

278.535 Switching of telecommunications provider -- Penalty -- Administrative regulations.

- (1) As used in this section:
 - (a) "Telecommunications provider" or "provider" means a person that provides one (1) or more telecommunications services for compensation, and its successors in interest by way of acquisition or merger, and includes a provider of regulated and unregulated intrastate services offered to customers for the transmission of two-way, interactive communications. "Telecommunications provider" or "provider" does not include a provider of commercial mobile radio services as defined in 47 U.S.C. sec. 332(d)(1).
 - (b) "Letter of agency" means a written statement that authorizes a change of the customer's telecommunications provider and bears the customer's signature.
- (2) A customer of a telecommunications provider shall not be switched to another provider without the customer's letter of agency or the electronically recorded authorization of the customer, indicating that the customer knowingly approved the specific details of the switch. The requirement of a written or electronically recorded authorization shall not apply if the customer initiates a call to the customer's local telephone service provider to request that his long-distance provider be changed. When a customer's service is changed, the new provider shall maintain for one (1) year a record of nonpublic customer-specific information that establishes that the customer authorized the change. In any dispute, the burden of proof to show that the customer knowingly authorized the change shall be on the provider that claims to have obtained customer authorization for the switch.
- (3) If a letter of agency is combined with an inducement, or with information on a subject other than the change of a customer's telecommunications provider, whether or not the letter of agency can be easily severed from the rest of the document, then the language whereby a person authorizes service from the provider shall be printed in a type size as large or larger than the largest type used in the document that includes the letter of agency.
- (4) If a telecommunications provider initiates a switch of provider that the customer has not authorized under this section, that provider, upon request by the customer, shall reverse the change within five (5) business days.
- (5) The customer subjected to a change that is not verified consistent with this section or administrative regulations promulgated under this section is not responsible for any charges associated with the unauthorized change, including charges for usage subsequent to the change that are in excess of the amount the customer would have paid had the service not been changed, if the customer contacts the customer's local exchange carrier, the customer's previous provider of intrastate service, or the telecommunications provider that initiated an unauthorized change in service within one hundred eighty (180) days after receipt of the customer's first bill containing charges by the telecommunications provider that initiated the unauthorized change. A telecommunications provider that has initiated an unauthorized customer change shall:

- (a) Pay all charges associated with returning the customer to the customer's original telecommunications provider;
- (b) Return to the customer any amount paid to the provider by the customer or on the customer's behalf in excess of the amount the customer would have paid had the service not been changed; and
- (c) Upon request, provide all billing records to the original provider from which the customer was changed to enable the original provider to comply with this section.

The telecommunications provider that initiated the unauthorized change is responsible for any payment to access providers or to an underlying carrier where applicable. Failure of the customer to provide timely notice will relieve the telecommunications provider that initiated the unauthorized change of any obligations under this subsection.

- (6) If the commission finds that a provider has willfully or repeatedly violated this section or an administrative regulation promulgated under it, the commission shall order the provider to take corrective action as necessary. The commission may impose a penalty on the violator as specified in KRS 278.990(1), except that the maximum civil penalty to be assessed for each violation of this section shall be ten thousand dollars (\$10,000). The commission also may, if consistent with the public interest, suspend, restrict, or revoke any certificate or registration of the telecommunications provider, thereby denying the provider the authorization to provide telecommunications service in the Commonwealth.
- (7) The commission shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement the policies of this section.

Effective: July 15, 1998

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