

**4.700 SELECTION OF PRIMARY TELECOMMUNICATIONS CARRIER****4.701 Definitions**

For purposes of this rule, the following definitions apply:

- (A) "Interexchange carrier" ("IXC"): a provider of interLATA or intraLATA long distance telecommunications services. Facilities-based carriers of long distance service, resellers of long distance service, and local exchange carriers providing long distance service are included in this definition.
- (B) "Letter of Agency" ("LOA"): a customer's written statement that authorizes a change to that customer's primary interexchange carrier or local exchange carrier and bears the customer's signature.
- (C) "Local Exchange Carrier" ("LEC"): a provider of switched telecommunications service that carries calls originating and terminating within the local calling area.
- (D) "Long Distance Telecommunications Service": service that carries calls to exchanges that are not within the local calling area of the originating number.
- (E) "Primary Interexchange Carrier" ("PIC"): a carrier to which a customer has presubscribed for either interLATA or intraLATA long distance service.
- (F) "Primary Local Exchange Carrier" ("PLEC"): a carrier to which a customer has presubscribed for local exchange service.

**4.702 Changes to Primary Interexchange Carrier****(A) Verification Procedures**

- (1) No IXC shall submit to a LEC a PIC change order unless the IXC has first obtained express authorization from the customer. "Express authorization" means an express, affirmative act by the customer clearly agreeing to the change in PIC in the form of:
  - (a) a written authorization;
  - (b) a customer initiated call to the IXC;
  - (c) an oral authorization verified, and recorded, by an independent third party;
  - (d) a recorded electronic authorization; or
  - (e) some other form of recorded authorization.
- (2) The IXC shall confirm such express authorization through one of the following three procedures:
  - (a) The IXC has obtained the customer's written authorization in a form that meets the requirements of Commission Rule 4.702(B); or
  - (b) The IXC has obtained the customer's electronic authorization, placed from the telephone number(s) on which the PIC is to be changed, to submit a PIC change order. The authorization shall include the information described in Commission Rule 4.702(B)(5). IXCs electing to confirm sales electronically shall establish one or more toll-free telephone numbers

exclusively for that purpose. A call to the number(s) will connect a customer to a voice response unit, or similar mechanism, that records the required information regarding the PIC change, including automatically recording the automatic number identification ("ANI"); or

- (c) An appropriately qualified and independent third party operating in a location physically separate from the IXC's telemarketing representative has obtained the customer's recorded electronic authorization, or some other form of recorded authorization, to submit the PIC change order. Such authorization shall confirm and include appropriate verification data (e.g., the customer's date of birth or social security number). Such authorization is valid only if the entity that obtained the authorization meets the following requirements:

- (1) it is independent of the IXC or the IXC's telemarketing representative;
- (2) it complies with the Commission's rules regarding changes to telecommunications carriers;
- (3) it has a written policy regarding customer complaints and it abides by that policy;
- (4) it has a written policy requiring the maintenance and storage of recorded electronic authorizations for a minimum period of one year and it abides by that policy;
- (5) it has a written script that it uses when obtaining verifications, and the script provides clear and unambiguous notice to the customer of the following: (a) that the customer is authorizing a change in primary interexchange carrier; (b) the identity of the new primary interexchange carrier; and (c) a toll-free number that the customer can call to verify whether the change has occurred; and
- (6) it is in a location that is physically separate from that of the IXC or the IXC's telemarketing representative.

- (3) A PIC change made in violation of any of the requirements of Rule 4.700 is invalid.

(B) Letter of Agency Form and Content

- (1) An IXC shall obtain any necessary written authorization from a subscriber for a PIC change by using a letter of agency as specified in this section. Any letter of agency that does not conform with this section is invalid.
- (2) The letter of agency shall be a separate document (an easily separable document containing only the authorizing language described in paragraph (5) of this section) whose sole purpose is to authorize an interexchange carrier to initiate a primary interexchange carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the primary interexchange carrier change.
- (3) The letter of agency shall not be combined with inducements of any kind on the same document.
- (4) Notwithstanding paragraphs (2) and (3) of this section, the letter of agency may be combined with checks that contain only the required letter of agency language prescribed in paragraph (5) of this section and the necessary information to make the check a negotiable instrument. The letter of agency

check shall not contain any promotional language or material. The letter of agency check shall contain in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a primary interexchange carrier change by signing the check. The letter of agency language also shall be placed near the signature line on the back of the check.

- (5) At a minimum, the letter of agency must be printed with a type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:
  - (a) The subscriber's billing name and address and each telephone number to be covered by the primary interexchange carrier change order;
  - (b) The decision to change the primary interexchange carrier from the current interexchange carrier to the prospective interexchange carrier;
  - (c) That the subscriber designates the interexchange carrier to act as the subscriber's agent for the primary interexchange carrier change;
  - (d) That the subscriber understands that only one interexchange carrier may be designated as the subscriber's interstate primary interexchange carrier, and only one as the subscriber's intrastate primary interexchange carrier, for any one telephone number. Any carrier designated as a primary interexchange carrier must be the carrier directly setting the rates for the subscriber;
  - (e) That the subscriber understands that any primary interexchange carrier selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's primary interexchange carrier. The precise amount of any such charge shall be specified in the letter of agency; and
  - (f) A toll-free number that the customer can call to verify whether the change has occurred.
- (6) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current interexchange carrier.
- (7) If any portion of a letter of agency is translated into a language other than English, then all portions of the letter of agency must be translated into that language.
- (8) The letter of agency shall provide the toll-free telephone number and mailing address of the Consumer Affairs Division of the Department of Public Service, and shall inform the customer of his/her right to file a complaint with the Consumer Affairs Division.

(C) Provision of Offers in Written Form. Upon request of the customer, offers to provide telecommunications interexchange services shall be sent to the customer in written form, describing the terms and conditions of service.

(D) Applicability. This rule shall apply only to the extent not preempted by federal law.

#### **4.703 Changes to Primary Local Exchange Carrier**

##### **(A) Verification Procedures**

- (1) No LEC shall submit a PLEC change order unless the LEC has first obtained express authorization from the customer. "Express authorization" means an express, affirmative act by the customer clearly agreeing to the change in PLEC in the form of:

- (a) a written authorization;
  - (b) a customer initiated call to the prospective LEC;
  - (c) an oral authorization verified, and recorded, by an independent third party;
  - (d) a recorded electronic authorization; or
  - (e) some other form of recorded authorization.
- (2) The LEC to whom service is to be changed shall confirm such express authorization through one of the following three procedures:
- (a) The LEC has obtained the customer's written authorization in a form that meets the requirements of Commission Rule 4.703(B); or
  - (b) The LEC has obtained the customer's electronic authorization, placed from the telephone number(s) on which the PLEC is to be changed, to submit a PLEC change order. The authorization shall include the information described in Commission Rule 4.703(B)(5). Prospective LECs electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. A call to the number(s) will connect a customer to a voice response unit, or similar mechanism, that records the required information regarding the PLEC change, including automatically recording the automatic number identification ("ANI"); or
  - (c) An appropriately qualified and independent third party operating in a location physically separate from the prospective LEC's telemarketing representative has obtained the customer's recorded electronic authorization, or some other form of recorded authorization, to submit the PLEC change order. Such authorization shall confirm and include appropriate verification data (e.g., the customer's date of birth or social security number). Such authorization is valid only if the entity that obtained the authorization meets the following requirements:
    - (1) it is independent of the LEC or the LEC's telemarketing representative;
    - (2) it complies with the Commission's rules regarding changes to telecommunications carriers;
    - (3) it has a written policy regarding customer complaints and it abides by that policy;
    - (4) it has a written policy requiring the maintenance and storage of recorded electronic authorizations for a minimum period of one year and it abides by that policy;
    - (5) it has a written script that it uses when obtaining verifications, and the script provides clear and unambiguous notice to the customer of the following: (a) that the customer is authorizing a change in primary local exchange carrier; (b) of the identity of the new primary local exchange carrier; and (c) a toll-free number that the customer can call to verify whether the change has occurred; and
    - (6) it is in a location that is physically separate from that of the LEC or the LEC's telemarketing representative.
- (3) A PLEC change made in violation of any of the requirements of Rule 4.700 is invalid.

(B) Letter of Agency Form and Content

- (1) A LEC to whom service is to be changed shall obtain any necessary written authorization from a subscriber for a PLEC change by using a letter of agency as specified in this section. Any letter of agency that does not conform with this section is invalid.
- (2) The letter of agency shall be a separate document (an easily separable document containing only the authorizing language described in paragraph (5) of this section) whose sole purpose is to authorize a LEC to initiate a PLEC change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the PLEC change.
- (3) The letter of agency shall not be combined with inducements of any kind on the same document.
- (4) Notwithstanding paragraphs (2) and (3) of this section, the letter of agency may be combined with checks that contain only the required letter of agency language prescribed in paragraph (5) of this section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a primary local exchange carrier change by signing the check. The letter of agency language also shall be placed near the signature line on the back of the check.
- (5) At a minimum, the letter of agency must be printed with a type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:
  - (a) The subscriber's billing name and address and each telephone number to be covered by the PLEC change order;
  - (b) The decision to change the PLEC from the current LEC to the prospective LEC;
  - (c) That the subscriber designates the prospective LEC to act as the subscriber's agent for the PLEC change;
  - (d) That the subscriber understands that only one LEC may be designated as the subscriber's intrastate primary LEC for any one telephone number. Any carrier designated as a primary LEC must be the carrier directly setting the rates for the subscriber;
  - (e) That the subscriber understands that any primary LEC selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's primary LEC. The precise amount of any such charge shall be specified in the letter of agency; and
  - (f) A toll-free number that the customer can call to verify whether the change has occurred.
- (6) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current LEC.
- (7) If any portion of a letter of agency is translated into a language other than English, then all portions of the letter of agency must be translated into that language.
- (8) The letter of agency shall provide the toll-free telephone number and mailing address of the Consumer Affairs Division of the Department of Public Service,

and shall inform the customer of his/her right to file a complaint with the Consumer Affairs Division.

- (C) Provision of Offers in Written Form. Upon request of the customer, offers to provide telecommunications local exchange services shall be sent to the customer in written form, describing the terms and conditions of service.
- (D) Applicability. This rule shall apply only to the extent not preempted by federal law.