

**54-4-37 Definitions -- Unauthorized charge to account -- Penalties -- Procedures for verification -- Authority of commission and Division of Public Utilities.**

(1) For purposes of this section:

- (a) "Agents" includes any person representing a public utility for purposes of billing for a service or merchandise from a third-party supplier.
- (b) "Billing aggregator" means any person that:
  - (i) initiates charges;
  - (ii) combines or aggregates charges from third-party suppliers of services or merchandise; or
  - (iii)
    - (A) creates bills for account holders; and
    - (B) passes these bills for the billing of account holders to:
      - (I) another billing aggregator; or
      - (II) a public utility.
- (c)
  - (i) "Public utility" is as defined in Section 54-2-1.
  - (ii) "Public utility" does not include a telecommunications corporation providing only mobile wireless service or Internet access.
- (d) "Subscriber" means a person or government or a person acting legally on behalf of a person or government who authorizes a charge from a third-party provider of service or merchandise.
- (e)
  - (i) "Third party" means any person other than the account holder and the public utility.
  - (ii) "Third party" includes:
    - (A) a billing aggregator;
    - (B) a public utility;
    - (C) a nonpublic utility provider of services and merchandise;
    - (D) those persons billing for services or merchandise; and
    - (E) those persons verifying a subscriber's authorization.
  - (iii) "Third party" does not include:
    - (A) an affiliated or subsidiary company of a public utility whose charges the commission determines by rule would be reasonably associated by a subscriber with the type of charges that would appear on that particular public utility's bill;
    - (B) a presubscribed local or long distance telecommunications corporation or its affiliated or subsidiary company as to charges for local or long distance telephone, data, or wireless services.

(2) This section does not apply to:

- (a) telecommunications services that are used, initiated, or requested by the customer, including dial-around services such as:
  - (i) 10-10-XXX;
  - (ii) 1-900 numbers;
  - (iii) directory assistance;
  - (iv) operator-assisted calls;
  - (v) acceptance of collect calls; and
  - (vi) other casual calling by the customer;
- (b) changes in telecommunications providers regulated by Section 54-8b-18;
- (c) the provision of any charges for financing by an affiliated or subsidiary company of a public utility in connection with the purchase of services or merchandise if there is a written agreement for the financing between the customer and the affiliated or subsidiary company; or

- (d) except for Subsections (5) and (6), services provided by any of the following that are billed through a public utility:
  - (i) a city;
  - (ii) a town; or
  - (iii) a county.
- (3) Pursuant to this section, a public utility may not charge an account holder for services the account holder never:
  - (a) ordered; or
  - (b) knowingly authorized.
- (4) A public utility shall ensure that its account holders receive:
  - (a) identification of a third-party provider of services or merchandise;
  - (b) upon subscriber request, toll-free numbers to enable a subscriber to contact the third party to resolve disputes;
  - (c) a clear, concise description of services or merchandise being billed;
  - (d) highlight or identification of each service or merchandise different from prior billing cycle services or merchandise;
  - (e) clear identification of the payment amount needed for each service or merchandise to ensure that any public utility service will continue;
  - (f) prompt and courteous treatment of all disputed charges; and
  - (g) information about the provisions in Subsections (5) and (6).
- (5)
  - (a) Unless specifically instructed by the account holder, each public utility shall first apply all payments received to the account holder's bill for the public utility's own tariffed utility services.
  - (b) Any remaining credit after the application of payment under Subsection (5)(a) shall be allocated proportionally to other charges, unless otherwise specified by the account holder.
- (6) A public utility may not disconnect or threaten disconnection of any account holder's basic utility service for failure to pay third-party charges.
- (7) Accounts receivable purchased by a public utility from third parties may not be treated as public utility charges regardless of the service or product upon which the account receivable is based.
- (8)
  - (a) If an account holder informs the public utility that a third-party service or merchandise charge is neither knowingly used nor authorized, or the charge in whole or part is disputed, the public utility shall:
    - (i)
      - (A) immediately credit the account holder's account for the disputed amount; and
      - (B) refer the matter back to the third party for collection; or
    - (ii) suspend the account holder's obligation of payment of the disputed amount until it is determined whether the charge was either knowingly used or authorized.
  - (b) The public utility may not request the account holder to contact the third party to resolve the dispute prior to applying the credit under Subsection (8)(a).
  - (c) The disputed charge shall be removed from the public utility's bill to the account holder no later than two billing cycles following the billing cycle during which the complaint or dispute is registered unless it is later determined that the charge was authorized and the account holder is required to pay the charge.
  - (d) Immediately upon the account holder's first complaint or inquiry, the public utility shall inform the account holder of:
    - (i) the process provided in this Subsection (8); and

- (ii) the account holder's options.
- (e) Except as provided in Subsection (8)(c), once the charges have been removed from the account holder's utility bill:
  - (i) the third party may not use the utility bill to:
    - (A) rebill the charges; or
    - (B) further attempt to collect the charge; and
  - (ii) the public utility may not allow any further collection attempts by the third party to involve the utility bill.
- (9)
  - (a) If requested by the account holder, a public utility shall provide the account holder with toll-free numbers supplied by the provider of the service or merchandise, so the account holder may contact the third-party supplier of the services or merchandise billed.
  - (b) The public utility responsibility prescribed by Subsection (9)(a) applies through all layers of third parties, including:
    - (i) public utilities;
    - (ii) service providers;
    - (iii) merchandise providers;
    - (iv) affiliate billing companies; or
    - (v) billing aggregators.
  - (c) A public utility shall perform due diligence to acquire the information required under this Subsection (9) from any provider for whom it bills.
- (10) A third-party provider of services or merchandise may not request a public utility to bill its charges unless and until it:
  - (a) has provided to the public utility valid toll-free numbers to enable a subscriber to contact the third-party to resolve any disputed charges;
  - (b) has provided updated toll-free numbers to the public utility upon any change in the numbers; and
  - (c) has received authorization from the subscriber for the service or merchandise through:
    - (i) obtaining the subscriber's written authorization;
    - (ii) having the subscriber's oral authorization verified by an independent verifier; or
    - (iii) any means provided by rule of the commission.
- (11) If the subscriber is not an individual, an authorization shall be valid only if given by an authorized representative of the subscriber.
- (12) The written authorization for the service or merchandise described in Subsection (10) shall:
  - (a) be signed by the subscriber; and
  - (b) contain a clear, conspicuous, and unequivocal request by the subscriber for the service or merchandise.
- (13) The confirmation by a verifier shall, at a minimum:
  - (a)
    - (i) confirm the subscriber's identity with information unique to the customer; or
    - (ii) if the customer refuses to provide identifying information, note the fact that the customer would not provide the identifying information;
  - (b) confirm that the subscriber requests the service or merchandise be provided by the third party; and
  - (c) confirm that the subscriber has the authority to request the service or merchandise be provided by the third party.
- (14) A verifier shall meet each of the following:
  - (a) any criteria set for verifiers by the commission;

- (b) not be directly or indirectly managed, controlled, directed, or owned wholly or in part by:
    - (i) the public utility on whose bill the charge will appear;
    - (ii) a third-party provider;
    - (iii) an agent of a public utility or third-party provider that seeks to provide the service or merchandise;
    - (iv) a person who directly owns or indirectly manages, controls, directs, or owns more than 5% of the public utility or third-party provider described in Subsection (14)(b)(i) or (ii);
    - (v) the marketing entity that seeks to market the third-party provider's service or merchandise;or
    - (vi) any person who directly or indirectly manages, controls, or owns more than 5% of the marketing entity described in Subsection (14)(b)(v);
  - (c) operate from facilities physically separated from those facilities of:
    - (i) the public utility on whose bill the charge will appear;
    - (ii) the third party or its agents that seek to provide the service or merchandise to the subscriber; or
    - (iii) the marketing entity that seeks to market the third-party provider's service or merchandise to the subscriber; and
  - (d) not derive commissions or compensation based upon the number of authorizations verified.
- (15) A verifier that obtains the subscriber's oral verification regarding the change shall record that verification by obtaining the appropriate verification data.
- (16)
- (a) The record verifying a subscriber's request for a third-party to provide services or merchandise shall be available to the subscriber upon request.
  - (b) Information obtained from the subscriber through verification may not be used for any other purpose.
  - (c) Any intentional unauthorized release of the information in violation of Subsection (16)(b) is grounds for:
    - (i) penalties or other action by the commission; or
    - (ii) remedies provided by law to the aggrieved subscriber against any of the following who is responsible for the violation:
      - (A) the third-party provider;
      - (B) the verifier;
      - (C) an agent or employee of the third-party provider or verifier.
- (17) The verification shall occur in the same language as that in which the request was solicited.
- (18) Each public utility shall allow account holders to prohibit the public utility from billing for all or selected third parties for services or merchandise.
- (19)
- (a) Each public utility shall maintain monthly records of the number of complaints about unauthorized charges that appear on a public utility bill.
  - (b) The records described in Subsection (19)(a) shall be available to the commission upon request.
- (20)
- (a) Proceedings for violations of this section may be commenced by request for agency action filed with the commission by:
    - (i) an account holder;
    - (ii) a public utility;
    - (iii) the Division of Public Utilities; or
    - (iv) the commission on the commissioner's own motion.

- (b) The remedies provided by this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law.
- (21) Any public utility, its agents, or a third-party provider of goods or services who violates this section or rules adopted to implement this section shall be subject to Sections 54-7-23 through 54-7-29.
- (22) The Division of Public Utilities shall have power to seek injunctive relief to stop repeated unauthorized violations of this section by a public utility or a third-party provider of service or merchandise.
- (23) The commission is granted authority to:
  - (a) enforce this section; and
  - (b) implement rules to carry out the requirements of the section.

Amended by Chapter 139, 2001 General Session