSP freeze and confirmed the appropriate verification data (for example, the customer's date of birth or social security number) and the

information required in (f)4iii(2)(A) through (D) below. The independent third party shall not be owned, managed, or directly controlled by the TSP or the TSP's marketing agent; not have any financial incentive to confirm primary TSP freeze requests for the TSP or the TSP's marketing agent; and operate in a location physically separate from the TSP or the TSP's marketing agent. The content of the verification shall include clear and conspicuous confirmation that the customer has authorized a primary TSP freeze;

iii. A TSP responsible for the imposition or lifting of primary TSP freezes may accept a customer's written or electronically signed authorization to impose a freeze on his or her primary TSP selection. Written authorization that does not conform with this section is invalid and shall not be used to impose a primary TSP freeze;

(1) The written authorization shall comply with *N.J.A.C. 14:10-11.5* concerning the form and content for letters of agency;

(2) At a minimum, the written authorization shall be printed with a readable type of sufficient size to be clearly legible and shall contain clear and unambiguous language that confirms:

(A)-(B) (No change.)

(C) That the customer understands that she or he will be unable to make a change in TSP selection unless she or he lifts the primary TSP freeze for that particular service; and

5. (No change.)

14:10-11.10 Enforcement

(a) TSPs shall adhere to a standard of due care when submitting and processing switches of primary TSPs. Adherence to this standard means that the TSP has taken all reasonable steps necessary to ensure compliance with this subchapter. There shall be a rebuttable presumption that any violation of this standard is "willful or intentional." The burden of proof shall be upon the submitting or executing TSP to rebut the presumption.

(b) Any TSP determined by the Board, after notice and hearing, *[or Board staff]* to have violated this subchapter, or a Board order adopted pursuant to *N.J.S.A. 56:8-1* et seq., or to have violated any Federal law or regulation, relating to switches in primary telecommunications service providers, shall be subject to the following, as applicable:

1. (No change.)

2. Civil penalties within the following ranges*[, determined according to N.J.A.C. 14:10-9]*:

i. Up to $ 7,500 for the first violation; and

ii. Up to $ 15,000 per violation for each subsequent violation associated with a specific access line; and/or

3. Such other remedies, including, but not limited to, the ordering of restitution to customers as the Board *[or Board staff]* deems appropriate.

(c) In the event the State owes money to the TSP, the amount of the penalty, when finally determined, may be deducted from any sums due and owing.

(d) (No change.)

(e) In the event that the Board suspends or revokes the authority of a TSP to conduct business in this State, the TSP which controls access, and/or the TSP responsible for call completion, shall immediately discontinue the revoked TSP's access to the facilities of any underlying TSP, and the TSP responsible for billing the customers of the revoked TSP shall notify each affected customer, advising that each customer has 30 days to choose another TSP.

(f) The Board may investigate, upon its own initiative or upon complaint, any allegation of a violation of this subchapter.

(g) The Board may compel the attendance of witnesses, compel the production of documents, and issue subpoenas in connection with any investigation of an alleged violation of this subchapter.

(h) The remedies provided for in this subchapter are in addition to any other remedies available under any Board order, rule, or finding; and in addition to remedies provided by any other applicable law.

14:10-11.11 Determination of penalties within statutory ranges

[(a) This section sets forth the method by which the Board or its designee will determine the penalty for a specific violation, within the ranges set forth at (e), (g), and (i) below.]

[(b)] ***(a)*** Each violation as it relates to each separate access line shall be a separate and distinct violation, for which a separate penalty may be assessed. For example, if a customer has two telephone lines, and a TSP improperly switches the customer's primary TSP for long distance service on both lines, the TSP is liable for two violations. Similarly, if a customer has one telephone line, and a TSP switches both intraLATA and long distance service improperly on that telephone line, the TSP is liable for two violations.

*[(c) The Board shall classify each violation of this subchapter as minor, moderate, or major, and shall assign penalties as set forth in this section.

(d) The following violations shall be classified as minor violations:

1. Submittal of a third-party verification that fails to include verification of any one of the following (each a separate violation):

i. That the person requesting the switch is 18 years old or older;

ii. That the person requesting the switch is authorized to do so;

iii. The name of the TSP that the customer is switching to;

iv. The telephone number of the line that carries the service being switched;

v. The services to be switched;

2. A submitting TSP verifies authorization for the change of one line but also changes an associated line that was not specified during the third-party verification process; or

3. If the TSP used a letter of agency, and the line(s) affected are not specified on the letter of agency;

4. Failure to initiate a switch within 60 days after obtaining authorization by letter of agency, internet signup or third-party verification;

5. When purchasing a customer base, failure of the acquiring carrier to provide customers with a letter containing all of the following:

i. At least 30 days written notice of the transfer;

ii. The name of the new TSP;

iii. At least 30 days written notice of the customer's right to switch to another TSP; or

iv. The rate the customer will be charged for services;

6. When purchasing a customer base, failure to provide the Board with at least 30 days prior written notice of the transfer and a copy of the letter sent to customers under (d)5 above; and

7. Change of a customer due to a data entry error.

(e) The penalty for a minor violation shall fall within the following ranges:

First violation	Second violation	Third and subsequent

		violations
$ 100.00 - $ 7,500	$ 200.00 - $ 22,500	$ 300.00 - $ 37,500

(f) The following violations shall be classified as moderate violations:

1. Failure to obtain a separate authorization for each service to be switched;

2. Failure of the TSP or the TSP's sales representative to drop off the line during the third-party verification process, unless the TSP has obtained a drop off exemption from the FCC;

3. TSP switches the service when it is clear during the third-party verification process that the customer does not have a complete understanding of what is actually happening; and

4. Any violation not classified as minor or major.

(g) The penalty for a moderate violation shall fall within the following ranges:

First violation	Second violation	Third and subsequent violations
$ 400.00 - $ 7,500	$ 500.00 - $ 22,500	$ 600.00 - $ 37,500

(h) The following violations shall be classified as major violations:

1. No verification of a customer's authorization of a switch in service;

2. An audio record of a third-party verification, which has a customer voice that is not the same as the customer by whom the switch was allegedly authorized;

3. A fraudulently obtained verification;

4. A forged signature on a letter of agency;

5. A TSP initiates a switch despite a customer's cancellation of the switch authorization during the third-party verification process;

6. Failure of the TSP to provide proof of authorization to the Board, within 30 days after being notified of an alleged violation, as required under *N.J.A.C. 14:10-11.8*;

7. When purchasing a customer base, the acquiring carrier provides no notice to customers of the transfer; and

8. When purchasing a customer base, the acquiring carrier provides no notice to the Board of the transfer.

(i) The penalty for a major violation shall fall within the following ranges:

First violation	Second violation	Third and subsequent violations
$ 700.00 - $ 7,500	$ 800.00 - $ 22,500	$ 900.00 - $ 37,500]*

[(j)] ***(b) The*** Board *[staff]* may, in its discretion, adjust a penalty determined in accordance with this section, *[within the ranges set forth at (a) through (h) above,]* on the basis of one or more of the following factors:

1. The nature, circumstances and gravity of the violation, including the individual and cumulative effect on customers;

2. The degree of the TSP's culpability;

3. Any history or pattern of prior violations;

4. The prospective effect of the penalty on the ability of the TSP to conduct business;

5. Any good faith effort on the part of the TSP in attempting to achieve compliance;

6. The TSP's ability to pay the penalty; and/or

7. Any other factors the Board determines to be appropriate.

[(k)] ***(c)*** The rights, remedies, and prohibitions accorded the Board under this chapter are in addition to and cumulative of any right, remedy or prohibition accorded by the common law or any statute of this State. Nothing in this subchapter shall be construed

to deny, abrogate or impair any such common law or statutory right, remedy or prohibition.

[(l)] ***(d)*** Neither P.L. 1998, c. 82, nor this subchapter, shall be construed in any way to limit the authority and power of the Attorney General and the Division of Consumer Affairs in the Department of Law and Public Safety to enforce any other sections of the Consumer Fraud Act, P.L. 1960, c. 39 (*N.J.S.A. 56:8-1* et seq.) or any other applicable law, rule or regulation in connection with the activities of telecommunications service providers, even if such activities involve slamming. Nothing in this subchapter shall be construed in any way to abrogate a customer's private right of action, pursuant to *N.J.S.A. 56:8-19*.

*[APPENDIX

New Jersey Board of Public Utilities

Division of Customer Assistance

TSP Slamming Activity Report

Name of Reporting TSP_____

Reporting Period_____

Number of Verified Slamming Complaints_____

Number of Slamming Complaints Resolved with Customer_____

Total Number of Slamming Complaint Received by Reporting TSP Identified by Local, Regional or Long Distance TSP Name

Can attach a separate sheet of paper if necessary

Total Number of Customer's Served by Reporting TSP_____]*

SUBCHAPTER 12. MASS MIGRATION UPON TSP DEPARTURE FROM A SERVICE TERRITORY

14:10-12.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meaning unless the context clearly indicates otherwise.

. . .

"Competitive local exchange carrier" or "CLEC" has the same meaning as is assigned to this term *N.J.A.C. 14:10*-*[5.2]***1.2***.

. . .

"Incumbent local exchange carrier" or "ILEC" has the same meaning as is assigned to this term in *N.J.A.C. 14:10*-*[5.2]***1.2***.

"Local exchange carrier" or "LEC" has the same meaning as is assigned to this term in *N.J.A.C. 14:10*-*[5.2]***1.2***.

. . .

"NXX code" has the same meaning as is assigned to this term in *N.J.A.C. 14:10*-*[1.18]***3.1***.

. . .

"Telecommunications service provider" or "TSP" has the same meaning as is assigned to the term *N.J.A.C. 14:10*-*[11.1]***1.2***.

. . .

14:10-12.3 Application to depart a service territory

(a) (No change.)

(b) At least 90 days prior to its planned departure date, a departing TSP shall file an application with the Secretary of the Board that includes all of the following:

1. (No change.)

2. An exit plan that explains the steps the TSP will take to help facilitate the transfer of its end users to a new TSP. The exit plan shall include the following:

i.-ii. (No change.)

iii. A plan for a second notice to end users in accordance with *N.J.A.C. 14:10*-*[12.5(b)]***12.5(d)***.

iv.-xv. (No change.)

(c)-(d) (No change.)

APPENDIX B

Mass Migration Timeline

Note: this timeline is a summary of some of the provisions of *N.J.A.C. 14:10-12.1* through *12.13*. It is not intended to replace those provisions. In case of any discrepancy between the rule provisions and this timeline, the rule provisions shall govern.

Note: The days listed below refer to calendar days, unless stated otherwise.

DAYS BEFORE PLANNED DEPARTURE DATE	MILESTONE
90	. Departing TSP files an application with the Board requesting permission to depart the service territory, in accordance with N.J.A.C. 14:10-12.3(b)1. . Departing TSP files an exit plan with the Board, in accordance with N.J.A.C. 14:10-12.3(b)2. . Within seven business days after receiving the application, the Board notifies the TSP service list in accordance with N.J.A.C. 14:10-12.4(b).
66	. Departing TSP transfers any NXX codes or thousand number blocks in accordance with N.J.A.C. 14:10-12.9(a).
60	. Departing TSP provides end user information to the Board and acquiring TSP in accordance with N.J.A.C. 14:10-12.7. . Departing TSP notifies its end users in accordance with N.J.A.C. 14:10-12.5(a).
55	. If the departing TSP fails to provide notice under N.J.A. C. 14:10-12.5, the acquiring TSP, if any, shall provide notice to end users and the Board in accordance with N.J.A. C. 14:10-12.5. If there is no acquiring TSP, the ILEC shall provide notice to end users and the Board in accordance with N.J.A.C. 14:10-*[12.5(e)]***12.5(h)***
30	. Departing TSP provides a second notice to each end user, in accordance with N.J.A.C. 14:10-*[12.5(b)]***12.5(d)***. . If the departing TSP fails to provide a notice under N.J.A.C. 14:10-12.5(b), and there is no acquiring TSP, the

	ILEC shall provide notice to end users and the Board in accordance with N.J.A.C. 14:10-*[12]***12.5(h)***; and
	. Departing TSP unlocks all of its telephone numbers in the E-911 database, in accordance with N.J.A.C. 14:10-12.12(a).
20	. Cut-off date if there is an acquiring TSP, in accordance with N.J.A.C. 14:10-*[12.6,]***12.6(h), (i) and (j)***.
15	. Acquiring TSP issues valid local service request (LSR), if required, in accordance with N.J.A.C. 14:10-12.11(a).
14	. Departing TSP or ILEC shall provide additional notice to priority end-users in accordance with N.J.A.C. 14:10-12. 7(c).
12	. Either the ILEC or departing TSP shall provide firm order confirmation (FOC) to acquiring TSP, in accordance with N.J. A.C. 14:10-12.11(b) or (c).
2	. The ILEC or departing TSP shall notify the acquiring TSP of any discrepancies in accordance with N.J.A.C. 14:10-12. 12(a).
	. Acquiring TSP takes appropriate actions to correct discrepancies, in accordance with N.J.A.C. 14:10-12.12(b).
1	. Acquiring TSP reschedules unresolved service order discrepancies for evaluation, in accordance with N.J.A.C. 14:10-12.12(c).
0	. Planned departure date. All scheduled service orders have been completed.
Day after planned departure date	. Termination of service of any remaining end users in accordance with N.J.A.C. 14:10-12.6(l)3.