CHAPTER 20.

REGULATIONS CONCERNING THE MARKETING OF TELECOMMUNICATIONS SERVICES.

Rule R20-1. Slamming, cramming and related abuses in the marketing of telecommunications services.
Rule R20-2. Fair competition among local telecommunications service providers.

CHAPTER 20.

REGULATIONS CONCERNING THE MARKETING OF TELECOMMUNICATIONS SERVICES.

Rule R20-1. Slamming, Cramming and Related Abuses In the Marketing of Telecommunications Services.

(a) No telecommunications provider shall submit, or cause to be submitted, a change order for preferred intraLATA interexchange carrier, interLATA interexchange carrier or local exchange carrier to any telecommunications company except in accordance with the procedures required by the current regulations of the Federal Communications Commission.

(b) If the Commission determines that a telecommunications provider has submitted, or caused to be submitted, a change order and cannot demonstrate that it has complied with subsection (a), the Commission shall make available to the customer the remedies authorized by the current regulations of the Federal Communications Commission, with respect to both interstate and intrastate service, and for this purpose the customer's authorized carrier may be made a party to the proceeding.

(c) (Reserved for future use.)

(d) No telecommunications provider shall provide any service to any customer for compensation, or submit or authorize any billing, unless and until the customer or the customer’s representative has clearly, expressly and affirmatively agreed to purchase the service; provided, however, with respect to dial-around charges or per-use charges associated with vertical feature offerings of local providers and subject to forgiveness policies relating to the billing of charges, use of such services by an employee of the customer or by a member or guest of the customer’s household shall be deemed to have been made under the authority of the customer. For purposes of this subsection, each day the provider continues to make the service available to the customer for compensation constitutes a separate violation, even if the customer does not actively make use of the service.

(e) Any telecommunications provider's telemarketing, direct mail or other forms of solicitation to change a customer's preferred local exchange carrier, intraLATA interexchange carrier, or interLATA interexchange carrier shall comply with the current regulations of the Federal Communications Commission regarding separate letters of authorization.

(f) As used in this section:

(1) "Express authorization" means an express, affirmative act by the customer or the customer’s representative clearly agreeing to the change in preferred intraLATA interexchange carrier, interLATA interexchange carrier or local exchange carrier, in a manner consistent with this section and the regulations of the Federal Communications Commission.

(2) "Customer" means the party in whose name the telecommunications service is provided.

(3) "Customer's representative" means any adult person authorized by the customer to change telecommunications services, or contractually or otherwise lawfully authorized to represent the customer.

(4) "Telecommunications provider" means any public utility that provides telecommunications service.

(NCUC Docket No. P-100, Sub 148, 07/12/01; NCUC Docket No. P-100, Sub 165, 08/5/10.)

Rule R20-2. FAIR COMPETITION AMONG LOCAL TELECOMMUNICATIONS SERVICE PROVIDERS

(a) For purposes of this rule, the following definitions shall apply:

(1) “Development” means a residential subdivision, office park, shopping center or other area with clearly defined boundaries being developed as a unified entity by one or more landlords or developers.

(2) “Electing provider” means a preferred provider that has chosen to make subloops available to competitors pursuant to subsections (f) and (h) of this rule.

(3) “Exclusive access provisions” are provisions of a preferred provider contract that prohibit the developer, manager, owner or other party controlling access to a development from allowing competitors of the preferred provider to enter upon the development premises or easements and rights-of-way appurtenant thereto, or provisions of a preferred provider contract that require the developer, manager, owner or other party controlling access to a development to impose restrictions or requirements on such third party access which are not imposed on the preferred provider and which are anticompetitive in nature.

(4) “Exclusive provisioning provisions” are provisions of a preferred provider contract that prohibit the developer, manager, owner or other party controlling access to a development from allowing competitors of the preferred provider to provide services in a development or provisions of a preferred provider contract that require the developer, manager, owner or other party controlling access to a development to impose restrictions or requirements on the provisioning of such third party service which are not imposed on the preferred provider and which are anticompetitive in nature.

(5) “Exempted provider” means a preferred provider that is a local exchange company and is not required under federal law to make subloops available to its competitors, or a preferred provider that is a competing local provider and would not, if it were a local exchange company, be required to make subloops available to its competitors.

(6) “Local service provider” includes any competing local provider, as defined in G.S. 62-3(7a), and any local exchange company, as defined in G.S. 62-3(16a).

(7) “Preferred provider” means a local service provider that has entered into a preferred provider contract.

(8) “Preferred provider contract” means a contract between a particular local service provider and the owner or developer of a development, giving the preferred provider special status or rights not available to other local service providers.

(9) “Weighted commission provisions” are provisions of a preferred provider contract providing for the payment of commissions to an owner or developer that (A) are based on the number of customers in the development who purchase service from the preferred provider, or (B) are based on a percentage of the revenues received by the preferred provider

from customers in the development, or (C) otherwise provide a financial incentive for the owner or developer to exclude competitors of the preferred provider from the development.

(b) Exclusive provisioning provisions in preferred provider contracts are anticompetitive and void.

(c) Exclusive access provisions in preferred provider contracts are anticompetitive and void.

(d) Weighted commission provisions in preferred provider contracts are contrary to public policy and void, except as provided in subsections (f) and (g) below.

(e) Every preferred provider shall file with the Commission a Preferred Provider Notice. There shall be a single notice for each preferred provider, rather than separate notices for each development where a preferred provider contract exists. The notice shall comply with the following requirements:

(1) For each development where the provider has entered into, or will enter into, a preferred provider contract, the Preferred Provider Notice shall provide the following information:

(A) The name and location of the development.

(B) The identity of the parties to the contract.

(C) The identity of the local exchange company, if any, in whose franchise area the development is located.

(D) Whether the contract includes exclusive provisioning provisions.

(E) Whether the contract includes exclusive access provisions.

(F) Whether the contract includes weighted commission provisions, and if so, whether the provider is filing an Electing Provider Attachment under subsection (f) of this rule or an Exempted Provider Attachment under subsection (g) of this rule.

(2) The Preferred Provider Notice shall be filed within 21 days after the effective date of this rule, if the provider is a party to any existing preferred provider contract. Before entering into any new preferred provider contract, a local service provider shall file an updated Preferred Provider Notice (or a new notice, if it has not filed such a notice previously) containing the information provided in subdivision (1) above with respect to the new preferred provider contract. Before amending any preferred provider contract in a manner that affects the information in the Preferred Provider Notice, a local service provider shall file an updated Preferred Provider Notice.

(f) A preferred provider may become an electing provider by filing with the Commission an Electing Provider Attachment that meets the requirements of subdivisions (1) through (3) below. An electing provider, within the developments specified in its Electing Provider Attachment, may enter into preferred provider contracts containing weighted commission provisions and may continue to enforce existing preferred provider contracts containing such provisions.

(1) The Electing Provider Attachment shall be attached to the electing provider's Preferred Provider Notice. It shall identify the name and location of each development to which it is applicable.

(2) The Electing Provider Attachment shall state that within the developments to which it applies, the electing provider will make unbundled subloops available to its competitors pursuant to this rule. It shall specify the basic terms under which subloops will be offered, and such terms shall be consistent with this rule and any applicable orders of the Commission.

(3) The Electing Provider Attachment may be updated to specify additional developments to which it is applicable. Any such update shall be filed before the electing provider enters into any preferred provider contract with weighted commission provisions relating to any of the additional developments.

(g) A preferred provider may become an exempted provider by filing with the Commission an Exempted Provider Attachment that meets the requirements of subdivisions (1) through (3) below. An exempted provider, within the developments specified in its Exempted Provider Attachment, may enter into preferred provider contracts containing weighted commission provisions and may continue to enforce existing preferred provider contracts containing such provisions.

(1) The Exempted Provider Attachment shall be attached to the exempted provider's Preferred Provider Notice. It shall identify the name and location of each development to which it is applicable.

(2) The Exempted Provider Attachment shall state either (A) that the exempted provider is a local exchange company and is not required by federal law to make subloops available to competitors in any of the developments to which the attachment is applicable, or (B) that the exempted provider is a competing local provider, and if it were a local exchange company, it would not be required by federal law to make subloops available to competitors in any of the developments to which the attachment is applicable.

(3) The Exempted Provider Attachment may be updated to specify additional developments to which it is applicable. Any such update shall be filed before the exempted provider enters into any preferred provider contract with weighted commission provisions relating to any of the additional developments. For each development for which exemption is asserted in an initial or updated Exempted Provider Attachment, the provider shall submit an affidavit, signed by an engineer with direct personal knowledge of the facilities serving the development, that specifies with particularity the provider's factual and legal basis for asserting the exemption.

(4) A local service provider may challenge an Exempted Provider Attachment by filing a petition seeking review of such Attachment with the Commission. In the event of such a challenge, the Public Staff shall investigate such challenge and file its report and recommendations concerning the merits of such challenge within 30 days of the filing of the challenge. The party asserting exemption shall bear the burden of demonstrating entitlement to the exemption by clear and convincing

evidence. Any such challenge shall, to the extent practicable, be given priority on the Commission's docket.

(h) No local service provider may maintain a preferred provider contract in effect in any development unless it has duly filed with the Commission a Preferred Provider Notice that makes reference to the development, together with any applicable Electing Provider Attachment or Exempted Provider Attachment.

(i) Preferred Provider Notices, Electing Provider Attachments and Exempted Provider Attachments shall be subject to the following filing requirements:

(1) Each preferred provider shall file its Preferred Provider Notice, together with any Attachments, in a docket to be designated by the Commission.

(2) The first Preferred Provider Notice filed by a particular preferred provider shall be labeled "Preferred Provider Notice – Version 1." The first updated Preferred Provider Notice filed by such provider shall be labeled "Preferred Provider Notice – Version 2," and subsequent updates shall be numbered sequentially.

(3) Whenever an Electing Provider Attachment or Exempted Provider Attachment is updated, the provider shall file an update of the entire Preferred Provider Notice, including the Attachments, with a new version number, even if the only changes are in one of the Attachments.

(j) When a competing local provider that is an electing provider receives a request from a competitor for subloops in a given development, the parties shall negotiate in good faith. If they are not able to reach agreement, the following requirements shall apply:

(1) The subloops shall be provisioned within the same time period that the local exchange company in whose franchise area the development is located makes subloops available. If no such period exists, such subloops shall be provisioned within seven days.

(2) At any point 60 or more days after the receipt of a bona fide request for subloop interconnection, either party may request the Commission to set a subloop rate for the electing provider.

(3) There is a rebuttable presumption that the appropriate rate for a subloop is the applicable subloop rate of the local exchange company in whose franchise area the development is located. If there is no such rate in existence, then the rebuttably presumptive subloop rate is BellSouth's Zone 1 subloop rate.

(4) The party seeking a departure from the rebuttably presumptive subloop rate shall have the burden of proof to demonstrate that such rate is not just and reasonable.

(5) The Commission will fix the subloop rates for a competing local provider that is an electing provider on a company-wide basis in an initial contested proceeding. If the rate fixed by the Commission is different from the rate previously being paid by the subloop purchaser in the contested proceeding, a true-up shall be performed.

(k) Every preferred provider, within the development to which its preferred provider contract applies, shall make its service available to competitors for resale. If the preferred provider is a competing local provider, the following requirements shall apply:

(1) Unless the competing local provider and the reseller agree on a different rate, the wholesale discount percentage offered by the competing local provider shall be the same wholesale discount percentage offered by the local exchange company in whose franchise area the development is located. If no such wholesale discount percentage has been determined, the discount percentage established for BellSouth in Docket No. P-140, Sub 50 shall apply.

(2) If either party contends that the discount percentage provided for in subdivision (1) above is inappropriate, it may request the Commission to calculate the discount based specifically on the circumstances of the competing local provider. If the discount percentage fixed by the Commission is different from the percentage previously being paid by the reseller in the contested proceeding, a true-up shall be performed.

(l) In every development where a local service provider has entered into a preferred provider contract containing provisions that are void under subsections (b), (c) or (d) of this rule, the local service provider shall, within 21 days after the effective date of this rule, mail to each of the parties to the preferred provider contract a letter advising such party that certain portions of the contract have been determined to be void. The following materials shall be attached to the letter: a copy of the preferred provider contract, with the void provisions conspicuously marked; a copy of this rule; and a copy of the Commission's order adopting this rule.

(NCUC Docket No. P-100. Sub 152, 01/12/06)