**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D. C. 20554**

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| In the Matter of | ) | |
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| Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 | ) | |
| | ) | CC Docket No. 94-129 |
| Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers | ) | |

# THIRD REPORT AND ORDER AND SECOND ORDER ON RECONSIDERATION

Adopted: July 21, 2000 Released: August 15, 2000

By the Commission:

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Paragraph No.

## I. INTRODUCTION AND BACKGROUND

1. In this Third Report and Order and Second Order on Reconsideration (Order), we adopt rules proposed in the Second Report and Order and Further Notice of Proposed Rulemaking (*Section 258 Order or Further Notice*)[1] to implement section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).[2] Section 258 prohibits any telecommunications carrier from submitting or executing an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.[3] This practice, known as "slamming," enables those companies who engage in fraudulent activity to increase their customer and revenue bases at the expense of consumers and law-abiding companies. The rules we adopt in this Order will improve the carrier change process for consumers and carriers alike while making it more difficult for unscrupulous carriers to perpetrate slams.

2. In the *Section 258 Order*, we established a comprehensive framework designed to close loopholes used by carriers who slam consumers and to bolster certain aspects of our slamming rules to increase their deterrent effect. In particular, we adopted aggressive new liability rules designed to take the profit out of slamming. We also broadened the scope of our

[1] *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order or Further Notice ), stayed in part, MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999) (*Stay Order*), *motion to dissolve stay granted, MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000) (*Order Lifting Stay*).

[2] 47 U.S.C. § 258(a). Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[3] 47 U.S.C. § 258(a).

slamming rules to encompass all carriers and imposed more rigorous verification measures. In our *First Reconsideration Order*,[4] we amended certain aspects of the slamming liability rules, granting in part petitions for reconsideration of our *Section 258 Order*.[5] Although the petitions raised a broad range of issues relating to the slamming rules, the *First Reconsideration Order* addressed only those issues relating to our liability rules, which had been stayed by the D.C. Circuit. We chose to resolve those issues separately, and on an expedited basis, because of the overriding public interest in reinstating the liability rules in order to deter slamming.[6]

3. When the Commission released the *Section 258 Order,* it recognized that additional revisions to the slamming rules could further improve the preferred carrier change process and prevent unauthorized changes. Thus, concurrent with the release of the *Section 258 Order*, the Commission issued a Further Notice of Proposed Rulemaking and sought comment on the following proposals: (1) permitting the authorization and verification of preferred carrier changes over the Internet; (2) requiring resellers to obtain their own carrier identification codes (CICs), or, in the alternative, some type of pseudo-CIC that would provide underlying facilities-based carriers and subscribers of resellers with a way to identify the service provider; (3) modifying the independent third party verification method; (4) defining the term "subscriber" for purposes of authorizing preferred carrier changes; (5) requiring carriers to submit reports on the number of slamming complaints they receive; (6) creating a registration requirement for all providers of interstate telecommunications services; and (7) requiring unauthorized carriers to remit to authorized carriers certain amounts in addition to the amount paid by slammed subscribers.[7]

4. On June 30, 2000, the President signed into law a piece of legislation that is relevant to our slamming rules and some of the issues pending in this proceeding, particularly our proposal in the *Further Notice* to allow the authorization and verification of preferred carrier changes using the Internet. The *Electronic Signatures in Global and National Commerce Act,* S.761 (E-Sign Act)[8] is intended to foster the development of e-commerce, or commerce

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[4] *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, First Order on Reconsideration, FCC 00-135 (rel. May 3, 2000) (*First Reconsideration Order*).

[5] *First Reconsideration Order*, FCC 00-135, at ¶¶ 7-21. We note that, in conjunction with the modifications adopted in the *First Reconsideration Order*, several sections within Part 64 of the Commission's rules (*i.e*., the slamming rules) have been renumbered. *See id.* at Appendix A. *See also Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Errata (Com. Car. Bur. June 14, 2000).

[6] Shortly after the release of the *First Order on Reconsideration*, the FCC filed a motion to dissolve the stay on the slamming liability rules that the D.C. Circuit had imposed in its *Stay Order*. Motion of the FCC to Dissolve the Stay, filed May 18, 2000 in *MCI WorldCom, Inc. v. FCC*, D.C. Cir. No. 99-1125. On June 27, 2000, the D.C. Circuit issued the *Order Lifting Stay*, which granted the Commission's unopposed motion and lifted the stay.

[7] *Section 258 Order,* 14 FCC Rcd at 1591-1609, ¶¶ 139-182.

[8] *See Electronic Signatures in Global and National Commerce Act*, S. 761, 106th Cong., 2d Sess. (signed into law June 30, 2000).

conducted electronically over the Internet. To accomplish this goal, the E-Sign Act establishes a framework governing the use of electronic signatures and records in transactions in or affecting interstate and foreign commerce.[9] With certain exceptions not relevant here, the provisions of the E-Sign Act will take effect on October 1, 2000.[10]

5. In this Order, we adopt a number of the proposals discussed in the *Further Notice*, and we also address the remaining issues that were raised on reconsideration of the *Section 258 Order*. Specifically, in this Order, we amend the current carrier change authorization and verification rules to expressly permit the use of Internet Letters of Agency (Internet LOAs) in a manner consistent with the new E-Sign Act;[11] we direct the North American Numbering Plan Administration (NANPA) to eliminate the requirement that carriers purchase Feature Group D access in order to obtain a CIC; we provide further guidance on independent third party verification; we define the term "subscriber;" we require each carrier to submit a bi-annual report on the number of slamming complaints it receives; and we expand the existing registration requirement on carriers providing interstate telecommunications service to the Commission to include additional facts that will assist our enforcement efforts. This Order also contains a Second Order on Reconsideration, in which we uphold our rules governing the submission of preferred carrier freeze orders, the handling of preferred carrier change requests and freeze orders in the same transaction, and the automated submission and administration of freeze orders and changes. In addition, we reaffirm our decision not to preempt state regulations governing verification procedures for preferred carrier change requests that are consistent with the provisions of Section 258. We also decline to adopt a 30-day limit on the amount of time an LOA confirming a carrier change request should be considered valid and instead adopt a 60-day limit. Finally, we clarify certain of our rules regarding the payment of preferred carrier change charges after a slam.[12]

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[9] *See* E-Sign Act at § 101.

[10] *See* E-Sign Act at § 107.

[11] *See* E-Sign Act at §§ 101, 104(e).

[12] In this order, we are not addressing the petitions filed by the Rural LECs and that National Telephone Cooperative Association (NTCA) seeking reconsideration of the rule prohibiting executing carriers from re-verifying properly submitted carrier change requests before executing the requested changes. *See Rural LECs*, Petition for Reconsideration, CC Docket No. 94-129, at 3-10 (filed March 18, 1999); *National Telephone Cooperative Association*, Petition for Reconsideration, CC Docket No. 94-129, at 4-18 (filed March 18, 1999). We note that the Rural LECs filed an *ex parte* submission on June 27, 2000 that raised additional issues. We plan to give these petitions expeditious but thorough attention and to resolve them in the near future. In addition, we are not addressing SBC's petition for reconsideration of our prohibition on the use of carrier change information for marketing purposes, nor are we addressing AT&T's petition for clarification of whether our verification rules apply to initial carrier selections or to carrier selections for newly-installed lines. *See SBC Communications, Inc.*, Petition for Reconsideration and for Clarification, CC Docket No. 94-129, at 13-14 (filed March 18, 1999); *AT&T Corp.*, Petition for Partial Reconsideration, or in the Alternative, for Clarification, CC Docket No. 94-129, at 23-25 (filed March 18, 1999). We also intend to address these petitions in the near future.

## II. THIRD REPORT AND ORDER

### A. Preferred Carrier Changes Using the Internet

6. Background. In the *Further Notice*, we recognized that many carriers currently use the Internet as a marketing tool for their services.[13] Typically, such carriers will post electronic carrier change forms on their websites. A subscriber is invited to electronically submit the carrier's form to select that carrier as his or her preferred carrier for a particular service *(i.e.*, local, intraLATA, or interLATA telecommunications service). Carriers that utilize the Internet in this fashion usually require the subscriber to submit the telephone number(s) to be affected by the change, the billing name and address for the subscriber, and other information (*e.g.*, a credit card number, a social security number, or a mother's maiden name) for billing, verification, security, or credit purposes.[14]

7. Our current rules provide that all preferred carrier change requests must be confirmed in accordance with one of four verification methods: written LOA, electronic (*i.e*., telephone) authorization, independent third party verification, or State-enacted verification procedure (only applicable to intrastate preferred carrier changes).[15] In the *Further Notice*, we sought comment on, among other things, whether a carrier change authorized and verified over the Internet (Internet LOA) could be considered valid under our existing verification rules and whether use of Internet LOAs should be permitted but subject to additional requirements.[16] We also invited parties to comment on whether Internet LOAs should contain separate statements regarding a subscriber's choice of interLATA and intraLATA toll services[17] and on other possible uses of the Internet in the carrier change context, such as the submission of requests to impose or lift preferred carrier freezes.[18]

8. Since the release of the *Further Notice*, the growth of the Internet has continued to accelerate, and the many ways in which companies and consumers may benefit from using the Internet have become increasingly apparent. E-commerce comprises a growing segment of all consumer transaction activity. Estimates place online consumer retail spending at $38 billion this year.[19] This figure is expected to grow to $199 billion by 2005.[20] Over 11 million new consumers

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[13] *See Further Notice*, 14 FCC Rcd at 1603, ¶ 169.

[14] We note that much of this information is required by the current rule governing the form and content of LOAs, section 64.1130. Under this section, when a carrier obtains a written LOA from a subscriber, the LOA serves as both authorization to change the subscriber's preferred carrier and verification of that subscriber's decision to change carriers. *Further Notice*, 14 FCC Rcd at 1604, ¶ 171.

[15] *See Further Notice*, 14 FCC Rcd at 1636-1637, Appendix A; 47 C.F.R § 64.1120(c).

[16] *See Further Notice*, 14 FCC Rcd at 1604, ¶¶ 17-73. We observed in the *Further Notice* that carriers appeared to differ greatly in their interpretations of the applicability of the Commission's verification rules to Internet carrier changes. *Id*. at ¶ 170.

[17] *See Further Notice*, 14 FCC Rcd at 1605, ¶ 174.

[18] *See Further Notice*, 14 FCC Rcd at 1605, ¶ 175.

[19] *See The Changing Face of E-Commerce,*

are expected to engage in e-commerce transactions this year.[21] In addition, the range of types of consumer transactions conducted on-line is also predicted to expand.[22] Against this backdrop, the federal government has taken various measures to examine and promote e-commerce while ensuring that consumers are protected from fraud.[23] The exponential growth of e-commerce also provides important context for our evaluation of the proposal in the *Further Notice* to endorse the Internet LOA as a method of authorizing carrier changes.

9. As noted above, the new E-Sign Act is designed to promote the use of electronic signatures in interstate and foreign commerce.[24] The E-Sign Act mandates that a contract or business transaction cannot be denied validity or enforceability solely because the contract or transaction is not in writing, so long as the contract or transaction is a properly authenticated electronic record or has been affirmed by an electronic signature. The E-Sign Act specifically defines the terms electronic record,[25] electronic signature,[26] and electronic.[27] The E-Sign Act provides a specific framework for the use of electronic records and signatures and places limits on the interpretation authority of federal and state regulatory agencies with regard to this framework.[28] It also specifies certain circumstances in which this framework will not apply, such as the signing of wills and the cancellation of health insurance.[29] In addition, while the E-Sign Act seeks to

<http://cyberatlas.internet.com/big_picture/demographics/article/0,1323,6061_366201,00.html > (date visited June 23, 2000) (citing a study by Forrester Research).

[20] *See id.*

[21] *See id.*

[22] *See id*.

[23] For example, to alleviate concerns about abusive e-commerce practices, the federal government has recently created the Internet Fraud Complaint Center (IFCC), an on-line collaboration among law enforcement agencies. The IFCC, located at www.ifccfbi.gov, is intended to provide consumers with a convenient way to alert authorities of a suspected criminal or civil violation relating to Internet fraud. The IFCC may also serve as a resource for the Commission, along with the records of our own Consumer Information and Enforcement Bureaus, to quantify any patterns of fraud involving e-commerce.

[24] *See, generally,* E-Sign Act.

[25] An "electronic record" is defined as "a contract or other record created, generated, sent, communicated, received, or stored by electronic means." *See* E-Sign Act at § 106(4).

[26] An "electronic signature" is defined as "an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record." *See* E-Sign Act at § 106(5).

[27] The term "electronic" is defined as "relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities." *See* E-Sign Act at § 106(2).

[28] *See, e.g.,* E-Sign Act at §§ 101, 104(b)(2), 104(c).

[29] *See* E-Sign Act at § 103.

promote e-commerce, it does not require consumers to enter into electronic contracts against their wishes.[30]

10. Section 104(e) of the E-Sign Act, entitled "Electronic Letters of Agency," specifically addresses our slamming rules by providing that the Commission "shall not hold any contract for telecommunications or letter of agency for a preferred carrier change, that otherwise complies with the Commission's rules, to be legally ineffective, invalid, or unenforceable solely because an electronic record or electronic signature was used in its formation or authorization."[31]

11. Discussion. We continue to believe that the Internet provides a quick and efficient means of signing up new subscribers and should be made widely available to carriers and consumers.[32] We recognize that consumers' use of the Internet for electronic commerce has grown tremendously in recent years, as more and more businesses provide services online, and a greater percentage of consumers and businesses utilize computers and the Internet to transact business. In addition, we recognize that section 104(e) of the E-Sign Act directs us not differentiate between written LOAs and LOAs that are submitted and signed electronically. In view of these developments, we hereby amend our carrier change authorization and verification rules to expressly permit the use of Internet LOAs, in a manner consistent with the provisions of the E-Sign Act.

1. Authorization and Verification of Internet LOAs.

12. As stated in the *Further Notice,* we believe that subscribers using the Internet to change telecommunications service providers are entitled to the same level of protection against slamming that we have mandated for other forms of solicitation. Internet LOAs must comply with the requirements of our rules governing written LOAs, subject to the clarifications and modifications adopted in this Order. Carriers who wish to sign up new subscribers over the Internet must adhere to the informational requirements for written LOAs, as specified in section 64.1130(e) of our existing rules.[33] In light of the E-Sign Act, we now conclude that an electronic signature used for a carrier change submitted over the Internet will satisfy the signature requirement of section 64.1130(b) governing LOAs, and that the information submitted to authorize and verify a carrier change request may be submitted in the form of an electronic record.

13. Carriers using Internet LOAs to sign up subscribers will be required to comply with the consumer disclosure requirements of section 101(c) of the E-Sign Act.[34] Section 101(c) requires, among other things, that the carrier obtain the subscriber's consent to use electronic records, obtain the subscriber's acknowledgment that he or she has the software and hardware necessary to access the information in the electronic form (*i.e.*, Internet LOA) used by the carrier, and give the

[30] *See* E-Sign Act at § 101(b)(2).

[31] E-Sign Act at § 104(e).

[32] *See Further Notice*, 14 FCC Rcd at 1603, ¶ 169.

[33] 47 C.F.R. § 64.1130(e).

[34] E-Sign Act at § 101(c).

subscriber notice of the procedures for withdrawing consent.[35] Section 101(c) also requires carriers to inform subscribers of any right (after consent to the transaction) to a non-electronic (that is, paper) copy of the electronic record of the transaction, to tell them how to obtain such a copy, and to make clear whether a fee will be charged for the copy.[36] Accordingly, we modify our rules to incorporate by reference the requirements of Section 101(c) of the E-Sign Act. We note that these consumer disclosures, in conjunction with the form and content requirements for LOAs under 64.1130 of our rules, are likely to address concerns about unwary consumers who might inadvertently switch their telephone service providers while exploring websites or participating in contests on the Internet.[37] At the same time, we recognize that many commenters expressed concerns regarding fraudulent use of Internet LOAs that may not be fully addressed by the protections afforded by compliance with section 101(c) of the E-Sign Act.[38] In this regard, we note that, if a subscriber contests the authenticity of an Internet LOA, the carrier will have the burden of proof to counter the subscriber's allegation.[39] For this reason, we would expect a carrier to employ procedures that would enable it to demonstrate that the electronic signature on an Internet LOA could not have been submitted by anyone other than the subscriber.[40] While it is our expectation that the consumer protection measures afforded by the combination of the requirements in the E-Sign Act and our LOA rules will suffice, we note that, if we detect an inordinate increase in slamming after these changes take effect, we may choose to re-evaluate our rules.

14. We are aware that some consumers may be concerned about security and privacy issues associated with submitting carrier change requests and associated personal information over the Internet.[41] Security and privacy issues arise because Internet communications are sent from computer to computer until the communications reach their final destinations. When information is sent from point A to point B over the Internet, every computer involved in the transmission path has an opportunity to intercept and view the information being sent.[42] As a result, we acknowledge the concerns of commenters who argue that carriers should provide subscribers with a secured web transaction for submitting Internet LOAs.[43] At this time, we decline to impose specific

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35 *Id.*

36 E-Sign Act at § 101(c).

37 *See Further Notice*, 14 FCC Rcd at 1603, ¶ 169; *see, e.g.*, New York State CPB Comments at 7-8; New York PSC Comments at 7.

38 *See , e.g.*, Missouri PSC Comments at 3; Montana Comments at 3; New York PSC Comments at 7; New York State CPB Comments at 14-16. *See also Further Notice*, 14 FCC Rcd at 1604, ¶ 171.

39 *See* 47 C.F.R. § 64.1150(d).

40 *See* paragraph 6, *supra*.

41 *See, e.g.*, CompTel Comments at 9; Qwest Comments at 19-20; TelTrust Reply at 13.

42 *See* Microsoft Internet Explorer v. 4.0, Help Section.

43 *See, e.g.*, BellSouth Comments at 3-4 (recommending that subscriber information be submitted using fields on webpages protected through electronic encryption); Florida PSC Comments at 6 (stating that the submitted Internet LOA should be encrypted to protect the consumer's personal information); New York CPB Comments at 16-19 (recommending that all Internet LOA websites be "secure transmission encrypted").

requirements regarding security and privacy as it relates to Internet LOAs, but we strongly encourage carriers who utilize Internet LOAs to sign up new subscribers to employ security measures in keeping with the best practices used for Internet transactions, such as providing subscribers with secured web access.[44] In addition, we strongly encourage carriers to provide notice to subscribers regarding the level of security that applies to the submission of Internet LOAs.[45] We also support the use of digital signatures, when they are made widely available, in order to more precisely establish the identity of the subscriber submitting an Internet LOA, the date of the submission, and other specifics.[46]

15. We also acknowledge that consumers have a legitimate interest in the privacy of personal information that they may be asked to submit with an Internet LOA. Again, we decline to mandate a specific action with regard to such information at this time. However, we encourage carriers to keep such information confidential and not use a subscriber's information, including his or her electronic mail (e-mail) address, for marketing or other business purposes without the express consent of the subscriber.[47] In addition, we recognize that some consumers may prefer, for a variety of reasons, not to use the Internet to authorize carrier changes. Consistent with section 101(b)(2) of the E-Sign Act, we will amend our rules to state that carriers must give subscribers the option of using one of the other authorization and verification methods specified in section 64.1120 of our rules, in addition to the use of Internet LOAs.[48]

2. <u>Pre-Existing Relationships</u>

16. We recognize that some carriers and subscribers who have pre-existing business relationships may wish to follow a more truncated authorization and verification process for making carrier changes than required for written and Internet LOAs. AOL and other commenters assert that subscribers and carriers belonging to a closed user group (CUG)[49] or linked in a similar ongoing

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44 By "secured web access," we are referring to the use of secure websites for carrier change transactions. A "secure" website is a website that is designed to prevent unauthorized parties from viewing or downloading the information that is sent to or from those websites. *See* Microsoft Internet Explorer v. 5.5, Help Section.

45 *See* Excel Comments at 4-5 (recommending that the security notice advise the consumer of the type of security measure (*i.e.*, encryption, secure server), if any, that is used when the consumer transmits the personal verification data); *see also* CoreComm Reply at 5 (supporting Excel's recommendation of a security notice requirement); MCI Reply at 24 (recommending that carriers should disclose, in an online (electronic) privacy policy, how the submitting subscriber's information will be used and secured).

46 *See, e.g.*, CoreComm Comments at 4, Reply at 2; Excel Reply at 3; RCN Reply at 3. In legislation currently pending before the U.S. House of Representatives, the "Digital Signature Act of 1999," a "digital signature" is defined as "a mathematically-generated mark, utilizing asymmetric key cryptography techniques, that is unique to both the signatory and the information provided." *See* HR 1572, 106th Congress, 1st Session, § 8 (3).

47 We note that carriers already have a statutory duty to protect the privacy of customer information. *See* 47 U.S.C. § 222(a) ("[E]very telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.")

48 *See* 47 C.F.R. § 64.1120.

business relationship should be permitted to utilize a less stringent verification method for Internet LOAs.[50] However, we see no compelling reason to determine that our LOA rules, which are designed to protect subscribers, should apply to a lesser degree when the subscriber belongs to a CUG or has a similar type of pre-existing relationship with the carrier.[51] Therefore, at this time, we decline to permit carriers and subscribers with pre-existing business relationships, such as CUG providers and members, to use less stringent verification methods to authorize and verify carrier changes processed over the Internet.[52]

### 3. Separate Screen Requirement

17. In the *Further Notice*, we sought comment on the extent to which change requests submitted over the Internet may or may not contain all the required elements of a valid LOA, and we also sought comment on ways in which we might ensure that consumer interests are protected when Internet LOAs are used.[53] In certain respects, our existing rules on the form and content of LOAs reflect the fact that they were written with paper documents in mind. For example, a written LOA must be a separate document not combined with inducements of any kind.[54] In order to conform Internet LOAs to this preexisting requirement, we amend our rules to specify that Internet LOAs must appear on a separate screen from any inducements or solicitations for a carrier's services and contain only the authorizing language found in section 64.1130(e) of our rules. We regard this requirement as the functional equivalent of the pre-existing requirements that a written LOA must be a separate document not combined with inducements of any kind.[55] Moreover, as noted by several commenters, this separate screen requirement is easily achievable and is necessary to eliminate the possibility of customer confusion and the potential for inadvertent selection of a new preferred carrier.[56]

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[49] The subscribers of an on-line service provider are often members of a CUG. The term "CUG" refers to a separate automated system in which a CUG service provider requires consumers to open an account with the CUG and to provide the CUG service provider with their name, address, and, typically, a credit card number to pay the CUG service charges. *See, e.g.,*Tel-Save Comments at 5-7.

[50] *See, e.g*., AOL Reply at 4-6; BellSouth Comments at 3-4; Cable & Wireless Comments at 12; Talk.com Reply at 5.

[51] We note that the NPRM sought comment on whether verification of Internet LOAs should include the submission of identifying information, such as a credit card number, by the subscriber. *See Further Notice*, 14 FCC Rcd at 1604-05, ¶¶ 171-73. In general, the commenters who raised this issue were seeking the ability to bypass such a requirement so that customers with whom they had pre-existing relationships could, for example, rely on passwords to identify themselves instead of redundantly supplying personal information. *See, e.g*., AOL Reply at 4. However, the Internet LOAs approved in this order, consistent with the E-Sign Act, do not require the submission of the additional identifying information that the proposed exception for pre-existing business relationships was meant to bypass.

[52] Carrier changes processed over the Internet, in this instance, include World Wide Web-based transactions as well as all other on-line transactions provided on a service provider's proprietary area.

[53] *See Further Notice*, 14 FCC Rcd at 1604-1605, ¶¶ 171-73.

[54] *See* 47 C.F.R. § 64.1130(b) and (c).

[55] *See id.*

[56] *See, e.g.,* CompTel Comments at 6; Cable & Wireless Reply at 3; Qwest Comments at 20.

18. We believe that this determination is consistent with section 104(b)(2)(C) of the E-Sign Act. That section of the E-Sign Act allows agencies to include requirements for electronic records that are "substantially equivalent to the requirements imposed on records that are not electronic records," that will not "impose unreasonable costs on the acceptance and use of electronic records," and will not "require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures."[57] As stated above, this separate screen requirement is substantially equivalent to the requirements found in subsections 64.1130(b) and (c) as they apply to written LOAs. Moreover, the record in this proceeding indicates that this separate screen requirement will not impose unreasonable costs on the acceptance and use of electronic records.[58]

### 4. Choice of Telecommunications Services

19. We adopt our tentative conclusion that carriers who solicit service over the Internet and require subscribers to sign up for more than one service (*e.g.*, interLATA and intraLATA) in order to authorize a carrier change, rather than giving subscribers the option of signing up for individual services, violate our rule requiring all LOAs to contain separate statements regarding choices of interLATA and intraLATA toll service.[59] While we presented this issue in the *Further Notice* as a "general concern[] about the content of the solicitation using the Internet" and cited some IXC webpages as examples of the practice,[60] we note that there is no reason to believe this type of inappropriate carrier change solicitation would only appear in an electronic medium. We emphasize that carriers must clearly and conspicuously delineate on any LOA, written or Internet, the individual services that the subscriber may choose to be covered by the carrier change request, including, but not limited to, local, intraLATA, and interLATA services. Consumers should know what specific services are being offered and should have the discretion to subscribe to only the services they desire. Such consumer choice and discretion are essential to maintaining and advancing the development of a competitive telecommunications marketplace.

### 5. Preferred Carrier Freeze

20. Consistent with our amendment of the rules governing LOAs, we are also amending our rules to allow subscribers to submit, and carriers to process, the imposition and/or lifting of preferred carrier freezes over the Internet, as recommended by many commenters.[61] Carriers must comply with the same verification requirements that apply to LOAs, as discussed in paragraphs 11-

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[57] E-Sign Act § 104(b)(2)(C).

[58] Commenters noted the ease of compliance with, and negligible cost of, a separate screen requirement for Internet LOAs. *See, e.g.*, Cable & Wireless Reply at 3.

[59] *See Further Notice*, 14 FCC Rcd at 1601, ¶ 174; 47 C.F.R. § 64.1130(e)(4).

[60] *See Further Notice*, 14 FCC Rcd at 1601, ¶ 174.

[61] *See, e.g.*, RCN Comments at 2, Reply at 3; Qwest Reply at 5; Tel-Save Reply at 17; Excel Reply at 3.

15 above, to help prevent the unauthorized imposition or lifting of preferred carrier freezes over the Internet.[62] In addition, as stated in paragraphs 14-15, we encourage carriers to employ measures to protect the security and confidentiality of subscribers' personal information.

6. State Authority

21. We note that the amendments to our rules that we adopt in this Order for Internet LOAs represent a minimum threshold for carrier change authorization and verification with which all carriers must comply. State jurisdictions may adopt verification requirements for Internet LOAs, so long as they are consistent with section 258, as implemented by our rules, and the E-Sign Act. We disagree with Cable & Wireless that we should preempt state laws regarding the legality and form of Internet LOAs at this time.[63] Carriers already must comply with state requirements for written LOAs that are consistent with section 258 and the Commission's rules,[64] and state requirements for Internet LOAs that are consistent with section 258, as implemented by our rules, and the E-Sign Act warrant the same compliance.

### B. Resellers and CICs

22. Background. A switchless reseller is a carrier that lacks switches or other transmission facilities in a given local access and transport area (LATA). It purchases long distance service in bulk from facilities-based carriers and resells such service directly to consumers. Resellers frequently share CICs[65] with the underlying carriers whose services they resell. In the *Further Notice*, we explained that the shared use of CICs gives rise to two related problems: soft slamming and carrier misidentification.[66] A soft slam is the unauthorized change of a subscriber from its authorized carrier to a new carrier that uses the same CIC. Because the change is not executed by the LEC, which continues to use the same CIC to route the subscriber's calls, a soft slam bypasses the preferred carrier freeze protection available to consumers from LECs. Carrier misidentification occurs because LECs also identify carriers by their CICs for billing purposes. A LEC's call record therefore is likely to reflect the identity of the underlying carrier whose CIC is used, even if the

[62] *See, e.g.,* CoreComm Comments at 5, Reply at 2-3; Excel Comments at 5, Reply at 4.

[63] *See* Cable & Wireless Comments at 12-13, Reply at 2.

[64] *See, e.g.,* Letter from James M. Veilleux, VoiceLog, to Magalie Roman Salas, FCC, dated June 13, 2000 (Voice Log June 13 *ex parte*) (noting variations in state carrier change verification rules, *e.g*., Louisiana requires that the carrier keep records of the data and time of the call when a carrier change order is made, verify the service change, including the calling plan offered and all fees or charges assessed in exchange for the change in service provider, and provide the subscriber with a statement of the certificated name of the provider and a disclosure that the carrier change may involve a charge and could involve another charge if the subscriber later desires to switch back to the original carrier.)

[65] CICs are four-digit numerical codes used by LECs to route traffic to IXCs and to identify them for billing purposes. They are assigned by the North American Numbering Plan Administration on a nationwide basis. We refer herein to "Feature Group D" CICs, which provide callers with equal access to their carrier of choice through presubscription or the use of a seven-digit carrier access code (CAC) incorporating the carrier's CIC. Feature Group D is one of several switching or access arrangements available from LECs to IXCs. *See generally* Carrier Identification Code Assignment Guidelines, INC 95-0127-006 (January 10, 2000) ("*CIC Assignment Guidelines*"). *See also infra*, ¶ 25.

[66] *See Further Notice*, 14 FCC Rcd at 1590, 1594-95.

actual service provider is a reseller. As a result, the name of the underlying carrier may appear on the subscriber's bill in lieu of, or in addition to, the reseller with whom the subscriber has a direct relationship. This makes it difficult for consumers to detect a slam and to identify the responsible carrier.

23. We requested comment in the *Further Notice* on three possible approaches to the problems arising from the shared use of CICs: (1) requiring switchless resellers to obtain their own CICs; (2) requiring the use of "pseudo-CICs," digits appended to underlying carriers' CICs to identify resellers; and (3) requiring modification of underlying carriers' systems to prevent soft slams where subscribers have preferred carrier freeze protection, and to permit identification of resellers on bills.[67] The Common Carrier Bureau subsequently released a public notice seeking further information on the first proposal.[68]

24. Discussion. As set forth below, we shall direct the NANPA to eliminate the requirement that carriers purchase "Feature Group D" to obtain CICs. This action will facilitate the assignment of CICs to switchless resellers and remove one obstacle to their independent use of CICs. At the present time, we are not requiring resellers to obtain their own CICs, nor are we adopting either of our other two proposals. Although we believe that requiring switchless resellers to obtain CICs may well be an effective solution to soft slamming and related carrier identification problems, commenters have raised a number of concerns regarding the potential impact of such a requirement on the carrier industry. Based on our review of the record, as discussed herein, we are not persuaded that we should adopt a CIC requirement for switchless resellers at this time. However, in order to continue developing the record, we shall refer the CIC assignment and use issues discussed below to the North American Numbering Council (NANC) for analysis and recommendations. We intend to reevaluate the costs and benefits of the proposed CIC requirement when we receive the NANC's report.

25. Under the current CIC Assignment Guidelines, a carrier must purchase Feature Group D access service to be assigned a CIC.[69] A switchless reseller does not require the physical or trunk access to the public switched telephone network (PSTN) available through the purchase of Feature Group D, and is unlikely to bear the expense simply to obtain a CIC.[70] The NANC's CIC Ad Hoc Working Group has recommended elimination of the Feature Group D requirement as "an unnecessary administrative burden for resale providers[.]"[71] In light of this recommendation, and

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[67] *Further Notice*, 14 FCC Rcd at 1597-1603.

[68] *Common Carrier Bureau Asks Parties to Refresh Record and Seeks Additional Comment on Proposal to Require Resellers to Obtain Carrier Identification Codes*, Public Notice, DA 00-1093, 65 Fed.Reg. 33281 (released May 17, 2000). Comments and replies filed in response to the Public Notice are referred to herein as "Suppl. Comments" and "Suppl. Reply," respectively.

[69] *See CIC Assignment Guidelines*, INC 95-0127-006 at 6.

[70] Our review of the record indicates that switchless resellers that have CICs despite the Feature Group D requirement generally obtain them as a result of the purchase of Feature Group D in areas where they operate as facilities-based carriers. *See, e.g.,* U S WEST Comments at 8. *See also infra*, n. 91.

[71] North American Numbering Council Report and Recommendation Regarding Use and Assignment of CICs (February 18, 1998), at 7 ("*NANC CIC Report*"). The NANC's recommendation represents a consensus within the carrier industry. *See id.* at 3. *See also* BellSouth Comments at 2; Cable & Wireless Comments at 16; GTE Comments at 5; GVNW Comments at 13-14 (supporting Commission adoption of the NANC's recommendation).

based on our examination of the record in this proceeding, we direct the NANPA to eliminate the Feature Group D requirement. This action, which is an aspect of our first proposal, "will facilitate the assignment of CICs to resellers, and thereby allow easier [carrier] identification . . . , enhancing the ability to resolve conflicts, including disputes which involve slamming."[72]

26. Commenters are divided on our proposal to require switchless resellers to obtain their own CICs. Generally, supporters argue that it would be a cost-effective and administratively simple solution to soft slamming and related problems.[73] Opponents raise a number of concerns regarding the impact of a CIC requirement on the carrier industry, including that it would: (1) impose undue financial burdens on resellers and damage them competitively; (2) require expensive and time-consuming LEC switch upgrades; and (3) accelerate exhaustion of the four-digit CIC pool.[74] Opponents also contend that the record contains insufficient evidence of the dimensions of soft slamming and related problems to warrant regulatory action and, in any event, that other recent Commission actions are likely to address such problems.[75] We address these issues in turn below.

27. Turning to the first issue, the principal cost of the subject proposal for a switchless reseller would be deploying or loading a CIC in LEC switches in each LATA where it operates. In this regard, "the use of translations access does not significantly reduce the time or expense required" to deploy a CIC.[76] On a nationwide basis, most estimates of this cost range from $500,000 to $1 million for a single CIC.[77] Relying on such estimates, and on the small size of many resellers,[78] opponents maintain that a CIC requirement would create a substantial market

[72] *NANC CIC Report* at 7. *See Further Notice*, 14 FCC Rcd at 1597-98.

[73] *See generally* AARP Comments at 3; BellSouth Comments at 1-2; Cable & Wireless Comments at 15-16 and Reply at 5-6; GVNW Comments at 8-15 and Suppl. Comments; Montana PSC Comments at 2; NASUCA Comments at 9-10; NTCA Suppl. Comments; PA Office of Consumer Advocate Suppl. Comments; Sprint Comments at 4-6, Reply at 4-9, and Suppl. Comments; VA State Corp. Comm'n Suppl. Comments.

[74] *See generally* Allegiance Suppl. Reply; ASCENT (formerly TRA) Comments at 5-12, Reply at 3-14, and Suppl. Comments; AT&T Comments at 36-37, Reply at 20-22, and Suppl. Comments; Ameritech Comments at 8; Bell Atlantic Suppl. Comments; Cincinnati Bell Comments at 2-3; CompTel/ACTA Comments at 11-12; Frontier Comments at 5 and Reply at 1-2; GST Comments at 15-16; GTE Suppl. Comments; Qwest Comments at 8-9; SBC Comments at 5; USTA Suppl. Comments and Suppl. Reply; U S WEST Suppl. Reply; WorldCom (formerly MCI WorldCom) Comments at 16-20, Reply at 18-22 and Suppl. Comments.

[75] *See* ASCENT Suppl. Comments at 3-7; AT&T Comments at 34-35, 40 and Suppl. Comments at 6-7; Bell Atlantic Suppl. Comments at 3-4; Comptel/ACTA Comments at 11-13; GTE Suppl. Comments at 6-7; USTA Suppl. Comments at 5-6; WorldCom Comments at 14-16 and Suppl. Comments at 9-10. *But see* GVNW Suppl. Reply at 1-2.

[76] *NANC CIC Report* at 7. *See* Bell Atlantic Comments at 3; ASCENT Suppl. Comments at 16-17; Sprint Suppl. Comments at 3. Translations access, also known as "CIC-Redirect," is non-trunk access to the PSTN, accomplished by programming a LEC switch to recognize the reseller's CIC and route traffic to the reseller via the underlying carrier's facilities. *See NANC CIC Report* at 7; GVNW Suppl. Comments at 8. Translations access has two main cost components: "the Access Service Request ('ASR') fee charged by the underlying facilities-based IXC and the fee charged by the LEC to load the CIC and CIC-Redirect functionality into its switches." *Id.*

[77] *See* Allegiance Suppl. Reply at 2; ASCENT Suppl. Comments at 9-10; Frontier Comments at 5; Sprint Comments at 5-6 and Suppl. Comments at 2-3; WorldCom Comments at 18 and Suppl. Comments at 4-5.

[78] ASCENT, which describes itself as the "the largest association of competitive providers of telecommunications service in the United States," including "more than 800 carrier and supplier members," states that 20 percent of its carrier members generate annual revenues of less than $5 million, 40 percent generate less than $10 million, and over 50 percent generate less than $25 million. In addition, approximately 50 percent report earnings of less than 5 percent,

entry barrier for resellers.[79] Our review of the record suggests that in many cases such estimates are unrealistic because resellers typically operate on a regional basis.[80] In addition, CIC deployment costs may be viewed as "a legitimate cost of doing business,"[81] and the independent use of CICs clearly has competitive advantages for resellers.[82] Nevertheless, we are concerned about restricting competition in the wholesale long distance service market by limiting resellers' ability to change and/or use multiple underlying carriers.[83] Although some resellers use their own CICs despite the asserted disadvantages, we are reluctant to adopt a requirement that resellers obtain their own CICs pending further review of the conclusions reached by the NANC.

28. Second, GTE, SBC, and USTA express concern that a CIC requirement may exhaust the limited capacity of certain types of LEC switches.[84] For example, GTE states that:

> [GTE] generally averages over two hundred CICs per switch in its 1600 plus switches. Almost half of these switches have a capacity of only 255 codes today. . . . The GTD5 switch, which comprises over a third of [GTE's] total, has a capacity of only 500 CICs. A 500 CIC capacity could well be insufficient in some locations to handle all

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and two-thirds report earnings of less than 10 percent. ASCENT Suppl. Comments at 1-2, 8.

[79] *See* ASCENT Suppl. Comments at 22-25; Frontier Comments at 5; Qwest Comments at 8; WorldCom Comments at 18.

[80] *See* GVNW Suppl. Comments at 9; Sprint Reply at 6; U S WEST Comments at 12. GVNW estimates the cost of deploying a CIC on a per-tandem basis at between $280 and $560. GVNW Suppl. Comments at 8-9. On a regional basis, ASCENT states that "[c]harges for CIC deployment vary widely . . . [F]or example, it would cost more than $30,000 to deploy a CIC with BellSouth and the major ITCs in the State of Kentucky, but less than $10,000 to deploy a CIC with Pacific Bell and the major ITCs in the State of California." ASCENT Suppl. Comments at 10 and n. 20.

[81] Sprint Comments at 6.

[82] *See, e.g.***,** Sprint Suppl. Comments at 4-5 ("resellers themselves derive significant benefits from having their own CICs."). *See also* U S WEST Comments at 8 ("it is U S WEST's belief that some facilities-based carriers will not permit a reseller to resell their services unless the reselling carrier has a CIC."). GVNW and the NTCA argue that a CIC requirement, in conjunction with a requirement that underlying carriers utilize Carrier Identification Parameter (CIP), a functionality available from LECs, would give resellers greater parity with facilities-based carriers "in the timing of customer access to long distance service." GVNW Comments at 11. *See* NTCA Suppl. Comments at 6-7. GVNW also argues that CIC/CIP requirements would address two additional problems: (1) "misdirection of a reseller's calls to casual billing by the underlying [] carrier;" and (2) "provision by underlying carriers of call detail records ('CDRs') for billing purposes for both interLATA and intraLATA to one reseller even though the reseller only configured the resale account for either interLATA or intraLATA alone." *Id.* at 4, 22-25.

[83] ASCENT and WorldCom point out that CIC deployment costs are recurring, and state that the costs of changing underlying carriers for a reseller that uses its own CIC are the same as the costs of deploying a new CIC. *See* ASCENT Suppl. Comments at 11-12 (CIC requirement "will not only limit the carrier's service options, but it will reduce its bargaining power with its current provider who will know that the substitution of another provider's service will entail substantial additional cost"); WorldCom Suppl. Comments at 8 ("According to the current ILEC tariffs, the charge for the re-direct is the same as that for loading a newly obtained CIC."). WorldCom estimates that such costs are eight times greater than when the reseller shares a CIC, and that the time required may be up to four months instead of an average of three to five days. In addition, ASCENT argues that a CIC requirement would restrict resellers' use of multiple underlying carriers because of the need to deploy multiple CICs. ASCENT Suppl. Comments at 11.

[84] *See* GTE Suppl. Comments at 4; SBC Suppl. Comments at 4; USTA Suppl. Comments at 8. *See also* Bell Atlantic Suppl. Comments at 4; U S WEST Suppl. Reply at 6-7.

> resellers who would obtain CICs. . . . [GTE] cannot add any new CICs to its switches in Hawaii because international operations have already utilized the total capacity.[85]

It is unclear how many LEC switches are implicated by this issue, as only GTE has identified the number of limited-capacity switches deployed in its territory, and the likelihood of exhausting switch capacity depends on the related questions of demand and location.[86] To the extent that upgrades are necessary, however, GTE, SBC, and USTA state that they are likely to be costly and time-consuming. Furthermore, although the need for upgrades was contemplated when the carrier industry moved from a three-digit to a four-digit CIC format, USTA suggests that requiring investment in switch upgrades may be wasteful because the industry now is moving towards new technology platforms.[87] There may be ways to ensure that any systems modifications necessary to accommodate the use of additional CICs do not impose undue burdens on LECs.[88] Nevertheless, we believe that this matter warrants further consideration.

29. Third, several commenters argue that adoption of a CIC requirement would accelerate exhaustion of the pool of four-digit CICs, thereby inflicting undue disruption and expense on the entire carrier industry.[89] Preliminarily, we find no compelling evidence of a significant threat of premature CIC exhaustion. The pool of four-digit CICs is 10,000, of which only 2,031 were assigned as of January, 2000, and the *NANC CIC Report* predicts that they will last for 22 years, assuming a limit of six per carrier.[90] In addition, it is not clear that the subject proposal would substantially increase the long-term net demand for CICs, given that some resellers already have CICs, and those without CICs are likely to obtain them as their businesses develop, without any regulatory requirement.[91]

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[85] GTE Suppl. Comments at 4.

[86] *See* Bell Atlantic Suppl. Comments at 4 ("Bell Atlantic does not know . . . how many switchless resellers operate in its territory, let alone how many would want to provide service in the areas served by each of these switches."); GTE Suppl. Comments at 4 ("many of these smaller capacity switches are in locations that are less likely to be targeted by a large number of resellers").

[87] *See* USTA Suppl. Comments at 8-9 ("at the time the original CIC use and assignment plan was broadly endorsed by the industry, current architectures and capabilities such as the 'soft switch' that fully integrates digital transmission and routing functions, had not been developed.").

[88] For example, GTE suggested in its original comments that LEC switch upgrades "be allowed to occur in the course of planned carrier switch upgrades." GTE Comments at 6.

[89] *See* ASCENT Suppl. Comments at 20; AT&T Comments at 36-37 and Suppl. Comments at 3-4; Ameritech Comments at 8; Cincinnati Bell Comments at 2; CompTel/ACTA Comments at 12; GST Comments at 15; SBC Comments at 5 and Suppl. Comments at 6. AT&T, for example, estimates that "up to six CICs may need to be assigned to each of the approximately 500 current switchless resellers," pointing out that resellers often deal with multiple underlying carriers and purchase services from other resellers rather than directly from facilities-based carriers, so that second-tier resellers also would have to obtain CICs. AT&T Comments at 36-37. Other commenters maintain that there is no danger of CIC exhaustion, or that preventive measures are available that would be sufficient to avert any danger, such as directing NANPA to reclaim CICs from carriers that have more than necessary. *See* Bell Atlantic Comments at 3; BellSouth Comments at 1; GTE Comments at 7-8; Sprint Comments at 4-5 and Suppl. Comments at 2.

[90] *See* AT&T Supplemental Comments at 4 (citing *NANPA 1999 Activity and Quality Report* at 4); *NANC CIC Report* at 12-13. Currently, carriers may be assigned only two CICs each. *Id.*

[91] *See*, *e.g.*, WorldCom Comments at 17 ("Many of today's national carriers relied exclusively or substantially on resale in their first few years of business. And many, like MCI WorldCom, grew to provide their own facilities.").

30. Turning to the fourth issue, there is a consensus among commenters that the shared use of CICs by resellers gives rise to significant problems that warrant Commission action.[92] Opponents of the subject proposal, however, argue that the record contains insufficient evidence for us to determine whether a CIC requirement is warranted in light of its potential costs.[93] The Commission does not maintain data as to the specific dimensions of these problems, but our review of the record suggests that they represent a substantial percentage of all slamming complaints.[94] We agree, however, that recent Commission actions in this proceeding and in the *Truth-in-Billing* proceeding may help to address soft slamming and related problems indirectly. In this regard, Bell Atlantic and USTA point out that the *Section 258 Order* imposes on facilities-based carriers the responsibilities of executing carriers in soft slam situations, and AT&T notes that the framework of the slamming rules is "intended to increase effective deterrence of slamming, including . . . 'soft slamming.'"[95] In the *Truth-in-Billing* proceeding, the Commission adopted a rule that the name of the service provider associated with each charge must be clearly and conspicuously identified on the telephone bill.[96] AT&T contends that this action "should substantially alleviate the 'soft slamming' problem by making unauthorized carrier changes readily detectable by end users."[97]

31. Based on our review of the record as a whole, we are not persuaded that we should adopt a CIC requirement at this time. Rather, as explained below, we wish to have more

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[92] *See generally* AT&T Comments at 33; Cincinnati Bell Comments at 1-2; Comptel/ACTA Comments at 11; NY DPS Comments at 4-5; PA Office of Consumer Advocate Suppl. Comments at 1; VA State Corp. Comm'n. Suppl. Comments at 1-2.

[93] *See* ASCENT Comments at 11-12; Comptel/ACTA Comments at 11; GTE Suppl. Comments at 6; USTA Suppl. Comments at 3-5.

[94] *See* Cable & Wireless Comments at 13-15 (resellers responsible for "[m]ost of the slamming accusations [Cable & Wireless] receives from the Commission or state regulatory bodies"); GVNW Suppl. Comments at 14 (estimating that "the incidence of soft slamming far exceeds any other form of slamming."); IXC Comments at 2-3 (carrier identification problems account for "[m]ore than ninety percent of IXC[]'s slamming complaints"); Sprint Suppl. Comments at 1-2 ("Between May 1999-April 2000, over 41% of the total number of slamming complaints served on Sprint by the Commission involved . . . a reseller which utilized the Sprint CIC, and approximately 11% involved a soft slam"). We find unpersuasive ASCENT's argument that only a small percentage of slamming complaints involve resellers. ASCENT relies on Trends in Telephone Service (available at www.fcc.gov/ccb/stats), which reports the number of slamming complaints against certain carriers, as well as each carrier's "complaint index," or complaints divided by revenue. This report, however, does not reflect (1) the nature of a carrier's operation in the area where the complaint originated (some resellers operate with switches in some regions and without in others), (2) the outcome of the complaint (a complaint against a facilities-based carrier may turn out to be the responsibility of a reseller of its services), or (3) complaints against carriers with less than a minimum number of complaints.

[95] AT&T Suppl. Comments at 7. *See* Bell Atlantic Suppl. Comments at 4; USTA Suppl. Comments at 5-6. *See also supra*, ¶ 2.

[96] *Truth-in-Billing and Billing Format, First Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 98-170, 14 FCC Rcd 7492, 7510 (released May 11, 1999) (subsequent history omitted); 47 C.F.R. § 64.2401.

[97] AT&T Suppl. Comments at 6-7 ("For example, for the first five months of this year the monthly average number of complaints regarding its resellers reported to AT&T—including, but *not* limited to, complaints of 'soft slamming'—was less than 20 percent the average monthly number of such complaints during the corresponding period in 1999."). *See* WorldCom Suppl. Reply at 2 ("Based on the complaints WorldCom has been served by the Commission, it appears the number of unauthorized conversion complaints involving its resellers has declined approximately 50% this year relative to a corresponding time period last year.").

information on the financial and competitive issues discussed herein before imposing a CIC requirement. By directing that the Feature Group D requirement be eliminated, we are taking a step that will facilitate the ability of switchless resellers to obtain and use their own CICs, while allowing them to choose whether to do so based on their own competitive needs. Nevertheless, we continue to believe that requiring resellers to obtain their own CICs holds promise as a direct and effective solution to the significant problems that arise from the shared use of CICs. We therefore wish to continue developing a record on the subject proposal, in order to be in a position to take informed and expeditious action, should we deem it necessary to do so. Accordingly, we shall refer the CIC use and assignment issues discussed herein to the NANC for analysis and recommendations. To the extent possible, we also request that the NANC submit any data it develops that may shed light on the financial and competitive issues discussed herein,[98] as well as the dimensions of soft slamming and related problems. We request that the NANC provide its report to the Commission by August 1, 2001. We intend to reassess the costs and benefits of the proposed CIC requirement after receiving the NANC's report. In the meantime, we anticipate that the reporting requirements we adopt herein will help to furnish us with more data as to the ongoing significance of the problems at issue and the impact of the Commission's recent anti-slamming and truth-in-billing measures.[99]

32. Finally, we conclude that adoption of either the second or the third proposals set forth in the *Further Notice* would not serve the public interest. Whereas a CIC requirement would rely on existing call routing and billing systems and provide consumers with equal access to switchless resellers, the "pseudo-CIC" proposal would require extensive systems modifications by both LECs and underlying carriers, without the advantage of equal access.[100] Commenters argue persuasively that the third proposal, carrier systems modifications, is not viable because, among other things, it would be costly and time-consuming to implement, would be likely to complicate and delay the carrier change process, and would not comport with existing billing systems.[101]

### C. Independent Third Party Verification

33. Background. In the *Section 258 Order*, we modified our rules regarding the independent third party method of verification to address some of the problems we have seen in

[98] For example, the number/percentage of switchless resellers that avail themselves of CICs, the geographic scope of most resellers' operations, etc.

[99] Specifically, carriers will be required to regularly report information about slamming complaints they receive to the Commission. *See infra*, Section E. In addition, state commissions that choose to administer our slamming rules will be regularly filing information with the Commission that details slamming activity in their regions. *First Reconsideration Order*, FCC 00-135, at § 34.

[100] *See generally* ASCENT Comments at 12-13 and Reply at 14-17; AT&T Comments at 37-38; Ameritech Comments at 9; Cable & Wireless Comments at 16; CompTel/ACTA Comments at 12-13; Frontier Comments at 5; GVNW Comments at 17-18; WorldCom Comments at 19; Qwest Comments at 9-10; Sprint Comments at 6; U S WEST Comments at 7, 16-18.

[101] *See generally* ASCENT Comments at 13-14 and Reply at 17-20; AT&T Comments at 35, 38-39; Cable & Wireless Comments at 16; CompTel/ACTA Comments at 13; Frontier Comments at 4-5; GST Comments at 15; GTE Comments at 10; GVNW Comments at 18-20; WorldCom Comments at 15; Qwest Comments at 10-11; SBC Comments at 8; Sprint Comments at 6-7; U S WEST Reply at 17-19.

conjunction with its use.[102] Specifically, we strengthened the independence criteria under which third party verification entities operate to better ensure that the third party verification process is truly separate from both the carrier and the carrier's sales representative. Thus, we determined that the third party verifier should not be owned, managed, controlled, or directed by the carrier; the third party verifier should not be given financial incentives to approve carrier changes; and the third party verifier must operate in a location physically separate from the carrier.[103] We concluded that these criteria, while not exhaustive, will inform the Commission's evaluation of the particular circumstances of each case.[104] In addition, we clarified that the third party verification must clearly and conspicuously confirm the previously obtained authorization.[105]

34. Despite these modifications, several parties requested further clarification of the independent third party verification option. Given the number and breadth of these clarification requests, we tentatively concluded in the *Further Notice* that we should revise our rules for independent third party verification.[106] Accordingly, we sought comment on (1) whether the carrier's sales representative should be permitted to remain on the line during the verification of the change request; (2) the types of information that third party verifiers should be either required or allowed to provide during the verification; (3) whether we should permit an automated verification system that plays recorded questions and records the subscriber's answers; and (4) whether we should permit a "live-scripted" automated verification system, which records scripted questions posed by the carrier's sales representative, along with the subscriber's answers to those questions.[107] We address each of these issues, in turn, below.

35. <u>Discussion</u>. The first issue we address is whether a carrier's sales representative should be permitted to remain on the line during the three-way verification call. NAAG raises concerns that the subscriber might remain under the influence of the sales representative during the verification process. NAAG argues that third party verification should be separated completely from the sales transaction, so that a carrier would not be permitted to connect the subscriber to the third party verifier by initiating a three-way call.[108] Other commenters support allowing the carrier's representative to remain on the line during the three-way conference call.[109]

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[102] Some carriers use misleading telemarketing to induce subscribers to change carriers by, for example, telling them that their local and long distance bills will be consolidated. The third party verifiers then close the deal for the slamming carriers by assuring the consumers that they have merely authorized billing consolidation, rather than any carrier changes. *Section 258 Order,* 14 FCC Rcd at 1551-2, ¶ 70.

[103] *Section 258 Order*, 14 FCC Rcd at 1552, 1601, ¶¶ 71, 165.

[104] *Section 258 Order*, 14 FCC Rcd at 1552, ¶ 71.

[105] *Section 258 Order*, 14 FCC Rcd at 1552-3, ¶ 72.

[106] *Section 258 Order*, 14 FCC Rcd at 1601, ¶ 165.

[107] *Section 258 Order*, 14 FCC Rcd at 1601-3, ¶¶ 165-168.

[108] *See* NAAG Comments at 17. *See also* Montana PSC Comments at 3; NASUCA Comments at 10; NY PSC Comments at 6.

[109] *See, e.g.*, Bell Atlantic Comments at 3; Cable & Wireless at 19; CoreComm Comments at 5.

36. As we stated in the *Further Notice*, the three-way call is often the most efficient means of accomplishing third party verification.[110] We believe that subscribers may benefit from the convenience of authorizing and verifying the carrier change in one phone call. In addition, use of this method of verification minimizes the risk that the subscriber will not be available when the third party verifier calls to confirm the change.

37. Some commenters propose that the Commission impose certain limited restrictions on such calls to ensure that the verification process will not become tainted, cause subscriber confusion, or go forward without the subscriber's express consent.[111] The proposed restrictions range from prohibiting carriers from remaining on the line once a connection is established with the third party verifier to requiring that all conversation on a three-way conference call be recorded.[112]

38. We agree with NAAG and others that the Commission should delineate minimum requirements to ensure that verification ultimately involves only the consumer and the third party verifier.[113] Given the convenience and cost-effectiveness of the three-way conference call as a verification method, we will retain the three-way call as a verification method, subject to one limited restriction. The carrier's sales representative may initiate the three-way conference call but must drop off the call once the connection has been established between the subscriber and the third party verifier.[114] We believe that this limited restriction will help ensure the independence of the third party verification process and prevent the carrier's sales representative from improperly influencing subscribers, without burdening the verification process. Once the connection has been established between the subscriber and the third party verifier, there is no need for the carrier's sales representative to stay on the line.

39. With respect to the content and format of the third party verification, we asked parties in the *Further Notice* to comment on a possible requirement that all third party verifications include certain information, such as information on preferred carrier freezes or the carrier change process.[115] We also asked parties to comment on any benefits that might be gained from permitting or requiring third party verifiers to provide subscribers with such additional information.[116] This proposal generated both strong support and opposition. Although many commenters argue that requiring third party verifiers to follow a scripted format would impose unnecessary, additional rules on the carrier change process without producing a significant corresponding benefit,[117] several

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[110] *Section 258 Order*, 14 FCC Rcd at 1601, ¶ 166.

[111] *See, e.g.*, GST Comments at 29; RCN Comments at 5.

[112] *See, e.g.*, Teltrust Comments at 5; RCN Comments at 5.

[113] *See* NAAG Comments at 17. *See also* Teltrust Comments at 5; RCN Comments at 5.

[114] *See, e.g.*, Teltrust Comments at 5; Sprint Comments at 8.

[115] *Section 258 Order,* 14 FCC Rcd at 1602-3, ¶ 168.

[116] *Section 258 Order,* 14 FCC Rcd at 1602-3, ¶ 168.

[117] *See, e.g.*, Qwest Reply at 15; CoreComm Comments at 5; Excel Comments at 6.

other commenters ask the Commission for additional guidance regarding the format and content of the third party verification.[118] For instance, Media One states that third party verifiers should be required to confirm the identity of the subscriber, to ascertain that the person contacted is authorized to make a change, and to frame the request for confirmation of the change as a simple yes/no question.[119]

40. We decline to mandate specific language to be used in third party verification calls. In order to eliminate uncertainty as to what practices are necessary and acceptable, however, we adopt minimum content requirements for third party verification. We believe that having minimum content requirements for third party verification calls will provide useful guidance to the third party verifiers and carriers without locking carriers into using a set script. These requirements also allow for more streamlined enforcement because they will assist the Commission in determining the adequacy of steps taken by independent third parties in the verification process. Accordingly, we conclude that a script for third party verification should elicit, at a minimum, the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the change; the names of the carriers affected by the change; the telephone numbers to be switched; and the types of service involved (*i.e.*, local, in-state toll, out-of-state toll, or international service). We note that these content requirements do not differ in substance from our rules regarding LOAs.[120]

41. In addition, the third party verification must be conducted in the same language that was used in the underlying sales transaction. We also conclude that the entire third party verification transaction must be recorded,[121] a practice that is already common in the industry. Consistent with our requirements under section 64.1120(a)(1)(ii), submitting carriers must maintain and preserve these recordings for a minimum period of two years after obtaining such verification.[122] If a slamming dispute arises, having a recorded verification will help determine whether the subscriber was simply seeking information or was in fact agreeing to change carriers and, if so, which service(s) the subscriber agreed to change.[123]

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[118] *See, e.g.,* MediaOne Comments at 8; Montana PSC Comments at 5; NASUCA Comments at 11-12.

[119] MediaOne Comments at 5.

[120] *See* 47 C.F.R. § 64.1130(e).

[121] *See, e.g.,* RCN Comments at 5 (stating that third party verification systems should record exchanges between the sales agent and the subscriber in the event the subscriber claims that the sales agent improperly influenced the subscriber's decision); NASUCA Comments at 11-12 (stating that the entire conversation with the customer should be recorded so that evidence of a customer's assent can be reviewed and investigated if a subsequent complaint is filed); NY PSC Comments at 6 (urging the Commission to require taping as a part of the verification process to help determine, in the event of a slamming complaint, what service(s) the customer agreed to change or whether the customer was simply seeking information). *See also Section 258 Order,* 14 FCC Rcd at 1602-3, ¶ 168.

[122] *See* 47 C.F.R. § 64.1120(a)(1)(ii).

[123] *See, e.g., In the Matter of Coleman Enterprises, Inc. d/b/a Local Long Distance, Inc., Apparent Liability for Forfeiture*, Notice of Apparent Liability for Forfeiture, File No. ENF-99-09, NAL/Acct. No. 916EF0004, 14 FCC Rcd 13786 (1999) (relying on recordings of TPV conversations to demonstrate that the slammed subscribers were *not* authorizing carrier changes.) *See also* ¶ 44, *infra.* We remind carriers that if a subscriber claims that he or she has been

42. We further conclude that third party verifiers may not dispense information concerning the carrier or its services, including information regarding preferred carrier freeze procedures or other non-telecommunications services that the carrier may offer to the subscriber. Allowing third party verifiers to effectively market the carrier's services could compromise the third party verifiers' independence and neutrality because verifiers could easily be drawn into presenting the particular market viewpoints of carriers by whom they are retained.[124] In addition, providing the verifier with certain carrier information could result in the disclosure of proprietary information to competing carriers. We also believe that incorporating information about preferred carrier freezes into the verification script is likely to be confusing to subscribers and would prolong the verification process unnecessarily.

43. Finally, we conclude that automated systems that preserve the independence of the third party verification process may be used to verify carrier change requests.[125] The use of automated third party verification systems not only promotes consistency in the verification process and adequacy of the information provided to subscribers, but also gives carriers a cost-effective way to create a readily accessible record of each order confirmation.[126] Moreover, the recordings generated by this automated process may be useful in addressing subscriber complaints of slamming. For instance, the recording can reveal whether the carrier change at issue was properly verified and whether an authorized person provided the verification. Automated systems may also help provide predictable and consistent service.[127]

44. Although several commenters argue that using automated verification systems that record the verification should obviate the need for more detailed script requirements,[128] we conclude that these systems should elicit, at a minimum, the same information that our rules currently require,[129] as well as the information specified in paragraph 40 above. To reiterate, automated verification systems must elicit, at a minimum, the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the change; the names of the carriers affected by the change; the telephone numbers to be switched; and the types of service affected by the transaction (*i.e.*, local, in-state toll, out-of-state toll, or international service). In addition, automated verifications

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subjected to an unauthorized change, the allegedly unauthorized carrier bears the burden of proving that such change was in fact authorized. *See* 47 C.F.R. § 64.1150(d).

124 *See* AT&T Comments at 42.

125 Generally, such systems operate in the following manner: after obtaining a carrier change request from a subscriber through telemarketing, the carrier's sales representative sets up a three-way call among the subscriber, the carrier, and the automated verification recording system. The automated system then plays recorded questions and records the subscriber's answers to those questions.

126 *See* Bell Atlantic Comments at 6; Cable & Wireless Comments at 19; Frontier Comments at 6.

127 *See* VoiceLog Comments at 4-5; Ameritech Comments at 12.

128 *See, e.g.,* Ameritech Comments at 14.

129 *See* 47 C.F.R. § 64.1130(e).

must be conducted in the same language that was used in the underlying sales transaction and must be recorded in their entirety to ensure that there is a record of the verification in the event of a slamming dispute.[130] As with the three-way conference call, and for the same reasons, a carrier's sales representative initiating the automated verification call may not remain on the line after the connection has been established. We further conclude that automated verification systems should provide subscribers with an option of speaking with a live person at any time during the call.[131] We believe that, in situations where the subscriber cannot follow the prompts of an automated system (or has questions once the automated verification commences), the subscriber should be able to reach a live person who can complete the process. If the subscriber does not want to complete the verification process, or is unable to do so, the third party verifier must end the call, and the transaction must be treated as unverified.

45. We note that, although our rules do not generally prohibit automated third party verification systems, certain types of automated verification systems undermine the independence requirement and contradict the intent behind our rules to produce evidence, independent of the telemarketing carrier, that a subscriber wishes to change his or her carrier. In particular, we conclude that the "live-scripted" automated verification system is at odds with our rules because it permits the carrier's agent, who is not an independent party located in a separate physical location, to solicit the subscriber's confirmation.[132] From a subscriber perspective, the "live-scripted" version may be appealing because the subscriber is interacting with a live person, even though that person is following a set script. The fact that the questions on the script are being read by the carrier's sales representative, however, compromises the independence of the verification.[133] The risk that the sales representative may ask the questions in a pressuring or misleading manner is inherent in the "live-scripted" version. Because the carrier's sales representative is usually compensated for sales completed, and not for sales attempts, the sales representative could not be considered an unbiased third party that lacks motivation to influence the outcome of the verification process.

### D. Definition of "Subscriber"

46. Background. In the *Further Notice*, we sought comment on how to define the term "subscriber" for purposes of our rules implementing section 258 of the Act.[134] Specifically, we requested comment on an SBC proposal that "subscriber" be defined as "any person, firm, partnership, corporation, or lawful entity that is authorized to order telecommunications services

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[130] *See, e.g.,* SBC Comments at 12; VoiceLog Comments at 4-10; Ameritech Comments at 12.

[131] *See, e.g.,* Montana PSC Comments at 3; VoiceLog Comments at 3.

[132] The "live-scripted" version of automated third party verification typically is conducted as follows: after the carrier's sales representative sets up the three-way call between the subscriber, the carrier's sales representative, and the automated recording system, the system begins recording, at which point the carrier's sales representative asks scripted questions to confirm the necessary information about the subscriber's account and the subscriber's desire to change his or her carrier.

[133] *See* PriceInteractive Comments at 13; Qwest Comments at 15; TRA Comments at 21.

[134] *Further Notice*, 14 FCC Rcd at 1605-06, ¶¶ 176-178; *see* 47 U.S.C. § 258; 47 C.F.R. §§ 64.1100, *et seq*.

supplied by a telecommunications service provider."[135] We stated our belief that this proposal would promote consumer convenience and competition by allowing the party responsible for payment of the telephone bill (*i.e.*, the customer of record) to authorize additional persons to make telecommunications decisions. We expressed concern, however, that it could lead to increased slamming and impose undue burdens on executing carriers.[136] We also requested comment on other proposals to define the term "subscriber," as well as on current carrier practices "with regard to which members of a household are permitted to make changes to telecommunications service."[137]

47. Twenty-two parties addressed this issue in comments and reply comments.[138] There is a consensus among commenters that, with regard to business services, the term "subscriber" should be defined so as to allow contractually or lawfully authorized agents to make telecommunications decisions on behalf of the customer of record.[139] With regard to residential service, the majority of commenters -- largely carriers -- favor a broad definition that would allow the customer of record to authorize additional persons to make telecommunications decisions. Specifically, ten commenters support the SBC proposal or a similar definition,[140] and four support a definition that would include any adult household member.[141] On the other hand, six commenters – including three state

[135] *Further Notice*, 14 FCC Rcd at 1605-06, ¶ 176.

[136] *Further Notice*, 14 FCC Rcd at 1606, ¶ 177.

[137] *Further Notice*, 14 FCC Rcd at 1606, ¶ 178.

[138] *See* AARP Comments at 5; Ameritech Comments at 17; Bell Atlantic Comments at 7; Cable & Wireless Comments at 20-21 and Reply at 9; Cincinnati Bell Comments at 3; Comptel/ACTA Comments at 17; Frontier Comments at 8 and Reply at 1-2; GST Comments at 22-24; GTE Comments at 12-13 and Reply at 5-6; GVNW Comments at 25; MCI WorldCom Comments at 24-25 and Reply at 14-15; MediaOne Comments at 12-13; Missouri PSC Comments at 3-4; Montana PSC Comments at 3; NASUCA Comments at 3-4; NY DPS Comments at 8; Qwest Comments at 21-23 and Reply at 25-26; SBC Comments at 14-15 and Reply at 14-15; Sprint Comments at 10-11; TRA Comments at 22-23; Texas PUC Comments at 14-16; U S WEST Comments at 25, n.49 and Reply at 37-38.

[139] *See* Ameritech Comments at 17; Cable & Wireless Comments at 20-21; Cincinnati Bell Comments at 3; Comptel/ACTA Comments at 17; GST Comments at 22-24; GTE Comments at 12-13; MCI WorldCom Comments at 24-25; MediaOne Comments at 12-13; NY DPS Comments at 8; Qwest Comments at 21-23; SBC Comments at 14-15; Texas PUC Comments at 14-16; U S WEST Reply at 38. The remaining commenters address residential service only or make no distinction between residential and business service.

[140] *See* Ameritech Comments at 17; Cable & Wireless Comments at 20; Cincinnati Bell Comments at 3; Comptel/ACTA Comments at 17; GTE Comments at 13; Qwest Comments at 22; SBC Comments at 15; Texas PUC Comments at 16. *See also* Bell Atlantic Comments at 7 (stating "the Commission could reasonably adopt" its practice of permitting account changes by other household members as authorized by the customer of record), U S WEST comments at 25, n.49 (stating its practice is to permit account changes by the customer(s) of record or others expressly or implicitly authorized by the customer(s) of record).

[141] *See* MCI WorldCom Comments at 24-25; MediaOne Comments at 12-13; Sprint Comments at 10-11; TRA Comments at 23.

commissions and the AARP -- support restricting the definition to the customer of record,[142] and two commenters oppose defining the term "subscriber" at all.[143]

48. Discussion. Based on our consideration of the comments filed in this proceeding, we adopt the following definition of the term "subscriber" for purposes of our rules implementing section 258 of the Act: "The party identified in the account records of a common carrier as responsible for payment of the telephone bill, any adult person authorized by such party to change telecommunications services or to charge services to the account, and any person contractually or otherwise lawfully authorized to represent such party." We believe that this definition will serve our public interest goals of promoting consumer protection, consumer convenience, and competition in telecommunications services. Specifically, this definition will allow customers of record to authorize additional persons to make telecommunications decisions, while protecting consumers by giving the customers of record control over who is authorized to make such decisions on their behalf. In addition, this definition will provide carriers with the flexibility to establish authorization procedures that are appropriate to their own and their customers' needs, consistent with the framework of our rules.

49. The definition we adopt is similar to the SBC proposal set forth in the *Further Notice*, in that it allows customers of record to authorize additional persons to make telecommunications decisions.[144] We believe that it is preferable to the SBC proposal, however, because it clearly identifies the customer of record as the source of authority over who is authorized to make telecommunications decisions. In addition, the definition we adopt distinguishes between two different types of authority: (1) authority based on the express or implied authorization of the customer of record, as reflected in carrier account records or elsewhere;[145] and (2) authority based on federal and/or state law and regulations concerning agency and authority.[146]

50. The principal concern expressed by commenters opposed to a definition that allows customers of record to authorize additional persons to make telecommunications decisions is that

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142 *See* AARP Comments at 5; GST Comments at 22; GVNW Comments at 25; Missouri PSC Comments at 4; Montana PSC Comments at 3; NY DPS Comments at 8.

143 *See* Frontier Comments at 8; NASUCA Comments at 3-4.

144 *See Further Notice*, 14 FCC Rcd at 1605-06, ¶ 176. The structure of the definition derives from that of two proposed definitions which are based, respectively, on the Anti-Cramming Best Practice Guidelines and anti-cramming legislation proposed in Congress in 1998. *See* Cincinnati Bell Comments at 3; GTE Comments at 13.

145 We choose not to restrict this category to persons identified in carrier account records, as do the above-referenced anti-cramming definitions. *See supra*, n. 145. Cramming involves the billing relationship between LECs and their local telephone customers, whereas, in the slamming context, long distance service providers often lack access to the LEC account records containing the pertinent information. *See* Texas PUC Comments at 15; TRA Comments at 22. In addition, a LEC may choose not to maintain such records.

146 *See, e.g.*, Comptel/ACTA Comments at 17; NASUCA Comments at 3-4. *See also* Texas PUC Comments at 16 (supporting definition that "allows for differences among the federal and state laws in legal areas such as family law (*e.g.*, community property), creditor/debtor law, business law (*e.g.*, principal and agent relationships, contract law (*e.g.*, vis-à-vis minors), etc.").

such a definition invites disputes among household members.[147] We conclude that this concern does not warrant restricting customer options. Commenters favoring a broad definition generally indicate that the current carrier practice is to allow persons other than the customer of record to make telecommunications decisions subject to varying authorization procedures,[148] and that consumers expect and value this service.[149] Examination of the record does not indicate that this practice has given rise to a substantial number of slamming complaints.[150] Moreover, as discussed below, we believe that our current rules provide sufficient incentives for carriers to adopt appropriate safeguards to ensure that only authorized persons are permitted to change telecommunications services. Absent more concrete evidence of the likelihood of harm to consumers, we agree with the majority of commenters that consumers "should be able to make decisions about their preferred carrier [and] delegate that authority if needed[.]"[151]

51. We emphasize that, by adopting a definition, we are not imposing additional responsibilities on carriers in the submission or execution of carrier changes. Rather, carriers' responsibilities are determined by the framework of the current rules. Under these rules, submitting carriers are subject to liability for the submission of unauthorized changes, regardless of intent.[152] As we held in the *Section 258 Order*, strict liability "provides appropriate incentives for carriers to obtain authorization properly and to implement their verification procedures in a trustworthy manner."[153] Within this framework, the definition that we adopt will permit submitting carriers to

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[147] *See, e.g.*, GST Comments at 24; GVNW at 25; NY DPS Comments at 8.

[148] According to Cable & Wireless USA, the general practice of submitting carriers is to obtain specific acknowledgement from the person "signing the LOA or accepting service through third party verification . . . that he or she has the authority to make telecommunications decisions on behalf of the principal." Cable & Wireless Comments at 21. A number of LECs also state that they maintain records of persons authorized to make telecommunications decisions on behalf of the customer of record. *See* Bell Atlantic Comments at 7; GTE Comments at 12-13; SBC Comments at 15; U S WEST Comments at 25, n.49.

[149] *See, e.g.*, GTE Comments at 12 ("GTE finds that allowing customers the ability to have multiple persons make account changes is an option customers value and expect.").

[150] *See, e.g.*, Sprint Comments at 10-11 ("While Sprint has received a few complaints regarding the conversion of a household's long distance service by another member of the household . . . without authority to make such a decision, such complaints are . . . small in both absolute numbers and as a percentage of total slamming complaints"). *See also* Ameritech Comments at 17; Bell Atlantic Comments at 7; Cable & Wireless Comments at 21; GTE Comments at 12-13.

[151] Qwest Reply at 26. We reject proposals that "subscriber" be defined to include any adult household member. *See supra*, n. 142 and accompanying text. Such a definition would remove control from customers of record by presumptively authorizing household members and excluding non-household members from making telecommunications decisions. *Compare* SBC Reply at 14 ("The problem with limiting the definition to a member of the household is that there are all sorts of commonly occurring situations that just do not fit the pattern.") *and* U S WEST Reply at 37 (definition "should be liberal enough to accommodate the practical fact that adults in a single household often think they are all authorized to make decisions about telecommunications purchases.").

[152] 47 C.F.R. § 64.1140. *See also Section 258 Order*, 14 FCC Rcd at 1539-41, ¶¶ 50-52.

[153] *Section 258 Order*, 14 FCC Rcd at 1541, ¶ 52. Because strict liability would prevent a slamming carrier from avoiding liability on the basis of a claim of mistake, we are not concerned that the "subscriber" definition we adopt herein will lead to an increase in slamming. *See id.* at 1606, ¶ 177.

utilize varying authorization procedures based on their own and their customers' needs, without tolerating procedures likely to enable unauthorized persons to make telecommunications decisions.[154] With regard to executing carriers, their responsibility is limited to prompt execution of changes verified by a submitting carrier. Carriers that execute changes verified by submitting carriers are not subject to liability for unauthorized changes.[155] For these reasons, we are not concerned that the definition we adopt will impose unreasonable burdens on executing carriers.[156]

52. In sum, we believe the "subscriber" definition that we adopt herein will serve our public interest goals of promoting consumer convenience and competition in telecommunications services, without leading to increased slamming. The definition we adopt is consistent with the framework of our rules and will enable carriers to adopt safeguards against unauthorized carrier changes that are suited to their own and their customers' needs.[157]

### E. Submission of Reports by Carriers

53. Background. In the *Section 258 Order,* we acknowledged that the number of slamming complaints filed with the Commission reflects a mere fraction of the actual number of slamming incidents.[158] Indeed, many incidents of slamming are reported to the IXCs themselves or the LECs and not to this Commission. To illustrate, while the Commission processed 19,769 slamming complaints between January and the beginning of December 1998, Ameritech reported that it received 123,848 complaints of slamming by IXCs during that same period.[159]

54. In the *Further Notice*, we sought comment on a proposal requiring carriers to periodically submit reports on the number of complaints regarding unauthorized carrier changes

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[154] For example, carriers may choose to rely on representations of authority by the person ordering the changes, the person's relationship to the customer of record (*e.g.*, household or family member), the person's access to the customer of record's telephone line, account records indicating who is authorized to order carrier changes on behalf of the customer of record, and/or other indicia of authority. *See, e.g.*, TRA Comments at 22.

[155] *See* 47 C.F.R. § 64.1120(a)(2); *Section 258 Order* at 1541, ¶ 54 ("where the submitting carrier submits a carrier change request that fails to comply with our rules and the executing carrier performs the change in accordance with the submission, only the submitting carrier is liable as an unauthorized carrier").

[156] *See Further Notice*, 14 FCC Rcd at 1606, ¶ 177.

[157] We reject arguments that we should not adopt a "subscriber" definition. *See* Frontier Comments at 8; NASUCA Comments at 3-4. *See also* Cable & Wireless Comments at 20-21; Comptel/ACTA Comments at 17; GTE Comments at 12-13; MCI Worldcom Comments at 24-25. The lack of a definition creates needless uncertainty. For example, the lack of a definition may discourage carriers from submitting changes ordered by persons other than their customers of record, regardless of the benefits to their customers of this service, based on concern about their potential liability under the current rules.

[158] *Section 258 Order*, 14 FCC Rcd at 1511, ¶ 2.

[159] *See Section 258 Order,* 14 FCC Rcd at 1512, ¶ 4. *See also* Ameritech Comments at 18. We note, in the future, the Commission may receive even fewer slamming complaints, as many states are likely to take the opportunity provided to them in the *First Reconsideration Order* to become the primary forum for the resolution of slamming complaints filed by their citizens. *See First Reconsideration Order,* FCC 00-135 at ¶¶ 23-28.

that they received.[160] We sought comment on the potential benefits of this reporting requirement and on whether such benefits would outweigh the burdens it would impose on carriers. We also asked for comment on how often carriers should file reports on slamming complaints, if the Commission were to adopt such a requirement. We stated that the information contained in these reports would constitute an "early warning" system for detecting slammers and would enable the Commission to take prompt investigative action to compel them to stop slamming.[161]

55. Discussion. We will require carriers to periodically submit reports regarding slamming complaints they received. Carriers objecting to this reporting requirement are concerned that the reports on slamming complaints received by carriers would produce inaccurate and misleading information.[162] Specifically, these carriers argue that such information, when provided by LECs, will inflate the number of slams attributed to other carriers because what is reported is the total number of slamming allegations, without reference to their validity or their underlying causes.[163] We believe the reporting requirement adopted herein is designed to address these concerns, and we are confident that reliance on the reported information as an "early warning" system will not misdirect the enforcement of the Commission's slamming rules.[164] Moreover, the information will be invaluable in enabling the Commission to identify, as soon as possible, the carriers who repeatedly initiate unauthorized changes. In addition, because the reports will be available for public inspection, they may compel carriers to reduce slamming on their own to avoid public embarrassment or loss of goodwill.

56. We recognize that a subscriber complaint is not, in and of itself, dispositive proof of a slam. Nevertheless, an excessive number of complaints directed at a particular carrier, or an increase in the number of such complaints, suggests that an immediate investigation into that carrier's practices may be warranted. Accordingly, to assist our enforcement efforts in this area, we conclude that each carrier must submit to the Commission via the Internet, U.S. Mail, or facsimile, a slamming complaint reporting form which will identify the number of slamming complaints received and state the number of such complaints that the carrier has investigated and found to be valid.[165] This report also must include the number of slamming complaints involving local intrastate and interstate interexchange service, investigated or not, that the carrier has chosen to

[160] *Section 258 Order*, 14 FCC Rcd at 1607, ¶ 179.

[161] *Section 258 Order*, 14 FCC Rcd at 1607, ¶ 179.

[162] *See, e.g.*, Qwest Comments at 23; Bell Atlantic Comments at 7; CompTel Comments at 16; RCN Comments at 6.

[163] *See, e.g.*, Bell Atlantic Comments at 7-8; Cable & Wireless Comments at 22; CoreComm Comments at 6-7.

[164] Cable & Wireless Comments at 23.

[165] *See infra*, Appendix A. We note that states that choose to administer the Commission's slamming rules are required to regularly file information with the Commission that details slamming activity in their regions. Such filings will identify the number of slamming complaints handled, including data on the number of valid complaints per carrier; the identity of top slamming carriers; slamming trends; and other relevant information. *See First Reconsideration Order*, FCC 00-135, at ¶ 34.

resolve directly with subscribers.[166] Moreover, because most subscribers who are slammed by an IXC report the slam to their LEC, rather than the IXC, facilities-based LECs should include in their reports the name of the entity against which the complaint is directed and the number of complaints involving unauthorized changes that have been lodged against that entity. Reporting shall commence on February 15, 2001 for calendar year 2000, and shall continue on a bi-annual basis thereafter on August 15 (covering January 1 through May 31) and on February 15 (covering June 1 through December 31). The slamming complaint reporting form may be obtained in the Commission's Public Reference Room or by accessing the Commission's website**.**

57. We recognize that some carriers may not have gathered the data described above for the entire calendar year 2000 because they were not required to track slamming complaints prior to the release of this Order. We direct these carriers to begin tracking the requisite information once this item has been published in the Federal Register and the Office of Management and Budget has approved the collection of information.[167] For purposes of complying with the reporting requirement for calendar year 2000, carriers shall submit their reports reflecting the information gathered for the period between the effective date of this requirement, as published in the Federal Register, and December 31, 2000.

58. Based on the record before us, we do not believe that this requirement will impose significant additional costs or administrative burdens on carriers. Indeed, several carriers have indicated that they already track slamming complaints received from subscribers.[168] It would be a reasonable business practice for all telecommunications carriers, including small carriers, to track slamming complaints they receive in the course of their business; we would be surprised if carriers did not do this. Thus, we do not believe we are requiring carriers to keep information that they would not otherwise keep.

### F. Registration Requirement

59. Background. In the *Further Notice*, we invited parties to comment on whether we should impose a registration requirement on carriers who wish to provide interstate telecommunications services. We stated that such a requirement could help to keep entities that are unqualified or have the intent to commit fraud from entering or remaining in the telecommunications marketplace, while giving us a means of tracking and contacting carriers who may be engaged in slamming. We requested comment on the information that the registration should contain and proposed that, at a minimum, such information should include the carrier's business name(s); the names and addresses of officers and principals; verification that such officers and principals have no prior history of committing fraud; and verification of the financial viability of the carrier.[169] In addition, we asked whether the collection of such additional information, to

[166] We expect that carriers will continue to work with subscribers to resolve many alleged incidents of slamming before they reach the complaint stage. *See infra*, ¶ 86.

[167] The Commission will publish a notice in the Federal Register announcing the effective date of this requirement.

[168] *See, e.g.*, Ameritech Comments at 19; GTE Comments at 14.

[169] *Section 258 Order*, 14 FCC Rcd at 1607-9, ¶¶ 180-82.

deter slammers from entering the market and assist our anti-slamming enforcement efforts, should be combined with existing information collection mechanisms, in order to lessen the burden on carriers.[170]

60. We also proposed to revoke or suspend, after appropriate notice and opportunity to respond, the operating authority of carriers that fail to file a registration statement or provide false or misleading information in their registration. In addition, we tentatively concluded that a carrier should have an affirmative duty to ascertain whether another carrier has filed a registration with the Commission prior to offering service to that carrier.[171]

61. Discussion. The Commission currently requires carriers providing interstate interexchange telecommunications service to submit various types of information, and the Commission recently streamlined many of these information collection requirements. For example, the Commission has consolidated several different worksheets into the Telecommunications Reporting Worksheet (FCC Form 499), which is used to calculate carriers' contributions to fund four different programs: interstate telecommunications relay service (TRS), federal universal service support mechanisms, the cost-recovery mechanism for the North American Numbering Plan Administration, and the cost recovery mechanism for the shared costs of long-term local number portability.[172] In addition, to assist carriers in meeting the requirement of section 1.47 of our rules that all common carriers must designate an agent for service of process in the District of Columbia, we have allowed carriers to report such information on the Form 499.[173] Our rules now provide that carriers may file the relevant portion of the Form 499 with the Commission to satisfy this requirement, and must update the information about the registered agent for service of process by submitting the revised portion of the Form 499 to the Chief of the Enforcement Bureau's Market Disputes Resolution Division within one week of any changes. The rules also provide that a paper copy of the designation list shall be maintained in the Office of the Secretary of the Commission.

62. We adopt our tentative conclusion that all new and existing common carriers providing interstate interexchange telecommunications service must register with the Commission. We believe such a registration requirement will bolster our efforts to curb slamming by enabling us to monitor the entry of carriers into the interstate telecommunications market and any associated increases in slamming activity. This requirement will also enhance our ability to take appropriate enforcement action against carriers that have demonstrated a pattern or practice of slamming. Slammers that simply change their names and/or move to different jurisdictions will find it difficult to escape detection if they cannot escape the obligation to register with the Commission. This registration information will enable the Commission to identify those entities providing interstate interexchange telecommunications service, it will complement the certification and registration

170 *Section 258 Order*, 14 FCC Rcd at 1607-9, ¶¶ 180-82.

171 *Section 258 Order*, 14 FCC Rcd at 1607-9, ¶¶ 180-82.

172 *See 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, Report and Order, CC Docket No. 98-171, 14 FCC Rcd 16606 (1999) (*Streamlining Order*).

173 47 C.F.R. § 1.47(h). *See also Streamlining Order,* 14 FCC Rcd at 16609-10, ¶ 11.

requirements in effect in almost every state for intrastate service providers, and it will enable the Commission and state authorities to coordinate enforcement actions through the creation of a central repository of key facts about carriers providing interstate interexchange telecommunications.

63. While we decline to rely exclusively on existing annual reporting mechanisms,[174] we are mindful of the importance of not overburdening carriers with obligations. Therefore, we will revise the annually-filed Telecommunications Reporting Worksheet (FCC Form 499-A), which must be filed by all telecommunications carriers in April of each year,[175] to include the following additional information that is targeted to assist our anti-slamming efforts and thereby minimize the burden of this registration requirement: the carrier's business name(s) and primary address; the names and business addresses of the carrier's chief executive officer, chairman, and president, or, in the event that a company does not have such executives, three similarly senior-level officials of the company; the carrier's regulatory contact and/or designated agent for service of process; all names under which the carrier has conducted business in the past; and the state(s) in which the carrier is certified to provide service.[176] The next scheduled filing of the Form 499-A is April 1, 2001, at which time carriers will file the revised form containing the additional information described above with the Commission's Office of the Secretary. This information shall be submitted under oath and penalty of perjury, and must be updated to reflect any changes.[177] Pursuant to the existing requirement in section 1.47 of our rules, a carrier shall update its registration to reflect any changes by submitting the revised relevant portion of the FCC Form 499-A within no more than one week of the change. The Commission will make the registration information described above available for public inspection in its reference room and on its website.[178]

64. We believe that all carriers providing interstate interexchange telecommunications service, including small carriers providing such service, should be able to submit this information without much expense or difficulty because it is readily available, and to a large degree, must already be submitted in state jurisdictions. In addition, we note that making the registration information part of an existing form that must be completed and submitted for other obligations will minimize the burden on carriers. We therefore conclude that carriers failing to register with the Commission may, after notice and opportunity to respond, be subject to a fine.[179] Carriers

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[174] *See, e.g.*, Bell Atlantic Comments at 8-9; U S WEST Comments at 30-31; AT&T Comments at 46.

[175] The Telecommunications Reporting Worksheet (FCC Form 499-S), which is filed in September of each year, is only filed by contributors to the universal service fund.

[176] We note that, in the near future, FCC Form 499-A will be expanded to reflect the requirement that all interstate, domestic, interexchange carriers certify their compliance with statutory geographic rate averaging and rate integration obligations under section 254(g) of the Act. *See* 47 C.F.R § 64.1900; *Domestic, Interexchange Carrier Detariffing Order Takes Effect,* CC Docket No. 96-61, Public Notice, DA 00-1028 (Com. Car. Bur. May 9, 2000). *See also* 47 U.S.C. § 254(g).

[177] *See* CoreComm Comments at 7; GST Comments at 18; GTE Comments at 14.

[178] Pursuant to the Commission's confidentiality rules, filers may request confidential treatment of the revenue data in their Telecommunications Reporting Worksheet by checking a box on the form. Data submitted pursuant to such a confidentiality request will be afforded the full protections of the Commission's rules and will not be made publicly available with the registration information described above.

providing false or misleading information in their registrations may have their operating authority revoked or suspended, after receiving appropriate notice and opportunity to respond.[180]

65. We further conclude that facilities-based carriers shall have an affirmative duty to ascertain whether a potential carrier-customer (*i.e.*, a reseller) has filed a registration with the Commission *prior to* providing that carrier-customer with service.[181] Once the facilities-based carrier determines the registration status of its potential carrier-customer, the facilities-based carrier will not be responsible for monitoring the registration status of that customer on an ongoing basis, although we believe that a prudent carrier may choose to do so. In situations where a facilities-based carrier is currently providing a reseller with service, we direct the reseller to notify its underlying facilities-based carrier that it has submitted the registration information to the Commission, within a week of having done so.

66. We note that a facilities-based carrier will not be responsible for the accuracy of the registration provided to the Commission by its potential carrier-customer, nor will such a carrier, relying in good faith on the absence of such registration, be liable under section 251 of the Act for withholding service from the unregistered entity. The Commission may, however, after giving appropriate notice and opportunity to respond, impose a fine on carriers that fail to determine the registration status of other carriers before providing them with service. The dollar amount of the fine imposed on a facilities-based carrier for failing to meet its affirmative duty with respect to an unregistered reseller will depend on the egregiousness of the facts surrounding the particular incident. We conclude that this will deter facilities-based carriers from providing service to resellers that have not registered with the Commission, which will, in turn, make it more difficult for “bad actor” resellers to stay in business.

### G. Recovery of Additional Amounts from Unauthorized Carriers

67. <u>Background.</u> In the *Further Notice*, we tentatively decided that it would be consistent with our authority under section 258 to subject slammers to additional expenses as a way of providing an even greater economic disincentive to their unlawful conduct. Where a subscriber has paid charges to an unauthorized carrier, we proposed that the authorized carrier be permitted to collect from the unauthorized carrier double the amount of charges paid by the subscriber during the first 30 days after the unauthorized change.[182] We noted in the *Further Notice* that this proposed remedy would enable the authorized carrier to provide a complete refund to the subscriber, as well as retain an equal amount for itself, which would give authorized carriers extra incentive to pursue their claims against slammers.[183] In situations where a subscriber has not paid charges to an unauthorized carrier, we proposed that the authorized carrier should collect from the unauthorized carrier the amount that would have been

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[179] *See* 47 U.S.C. § 503(b).

[180] *See* 47 U.S.C. § 214.

[181] *See* Frontier Comments at 10.

[182] *Section 258 Order*, 14 FCC Rcd 1592, ¶ 141.

[183] *Section 258 Order*, 14 FCC Rcd 1592, ¶¶ 141, 143.

billed to the subscriber during the first 30 days after the unauthorized change. We noted that this proposed remedy would punish the unauthorized carrier and enable the authorized carrier to receive payments to which it would have been entitled had the slam not occurred.[184]

68. Discussion. We believe that the issue of recovery of additional amounts from unauthorized carriers has been effectively resolved in the context of our *First Reconsideration Order*.[185] As discussed above, in that order, we reaffirmed our decision to absolve consumers of liability for slamming charges for a limited period of time, *i.e.*, within the first 30 days after the unauthorized change.[186] We established procedures that apply when a consumer has not paid charges to the slamming carrier and also modified the liability rules that apply when a subscriber has paid charges to a slamming carrier. Specifically, we concluded that, when the slamming carrier receives payment from the subscriber, such carrier must pay out 150% of the collected charges to the authorized carrier, which, in turn, will pay to the subscriber 50% of his or her original payment.[187] In addition, the order provides specific notification requirements to facilitate carriers' compliance with the liability rules. Given these modifications, we do not believe that there is a need for further action in this area at the present time.

## III. SECOND ORDER ON RECONSIDERATION

### A. Administration of Preferred Carrier Freezes

#### 1. IXC Submission of Preferred Carrier Freeze Orders and Freeze Lifts

69. Several parties argue on reconsideration that the Commission should allow carriers to verify and submit orders to implement or lift preferred carrier freezes,[188] just as the Commission allows carriers to verify and submit preferred carrier change orders.[189] We decline to modify our rules and retain the requirement that subscribers must implement or lift preferred carrier freezes through contact with their local carriers.

70. In the *Section 258 Order,* we decided carriers should not be permitted to submit preferred carrier freeze lifts, even if those lift orders were first verified by a neutral third party. We stated that "the essence of a preferred carrier freeze is that a subscriber must specifically

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184 *Section 258 Order*, 14 FCC Rcd 1592, ¶ 142.

185 *See First Reconsideration Order,* FCC 00-135, at ¶¶ 7-49 (complete discussion of liability rules).

186 *First Reconsideration Order,* FCC 00-135, at ¶ 14.

187 *First Reconsideration Order,* FCC 00-135, at ¶ 17.

188 A preferred carrier freeze prevents a change in a subscriber's preferred carrier selection, unless the subscriber gives the carrier from whom the freeze was requested his or her express consent. *See* 47 C.F.R. § 64.1190(a).

189 *See* AT&T Petition at 15-19; *Excel Telecommunications, Inc.*, Petition for Clarification and Reconsideration, CC Docket No. 94-129, at 6-7 (filed March 18, 1999); *RCN Telecom Services, Inc.*, Petition for Clarification and Reconsideration, CC Docket No. 94-129, at 7-8 (filed March 18, 1999).

communicate his or her intent to request or lift a freeze [and it is this] limitation on lifting preferred carrier freezes that gives the freeze mechanism its protective effect."[190] We determined that subscribers would gain no additional protection from the implementation of a preferred carrier freeze if we were to allow third party verification of a carrier change to override a preferred carrier freeze. Although such a proposal minimizes the risk that unscrupulous carriers might attempt to impose preferred carrier freezes without the consent of subscribers, we concluded that it frustrates the subscriber's ability to change carriers.[191] Petitioners have not persuaded us that we erred in making these determinations. We therefore affirm our decision that only a subscriber may request or lift a preferred carrier freeze.[192]

71. Consistent with this purpose, we also take this opportunity to clarify that LECs may not accept preferred carrier freeze orders from carriers on behalf of subscribers, even if they are properly verified.[193] We believe that limiting the submission of preferred carrier freeze requests to subscribers will help curb the potential for abuse by slamming carriers.[194] To interpret our rules otherwise would undermine the effectiveness of preferred carrier freezes.[195] For example, if a slamming carrier were allowed to submit an unauthorized freeze order with an unauthorized change order, not only would the subscriber be slammed, but it would also be more difficult for the subscriber to be switched back to the authorized carrier because of the unauthorized freeze. This freeze mechanism assures that no carrier change is processed without the direct involvement of the subscriber.

### 2. Simultaneous Submission of Preferred Carrier Change Requests and Preferred Carrier Freeze Requests

72. RCN and Excel seek clarification that a subscriber request a change and obtain a preferred carrier freeze in the same transaction.[196] Nothing in our rules prohibits a subscriber from

[190] *Section 258 Order,* 14 FCC Rcd at 1586, ¶ 131.

[191] *Section 258 Order* 14 FCC Rcd at 1583, ¶ 125.

[192] *See* Bell Atlantic Comments at 2; U S WEST Comments at 9-12; Rural LECs Comments at 3-4.

[193] *See* Ameritech Comments at 2-4, U S WEST Comments at 9-10 and AT&T Comments at 14 (stating that our rules are clear that only subscribers can submit properly verified PC freeze orders to LECs).

[194] SBC Response to RCN and Excel Petitions at 5, Reply at 7-8 (stating that allowing carriers to submit preferred carrier freeze requests would create the same opportunity for the submission of unauthorized freeze orders that currently exists for unauthorized carrier changes). *See also* GTE Comments at 7 (stating that maintaining the LEC-subscriber link enables the LEC to ensure that the decision to lift the freeze, like the decision to implement the freeze, is an informed decision made by the subscriber); Bell Atlantic Comments at 2 ("Lifting of freezes by long distance carriers, even with verification, will permit unscrupulous carriers to avoid the wishes of consumers who don't want any carrier change without their direct involvement.").

[195] SBC Response at 7-10; Ameritech Comments at 2-4; Bell Atlantic Comments at 2-3; U S WEST Comments at 9-11 (stating that "the hallmark of preferred carrier protection is a personal message communicated by the principal and not through any agent"); GTE Comments at 7; NTCA Comments at 4 (stating that "a carrier that would risk submitting an unauthorized change request, would also risk an unauthorized request to impose or lift a preferred carrier freeze."); Rural LECs Reply at 7; Ameritech Comments at 2.

changing a carrier and requesting a freeze in the same transaction. We emphasize that the LEC must, however, verify both the freeze request and the carrier change request in accordance with our rules.[197] Specifically, the LEC must obtain a Letter of Agency, electronic authorization, or third party verification that applies to the freeze request and, if the LEC is the provider of the requested long distance service, the LEC must also properly verify the carrier change request.[198] We note that, in situations where a customer initiates or changes long distance service by contacting the LEC directly, verification of the customer's choice is not necessary by either the LEC or the chosen IXC because neither carrier is the "submitting carrier" as we have defined it.[199]

### 3. Effecting Freeze Lifts and Change Requests in the Same Three-Way Call

73. MCI asks the Commission to clarify that executing carriers have an obligation to lift a preferred carrier freeze and switch a customer during the same three-way call.[200] MCI states that it has experienced difficulties in making authorized carrier changes where preferred carrier freezes have been place.[201] MCI explains that, after a carrier change request is properly verified, MCI electronically sends the request to the executing carrier.[202] In situations where the customer has a preferred carrier freeze in place, but may have forgotten, the change request has been rejected by the executing carrier.[203] At that point, MCI states that it contacts the customer and initiates a three-way call between the executing carrier, the customer, and MCI. According to MCI, the executing carrier will only sometimes accept the three-way call, will only sometimes lift the preferred carrier freeze during the three-way call, and will never execute the carrier change during the three-way call.[204] Thus, MCI appears to argue that, in situations where the submitting carrier initiates a three-way call for the purpose of simultaneously lifting a preferred carrier freeze and submitting a carrier change request that has been already properly verified, the Commission should require the executing carrier to accept the freeze lift and effect the carrier change request in the same three-way call.[205]

74. Although we agree with MCI that accepting both freeze lift and properly verified carrier change requests during the same three-way call may be an efficient means of effectuating a consumer's carrier change request, we need not mandate that executing carriers follow this course

[196] RCN Comments at 8-9; Excel Comments at 7-8.

[197] *See* 47 C.F.R. §§ 64.1120, 64.1190.

[198] *See* 47 C.F.R. §§ 64.1120, 64.1190.

[199] *See Section 258 Order,* 14 FCC Rcd at 1565, ¶ 93. *See also* 47 C.F.R. § 64.1100 (a).

[200] *See* MCI Comments at 12, Reply at 3.

[201] MCI Comments at 13.

[202] MCI Comments at 13.

[203] MCI Comments at 13.

[204] MCI Comments at 13.

[205] MCI Reply at 3.

at this time. As we stated in the *Section 258 Order*, carriers must offer subscribers a simple, easily understandable, but secure way of lifting preferred carrier freezes in a timely manner.[206] We concluded that LECs administering a preferred carrier freeze program must accept the subscriber's authorization, either oral or written and signed, stating an intent to lift a preferred carrier freeze.[207] We determined that LECs also must permit a submitting carrier to conduct a three-way conference call with the LEC and the subscriber in order to lift a freeze.[208] Our rules do not, however, prohibit LECs from requiring submitting carriers to use separate methods for lifting a preferred carrier freeze and submitting a carrier change request. If MCI is concerned about the delay that may result from some LECs refusing to accept properly verified carrier change orders during the same three-way call initiated for the purpose of lifting a freeze, it may file a complaint in the appropriate forum.[209]

75. We also note that, in the *Section 258 Order*, we declined to enumerate all acceptable procedures for lifting preferred carrier freezes. Rather, we encouraged parties to develop other methods of accurately confirming a subscriber's identity and intent to lift a preferred carrier freeze, in addition to offering written and oral authorization to lift preferred carrier freezes.[210] We continue to believe that, as long as these other methods are secure and "impose only the minimum burdens necessary on subscribers who wish to lift a preferred carrier freeze," we need not mandate an automated process for carrier freezes, as requested by AT&T.[211]

76. Furthermore, for the same reasons articulated in the *Section 258 Order*, we will not require LECs administering preferred carrier freeze programs to make subscriber freeze information available to other carriers.[212] We continue to believe that, in light of our preferred carrier freeze solicitation requirements, subscribers should know whether there are preferred carrier freezes in place on their carrier selections.[213] As we noted in the *Section 258 Order*, if a subscriber is uncertain about whether a preferred carrier freeze has been imposed, the submitting carrier may use the three-way calling mechanism to confirm the presence of a freeze.[214] Carriers therefore would

[206] *Section 258 Order*, 14 FCC Rcd at 1584, ¶ 127.

[207] *Section 258 Order*, 14 FCC Rcd at 1584-5, ¶ 128.

[208] *Section 258 Order*, 14 FCC Rcd at 1585, ¶ 129.

[209] *See Section 258 Order*, 14 FCC Rcd at 1570, ¶ 103. Executing carriers may be liable for failing to comply with our rules if their actions result in any unreasonable delay of execution of carrier changes or in unauthorized carrier changes.

[210] *See Section 258 Order*, 14 FCC Rcd at 1586, ¶ 130. *See also* AT&T Petition at 19 (stating that LECs should be required to provide automated handling of freeze orders and changes.)

[211] *See Section 258 Order*, 14 FCC Rcd at 1586, ¶ 130.

[212] *See Section 258 Order*, 14 FCC Rcd at 1587-8, ¶ 133; AT&T Petition at 20-23. *But see* Rural LEC Comments at 5; SBC Reply at 10.

[213] *See* 47 C.F.R. § 64.1190. For example, under section 64.1190(a) of our rules, "[a] preferred carrier freeze (or freeze) prevents a change in a subscriber's preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested *his or her express consent*. 47 C.F.R. § 64.1190(a) (emphasis added).

not need to rely on a LEC-prepared list identifying those subscribers who have freezes in place. Moreover, there is no indication, based on the record before us, that this information has been used in an anti-competitive manner, as AT&T suggests.[215] If, in the future, we find that LECs are using this information for anti-competitive purposes, we will revisit this issue at that time.

### B. Verification of Preferred Carrier Changes

#### 1. Liability of an Executing Carrier

77. Several carriers ask the Commission to clarify that an executing carrier is liable for an unauthorized carrier change when the carrier improperly executes a carrier change request.[216] Section 258 of the Act contemplates that the submitting carrier and/or the executing carrier could be liable for an unauthorized change in a subscriber's telecommunications service. In the *Section 258 Order*, we delineated the duties and obligations of submitting and executing carriers in order to minimize disputes over the source or cause of unauthorized carrier changes. Generally, we concluded that submitting carriers are responsible for submitting, without unreasonable delay, authorized and properly verified carrier change requests; while executing carriers are charged with executing promptly and without unreasonable delay changes that have been verified by the submitting carrier.[217] We found that "where the submitting carrier submits a carrier change request that fails to comply with our rules and the executing carrier performs the change in accordance with the submission, only the submitting carrier is liable as an unauthorized carrier; [but] where the submitting carrier submits a change request that conforms with our rules and the executing carrier *fails to perform* the change in conformance with the submission, … the executing carrier is liable…."[218] Thus, an executing carrier that fails to execute promptly and without unreasonable delay a change request that has been properly submitted and verified is in violation of section 258 of the Act and section 64.1100(b) of our rules and may be subject to liability for damages.[219]

#### 2. Separate Authorizations for Multiple Services

78. We affirm our decision to require separate authorization for each service for which a subscriber requests a carrier change and/or freeze. Excel has not presented any new arguments or credible evidence that would cause us to conclude our original decision was in error.[220]

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214 *See Section 258 Order*, 14 FCC Rcd at 1587-8, ¶ 133.

215 *See* AT&T Petition at 20-23. *See also* Rural LECs Comments at 5 ("AT&T does not document any instance in which information obtained in connection with implementing a freeze was used for anti-competitive purposes…")

216 *See e.g.,* RCN Petition at 6-7; Excel Petition at 5.

217 *See Section 258 Order,* 14 FCC Rcd at 1541, ¶ 54. *See also* 47 C.F.R. § 64.1100(a), (b).

218 *See Section 258 Order,* 14 FCC Rcd at 1541, ¶ 54 (emphasis added).

219 *See, e.g.,* 47 U.S.C. §§ 208, 503(b).

220 We disagree with Excel's argument that separate authorization is not necessary for the interexchange and international portions of either preferred carrier changes or preferred carrier freezes. *See* Excel Petition at 9.

79. We also clarify that the separate authorization requirement does not prohibit carriers from obtaining a customer's authorization to change more than one service on the same LOA. Section 64.1130(d) of our rules allows carriers to use these "combined check-LOAs," as long as they comply with all the requirements governing Letters of Agency in section 64.1130.[221] Thus, a carrier may use one combined check-LOA to obtain authorization for more than one service. It must be clear to the subscriber, however, that he or she will be receiving each service listed on the combined check-LOA from the same carrier.

### C. Rules Governing LOAs

#### 1. Limitation on the Effectiveness of an LOA

80. We will not adopt a 30-day limit on the effectiveness of an LOA as suggested by petitioner SBC.[222] We believe a more reasonable limitation on the amount of time an LOA should be considered valid is 60 days, and we hereby adopt this 60-day limit.[223] We further conclude that the 60-day limit shall apply to submitting carriers rather than executing carriers, because submitting carriers are actually parties to the contractual agreement with the customer and, as such, are more capable of conforming their behavior to the obligation.

81. Although we recognize that a LEC may be able to lift a freeze in as few as 24 or 48 hours,[224] there are several factors to consider in determining the time period that an LOA should be considered valid. For example, if a carrier change request is rejected because the subscriber has not lifted the freeze on his or her account, the carrier must contact the subscriber and give him or her the opportunity to lift the freeze via a three-way call to the LEC. The subscriber may, however, be out of town or otherwise unable to be reached immediately. In either case, the carrier will be forced to continue to hold the LOA indefinitely or until the subscriber can be contacted. A 60-day limitation permits more flexibility under these and other, similar circumstances. We emphasize that this 60-day limitation represents the maximum time period for which an LOA will be considered valid. We note that consumers expect that their expressed preference for a new carrier will be honored within a reasonable time frame, and we think that a 60-day period sets a reasonable outer limit. In addition, a time period exceeding 60 days may cause confusion for customers regarding requests they may have made concerning their account but no longer remember. We encourage carriers to submit a change order immediately after the subscriber authorizes the change to minimize the risk that the subscriber will have forgotten the change.[225]

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[221] 47 C.F.R. § 64.1130(d). *See also* SBC Reply at 11.

[222] SBC Petition at 11-13; SBC Reply at 8. *See also* U S WEST Comments at 13 and Reply Comments at 3-4 (supporting SBC's proposal but suggesting a 60-day time limit).

[223] U S WEST Comments at 13; Reply Comments at 4. *See also infra*, Appendix A at 47 C.F.R. § 64.1130(j).

[224] SBC Reply Comments at 8.

[225] SBC Reply at 8.

### 2. Contents of LOA Regarding Preferred Carrier Change Charge

82. Under section 64.1130(e)(5) of our rules, LOAs are required to include a statement "[t]hat the subscriber understands that any preferred carrier selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's preferred carrier."[226] In its petition, MediaOne explains that this requirement, which initially applied only to changes of a subscriber's long distance provider, can now be read to apply to changes of local service providers.[227] Because preferred carrier change charges do not apply when a subscriber changes from one local service provider to another, MediaOne argues that the requirement set forth in section 64.1130(e) will result in consumer confusion.[228] Accordingly, MediaOne asserts that this rule should be revised to provide that this statement is not required in LOAs authorizing changes of local service providers.[229]

83. We will revise our requirements for the content of LOAs. Our current rules state that an LOA must indicate to the subscriber that a charge "may" be assessed for any preferred carrier change.[230] We agree with MediaOne that section 64.1130(e)(5) of our rules, as written, may result in consumer confusion to the extent there is no preferred carrier change charge applied for a change in local service providers. To alleviate consumer confusion, we therefore amend section 64.1130(e)(5) to provide that an LOA must contain language giving a subscriber the option of consulting with the carrier as to whether a fee applies to his or her preferred carrier change.[231]

## D. Payment of Preferred Carrier Change Charges After Slam

84. There are two preferred carrier change charges that can be involved in a slam. The first charge is assessed when the LEC executes the slamming carrier's preferred carrier change order. The second charge is assessed when the LEC returns the subscriber to his or her authorized carrier. SBC seeks clarification as to whether, under the new slamming procedures, the unauthorized carrier is responsible for paying the carrier change charge when the subscriber is returned to his or her authorized carrier.[232] SBC also requests clarification that, when a slam has been alleged, the LEC, acting as executing carrier, is no longer obligated to investigate or make a determination as to the validity of the initial carrier change.[233]

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[226] 47 C.F.R. § 64.1130(e)(5).

[227] *MediaOne Group, Inc.*, Petition for Reconsideration, CC Docket No. 94-129, at 5 (filed March 18, 1999).

[228] *Id.*

[229] *Id.*

[230] *See* 47 C.F.R. § 64.1130.

[231] *See infra*, Appendix A, § 64.1130(e)(5).

[232] SBC Petition at 5.

[233] SBC Petition at 6.

85. We have previously stated that where an IXC submits a request that is disputed by a subscriber and the IXC is unable to produce verification of that subscriber's change request, the LEC must assess the applicable change charge against that IXC.[234] We also stated in the *Section 258 Order* that the unauthorized carrier must pay for the expenses of restoring the subscriber to his or her authorized carrier.[235] We continue to believe that an unscrupulous carrier should bear full financial responsibility for the costs of its unlawful actions. Accordingly, we hereby clarify that the unauthorized carrier shall pay the preferred carrier change charges that are assessed in the event of a slam, *i.e.*, the charge assessed when the LEC executes the slamming carrier's preferred carrier change order and the charge assessed when the LEC returns the subscriber to his or her authorized carrier.[236] Unauthorized carriers also are responsible for reimbursing authorized carriers in accordance with the requirements set forth in section 258 of the Act and section 64.1170 of our rules.[237]

86. We note that SBC's second clarification request regarding the executing carrier's role in investigating slamming allegations was made in response to the Commission's prior liability rules, which were superceded by the liability rules adopted in the *First Reconsideration Order*. The procedures we adopted in the *First Reconsideration Order* provide that "disputes between alleged slamming carriers, authorized carriers, and subscribers now will be brought before an appropriate state commission, or this Commission in cases where the state has not elected to administer these rules, rather than to the authorized carriers, as adopted in the *Section 258 Order.*"[238] Under these procedures, carriers must inform subscribers who believe that they have been slammed of their right to file a complaint with the appropriate governmental entity.[239] We have not, however, restricted the ability of carriers to try to satisfy subscribers who alleged they have been slammed. For example, an IXC might authorize a LEC to fix alleged slams on a no-fault basis or to investigate the validity of the carrier changes. Nothing in the *First Reconsideration Order* precludes carriers from attempting to resolve slamming allegations, either directly or through contractual arrangement with another carrier, before the subscribers have filed complaints, and, indeed, we anticipate that carriers will have incentives to continue such practices.

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[234] *See Illinois Citizens Utility Board Petition for Rulemaking*, Memorandum Opinion and Order, 2 FCC Rcd 1726, 1729 (1987).

[235] *Section 258 Order*, 14 FCC Rcd at 1530-1, ¶ 37.

[236] We note that our determination is not meant to interfere with any tariffed offerings by LECs that are designed to return subscribers to their preferred providers more simply and more effectively. For example, the SBC PIC Switchback offering should not be withdrawn as a result of the new slamming rules. This offering allows the IXC to pay for returning the subscriber back to its formerly authorized carrier on a no-fault basis. *See* SBC Petition at 6-7.

[237] *See* 47 U.S.C. § 258; 47 C.F.R. § 64.1170.

[238] *First Reconsideration Order*, FCC 00-135, at ¶¶ 22-28. *See also* 47 C.F.R. § 64.1150.

[239] *First Reconsideration Order*, FCC 00-135, at ¶¶ 33-37.

### E. Preemption of State Regulations

87. Excel and RCN argue in their petitions that the Commission should reconsider its decision not to preempt state regulations regarding slamming because they believe that "the costs to carriers to comply with a patchwork of inconsistent federal and state regulations could be exorbitant, while accruing little benefit to consumers."[240] Although we recognize that it may be simpler for carriers to comply with one set of verification rules,[241] we will not interfere with the states' ability to adopt more stringent regulations. As we observed in both the *Section 258 Order* and the *First Reconsideration Order*, the Commission must work hand-in-hand with the states towards the common goal of eliminating slamming. States have valuable insight into the slamming problems experienced by consumers in their respective locales and can share their expertise with this Commission.[242] We will not thwart that effort by requiring states to limit their verification requirements so that they are no more stringent than those promulgated by this Commission.[243] The carriers challenging the Commission's decision to refrain from preempting state regulations have failed to identify a particular state law that should be preempted and how that state law conflicts with federal law or obstructs federal objectives.[244] In the absence of such evidence, we will not preempt state regulations governing verification procedures for preferred carrier change requests.[245]

## IV. CONCLUSION

88. In this Order, we amend the current carrier change authorization and verification rules to expressly permit the use of Internet LOAs in a manner consistent with the E-Sign Act. We direct NANPA to eliminate the requirement that carriers purchase "Feature Group D access to obtain CICs, thereby facilitating the assignment of CICs to switchless resellers. We also provide additional guidance on independent third party verification methods. In addition, we define the term "subscriber," establish reporting requirements for all carriers regarding slamming complaints, require all carriers that provide interstate interexchange telecommunications services to submit

[240] RCN Petition at 9; Excel Petition at 9; Cable & Wireless Comments at 10; MCI Comments at 22. MCI suggests that the Commission examine the lawfulness of the "exorbitant" $5 preferred carrier change charge imposed by ILECs and argues that the charge is not cost based. MCI Comments at 23. We decline, however, to address the lawfulness of the amounts charged for preferred carrier changes in this Order because it is outside the scope of this proceeding. *See MCI Telecommunications Corp. v. U S West Communications, Inc., et al.*, File Nos., E-07-08, E-97-20, E-97-21, E-97-22, E-97-23, E-97-24, Memorandum Opinion and Order, 15 FCC Rcd 9328 (2000).

[241] MCI Comments at 22; *but see* NASUCA Comments at 8 (noting that there is no evidence in the record to support the allegation that varying state verification procedures increases carriers' costs.).

[242] *Section 258 Order*, 14 FCC Rcd at 1561-2, ¶¶ 87-88; *First Reconsideration Order*, FCC 00-135, at ¶¶ 24-25.

[243] *See* MCI Comments at 22-23 (suggesting that the Commission determine that states may have state-specific verification requirements, but the requirements may be no more onerous or stringent than those required by the Commission).

[244] *See* NASUCA Comments at 8-9 (stating that neither Excel nor RCN cites any authority allowing the Commission to preempt state regulation on the basis that it would increase carrier's costs.)

[245] *Section 258 Order*, 14 FCC Rcd at 1562-3, ¶ 89.

additional information, in conjunction with existing information collections, that will assist the Commission's enforcement efforts, and create incentives for carriers to avoid doing business with slammers. In the Second Order on Reconsideration portion of this item, we grant in part and deny in part petitions for reconsideration or clarification of the slamming rules adopted in the *Section 258 Order*. In particular, we reaffirm our rules governing the submission of preferred carrier freeze orders, the handling of preferred carrier change requests and freeze orders in the same transaction, and the automated submission and administration of freeze orders and changes. We also decline to adopt a 30-day limit on the time period that an LOA confirming a carrier change request should be considered valid and instead adopt a 60-day limit. Finally, we reaffirm our decision not to preempt state regulations governing verification procedures for preferred carrier change requests that are consistent with the provisions of Section 258, and we clarify certain of our rules regarding the payment of preferred carrier change charges after a slam.

## V. PROCEDURAL MATTERS

### A. Final Regulatory Flexibility Analysis.

89. As required by the Regulatory Flexibility Act (RFA),[246] an Initial Regulatory Flexibility Analysis (IRFA)[247] was incorporated in the *Further Notice* in this proceeding.[248] The Commission sought written public comment on the proposals in the *Further Notice*, including comment on the IRFA. The comments received are discussed below. The instant Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[249]

#### 1. Need For and Objectives of this Action

90. Section 258 of the Act makes it unlawful for any telecommunications carrier "to submit or execute a change in a subscriber's selection of a provider of telephone exchange services or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe." In the *Section 258 Order*, the Commission established a comprehensive framework of rules to implement section 258 and strengthen its existing anti-slamming rules.[250] Concurrent with the release of the *Section 258 Order*, the Commission issued a *Further Notice* seeking comment on a number of additional proposals to further improve the preferred carrier change process and to prevent unauthorized carrier changes. In the instant *Order*, the Commission adopts some of the proposals set forth in the *Further Notice*. Specifically, the Commission: (1) amends the current carrier change authorization and verification rules to expressly permit the use of Internet Letters of Agency (Internet LOAs) in a manner consistent with the new E-Sign Act;[251] (2)

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[246] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, was amended by the Contract with America Advancement Act of 1996, Pub. L. 104-121, 110 Stat. 87 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[247] 5 U.S.C. § 603.

[248] *Further Notice*, 14 FCC Rcd at 1626.

[249] *See* 5 U.S.C. § 604.

[250] *See Section 258 Order*, 14 FCC Rcd at 1510-12, ¶¶ 1-4. *See also supra*, ¶ 2.

directs the North American Numbering Plan Administration (NANPA) to eliminate the requirement that carriers purchase Feature Group D access in order to obtain a carrier identification code (CIC);[252] (3) provides further guidance on the independent third party verification process;[253] (4) defines the term "subscriber" for purposes of its slamming rules;[254] (5) requires each carrier to submit a bi-annual report on the number of slamming complaints it receives;[255] and (6) expands the existing registration requirement on carriers providing interstate telecommunications service to include additional facts that will assist the Commission's enforcement efforts.[256] The objectives of the modified rules adopted in this *Order* are to implement section 258 by improving the preferred carrier change process and strengthening the Commission's framework of anti-slamming rules.

### 2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA.

91. The Commission received no comments directly in response to the IRFA.

92. *Resellers and CICs.* Relying in part on the small size of many resellers, opponents of the Commission's proposal to require switchless resellers to use their own CICs argue that such a requirement would create a substantial market entry barrier for resellers.[257] Others maintain that CIC deployment costs would be manageable for resellers because they typically operate on a regional rather than on a national basis,[258] that such costs may be viewed as "a legitimate cost of doing business,"[259] and that the independent use of CICs has significant competitive advantages for switchless resellers.[260] These comments are discussed in more detail in paragraph 27 above.

93. *Submission of Reports by Carriers.* Commenters contend that requiring each carrier to submit reports on the number of slamming complaints that it receives would create serious burdens for the Commission and compliant carriers alike.[261] We do not believe that the reporting requirement adopted in this Order will impose significant additional costs or administrative burdens on carriers. Several carriers indicated that they already track slamming complaints received from subscribers. Thus, we do not believe that we are requiring carriers to keep information that they

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[251] E-Sign Act at §§ 101, 104(e). *See supra*, ¶¶ 6-21.

[252] *See supra*, ¶¶ 22-31.

[253] *See supra*, ¶¶ 33-45.

[254] *See supra*, ¶¶ 46-52.

[255] *See supra*, ¶¶ 53-58.

[256] *See supra*, ¶¶ 59-66.

[257] *See* ASCENT Suppl. Comments at 22-25; Frontier Comments at 5; Qwest Comments at 8; WorldCom Comments at 18.

[258] *See* GVNW Suppl. Comments at 9; Sprint Reply at 6; U S WEST Comments at 12.

[259] Sprint Comments at 6.

[260] *See* Sprint Suppl. Comments at 4-5; U S WEST Comments at 8. *See also supra*, n. 82.

[261] *See, e.g.*, AT&T Comments at 45.

would not otherwise already keep. Moreover, this requirement will enable the Commission to identify the carriers who repeatedly initiate unauthorized changes. In addition, carriers may be compelled to reduce slamming on their own, since the reports will be available for public inspection.

94. *Registration Requirement.* Commenters argue that the proposed registration requirement would impose unnecessary costs on carriers and would do little to alleviate the slamming problem.[262] We believe that all carriers providing interstate interexchange telecommunications should be able to comply with the registration requirement adopted herein without much expense or difficulty, because the information requested is readily available, and to a large degree, must be provided to the states. We have minimized the burden that this requirement may have on carriers by making the registration information part of an existing form that must be completed and submitted for other obligations. We believe this requirement will benefit consumers by enhancing our ability to take appropriate enforcement action against carriers that have demonstrated a pattern or practice of slamming.

### 3. Description and Estimate of the Number of Small Entities To Which this Action Will Apply.

95. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[263] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," "small governmental jurisdiction," and "small business concern" under section 3 of the Small Business Act.[264] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[265] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[266] Nationwide, as of 1992, there were approximately 275,801 small organizations.[267] "Small governmental jurisdiction"[268] generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[269] As of 1992, there were approximately 85,006 such jurisdictions in the United

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[262] *See, e.g.,* Qwest Comments at 24; Cable & Wireless Comments at 24.

[263] 5 U.S.C. § 603(b)(3).

[264] 5 U.S.C. § 601(3).

[265] 15 U.S.C. § 632.

[266] 5 U.S.C. § 601(4).

[267] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[268] 47 CFR § 1.1162

[269] 5 U.S.C. § 601(5).

States.[270] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[271] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities. According to SBA reporting data, there were 4.44 million small business firms nationwide in 1992.[272] Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

96. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be data the Commission publishes in its *Trends in Telephone Service* report.[273] In a recent news release, the Commission indicated that there are 4,144 interstate carriers.[274] These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

97. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees.[275] Below, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

98. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[276] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[277] We have therefore included small incumbent LECs in this

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[270] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[271] *Id.*

[272] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[273] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[274] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[275] 13 CFR § 121.201, Standard Industrial Classification (SIC) codes 4812 and 4813. *See also* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987).

[276] 5 U.S.C. § 601(3).

[277] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, *to* William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR §

RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

99. **Total Number of Telephone Companies Affected**. The U.S. Bureau of the Census ("Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[278] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities because they are not "independently owned and operated."[279] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that 3,497 or fewer telephone service firms are small entity telephone service firms that may be affected by the new rules.

100. **Wireline Carriers and Service Providers**. The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[280] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.[281] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that 2,295 or fewer small telephone communications companies other than radiotelephone companies are small entities that may be affected by the new rules.

101. **Local Exchange Carriers**. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[282] According to the most recent *Telecommunications Industry Revenue* data,

121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996), 61 FR 45476 (Aug. 29, 1996).

[278] U.S. Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) (1992 Census).

[279] *See generally* 15 U.S.C. § 632(a)(1).

[280] *1992 Census*, *supra*, at Firm Size 1-123.

[281] 13 CFR § 121.201, SIC code 4813.

[282] *Id.*

1,348 incumbent carriers reported that they were engaged in the provision of local exchange services.[283] We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that 1,348 or fewer providers of local exchange service are small entities that may be affected by the new rules.

102. **Interexchange Carriers**. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[284] According to the most recent *Trends in Telephone Service* data, 171 carriers reported that they were engaged in the provision of interexchange services.[285] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 171 or fewer small entity IXCs that may be affected by the new rules.

103. **Competitive Access Providers**. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[286] According to the most recent *Trends in Telephone Service* data, 212 CAP/CLECs carriers and 10 other LECs reported that they were engaged in the provision of competitive local exchange services.[287] We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 212 or fewer small entity CAPs and 10 other LECs that may be affected by the new rules.

104. **Operator Service Providers**. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[288] According to the most recent *Trends in Telephone Service*

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[283] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[284] 13 CFR § 121.201, SIC code 4813.

[285] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[286] 13 CFR § 121.201, SIC code 4813.

[287] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[288] 13 CFR § 121.201, SIC code 4813.

data, 24 carriers reported that they were engaged in the provision of operator services.[289] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 24 or fewer small entity operator service providers that may be affected by the new rules.

105. **Pay Telephone Operators**. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[290] According to the most recent *Trends in Telephone Service* data, 615 carriers reported that they were engaged in the provision of pay telephone services.[291] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 615 or fewer small entity pay telephone operators that may be affected by the new rules.

106. **Resellers (including debit card providers)**. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies.[292] According to the most recent *Trends in Telephone Service* data, 388 toll and 54 local entities reported that they were engaged in the resale of telephone service.[293] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 388 or fewer small toll entity resellers and 54 small local entity resellers that may be affected by the new rules.

107. **Toll-Free 800 and 800-Like Service Subscribers**.[294] Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 and 800-like service ("toll free") subscribers. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use.[295] According to our most recent data, at the end of January 1999, the number of

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[289] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[290] 13 CFR § 121.201, SIC code 4813.

[291] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[292] 13 CFR § 121.201, SIC code 4813.

[293] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[294] We include all toll-free number subscribers in this category, including 888 number subscribers.

[295] FCC, CCB Industry Analysis Division, *FCC Releases, Study on Telephone Trends*, Tbls. 21.2, 21.3 and 21.4 (February 19, 1999).

800 numbers assigned was 7,692,955; the number of 888 numbers that had been assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 7,692,955 or fewer small entity 800 subscribers, 7,706,393 or fewer small entity 888 subscribers, and 1,946,538 or fewer small entity 877 subscribers may be affected by the new rules.

108. **Cellular Licensees**. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[296] According to the Census Bureau, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[297] Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Telecommunications Industry Revenue* data, 808 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.[298] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 808 or fewer small cellular service carriers that may be affected by the new rules.

### 4. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements

109. Below, we analyze the projected reporting, recordkeeping, and other compliance requirements that might affect small entities.

110. **Preferred Carrier Changes Using the Internet**. The Commission amends its rules to expressly permit preferred carrier changes to be conducted electronically through the use of Internet Letters of Agency (LOAs). Internet LOAs must comply with all current Commission authorization and verification requirements (as modified), and consumers must have the option of using alternative authorization and verification methods. This action is consistent with the *E-Sign Act*'s mandate that electronic signatures and transactions be treated the same as written ones, and will promote consumer convenience and competition by facilitating the use of the Internet for preferred carrier changes.

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[296] 13 CFR § 121.201, SIC code 4812.

[297] *1992 Census, Series UC92-S-1*, at Table 5, SIC code 4812.

[298] *Trends in Telephone Service*, Table 19.3 (March 2000).

111. **Resellers and CICs**. The Commission directs the NANPA to eliminate the requirement that carriers purchase "Feature Group D access" to obtain CICs. This action will facilitate the assignment of CICs to switchless resellers and eliminate a financial and administrative obstacle to their independent use of CICs.

112. **Independent Third Party Verification**. The Commission retains the three-way conference call and confirms that automated systems may be used as independent third party verification methods, but requires that the carrier's sales representative drop off the call once the connection has been established between the subscriber and the third-party verifier. This action will ensure the independence of the third party verification process and prevent the carrier's sales representative from improperly influencing subscribers, without burdening the verification process. In addition, the Commission adopts minimum content requirements for third party verification to provide guidance as to what practices are necessary and acceptable, and confirms that automated verification systems that preserve the independence of the third party verification process may be used to verify carrier change requests.

113. **Definition of "Subscriber."** The Commission adopts a definition of the term "subscriber" for purposes of its slamming rules that will allow customers of record to authorize additional persons to make telecommunications decisions, while retaining control over who is authorized to make such decisions on their behalf. The adoption of this definition will benefit all carriers, including small carriers, by providing them with the flexibility to establish authorization procedures appropriate to their own and their customers' needs, consistent with the framework of the Commission's slamming rules.

114. **Submission of Reports by Carriers**. Each carrier is required to submit to the Commission a bi-annual report identifying the number of complaints involving unauthorized changes that it has received, the number that it has investigated and found to be valid, and the number, investigated or not, that it has chosen to resolve directly with consumers. The report also must include the number of slamming complaints involving local intrastate and interstate interexchange service, investigated or not, that the carrier has chosen to resolve directly with subscribers. Because most subscribers who are slammed by an IXC report the slam to their LEC, rather than the IXC, facilities-based LECs should include in their reports the name of the entity against which the complaint is directed and the number of complaints involving unauthorized changes that have been lodged against that entity. These reporting requirements will enable the Commission to identify carriers who repeatedly initiate unauthorized changes, and may induce carriers to reduce slamming on their own to avoid public embarrassment or loss of goodwill.

115. **Registration Requirement**. Each carrier is required to register with the Commission, and an affirmative duty is established on the part of facilities-based carriers to confirm that a reseller has registered with the Commission prior to providing that reseller with service. Specifically, the annually-filed Telecommunications Reporting Worksheet (FCC Form 499-A), which must be filed by all telecommunications carriers in April of each year, will be revised to include the following additional information that is targeted to assist the Commission's anti-slamming efforts: the carrier's business name(s) and primary address; the carrier's regulatory contact and/or designated agent for service of process; all names under which the carrier has conducted business in the past; and the state(s) in which the carrier is certified to provide service. The new registration requirement will enable the Commission to monitor the entry of carriers into

the interstate telecommunications market and any associated increases in slamming, enhance the Commission's ability to take appropriate enforcement action against carriers that have demonstrated a pattern or practice of slamming, and deter facilities-based carriers from providing service to unregistered resellers.

### 5. Steps Taken to Minimize the Significant Economic Impact of This Action on Small Entities, and Significant Alternatives Considered

116. **Resellers and CICs**. The Commission requested comment in the *Further Notice* on three possible approaches to the problems arising from the shared use of CICs by switchless resellers and their underlying, facilities-based carriers.[299] The Commission believes that its proposal to require resellers to obtain their own CICs holds promise as a direct and effective solution to the significant problems that arise from the shared use of CICs. Based on review of the record as a whole, however, including concerns raised by some commenters regarding the financial and competitive impact of a CIC requirement on resellers, many of which are small entities, the Commission is not adopting a CIC requirement at this time. By directing that the Feature Group D requirement be eliminated, the Commission is taking a step that will facilitate the ability of resellers to obtain and use their own CICs, while allowing them to choose whether to do so based on their own competitive needs.

117. **Submission of Reports by Carriers**. The Commission has considered whether the reporting requirements adopted herein will impose significant additional costs or administrative burdens on carriers.[300] The Commission concludes that this requirement would not impose significant additional costs or administrative burdens on carriers. In this regard, the Commission notes the comments of several carriers that they already track slamming complaints received from subscribers,[301] and reasons that it would be a reasonable business practice for all telecommunications carriers, including small carriers, to track slamming complaints they receive in the course of their business. Indeed, the Commission states that it would be surprised if carriers did not do this. Accordingly, the Commission concludes that it is not requiring carriers to keep information that they would not otherwise keep. Moreover, these modest reporting requirements will help the Commission to achieve important objectives: identifying carriers that repeatedly initiate unauthorized changes, and deterring carriers from slamming. Because the Commission recognizes that some carriers may not have gathered the required data for the entire calendar year 2000, as they were not required to do so prior to the release of this *Order*, the Commission also directs that such carriers need only gather the required information prospectively.

118. **Registration Requirement**. To minimize the administrative burden on carriers of the registration requirement adopted herein, the Commission makes the registration information part of an existing form that must be completed and submitted for other obligations.[302] The Commission also observes that all carriers providing interstate interexchange telecommunications

[299] *See supra*, ¶¶ 22-23.

[300] *See supra*, ¶ 58.

[301] *See, e.g.*, Ameritech Comments at 19; GTE Comments at 14.

[302] *See supra*, ¶¶ 61-64.

service, including small carriers providing such service, should be able to submit this information without much expense or difficulty because it is readily available, and to a large degree, must already be submitted in state jurisdictions.

### 6. Report to Congress

119. The Commission will send a copy of the *Order,* including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[303] In addition, the Commission will send a copy of the *Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Order* and FRFA (or summaries thereof) also will be published in the Federal Register.[304]

## B. Supplemental Final Regulatory Flexibility Analysis

120. As required by the Regulatory Flexibility Act (RFA),[305] an Initial Regulatory Flexibility Analysis (IRFA)[306] was incorporated in the Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration in this proceeding.[307] The Commission sought written public comment on the proposals in the *Further Notice and Order*, including comment on the IRFA. A Final Regulatory Flexibility Analysis (FRFA) was incorporated in the subsequent *Section 258 Order* in this proceeding.[308] The Commission received a number of petitions for reconsideration in response to the *Section 258 Order*. The instant *Second Order on Reconsideration* addresses issues raised in those reconsideration petitions. This associated Supplemental Final Regulatory Flexibility Analysis (SFRFA) reflects revised or additional information to that contained in the FRFA. This SFRFA is thus limited to matters raised in response to the *Section 258 Order* and addressed in the instant *Second Order on Reconsideration*. This SFRFA conforms to the RFA.[309]

### 1. Need For and Objectives of this Action

121. Section 258 of the Act makes it unlawful for any telecommunications carrier "to submit or execute a change in a subscriber's selection of a provider of telephone exchange services or telephone toll service except in accordance with such verification procedures as the Commission

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303 *See* 5 U.S.C. § 801(a)(1)(A).

304 *See* 5 U.S.C. § 604(b).

305 *See* 5 U.S.C. § 603.

306 5 U.S.C. § 603.

307 *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10674 (1997) (*Further Notice and Order*).

308 *Section 258 Order*, 14 FCC Rcd at 1611.

309 *See* 5 U.S.C. § 604.

shall prescribe." In the *Section 258 Order*, the Commission established a comprehensive framework of rules to implement section 258 and strengthen its existing anti-slamming rules.[310] In this *Second Order on Reconsideration*, the Commission upholds its rules governing the submission of preferred carrier freeze orders, the handling of preferred carrier change requests and freeze orders in the same transaction, and the automated submission and administration of freeze orders and changes.[311] In addition, the Commission reaffirms its decision not to preempt state regulations governing verification procedures for preferred carrier change requests that are consistent with the provisions of section 258.[312] Furthermore, the Commission declines to adopt a 30-day limit on the amount of time an LOA confirming a carrier change request should be considered valid and instead adopts a 60-day limit.[313] Finally, the Commission clarifies certain of its rules regarding the payment of preferred carrier change charges after a slam.[314]

### 2. Summary of Significant Issues Raised by Petitions in Response to the FRFA

122. The Commission received no comments directly in response to the previous FRFA concerning the issues addressed in this Order.

### 3. Description and Estimate of the Number of Small Entities To Which this Action Will Apply

123. In the associated FRFA, *supra*, we have provided a detailed description of the pertinent small entities.[315] Those entities include wireline carriers, local exchange carriers, interexchange carriers, competitive access providers, resellers, and wireless carriers. We hereby incorporate those detailed descriptions by reference.

### 4. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements

124. **Administration of Preferred Carrier Freezes**. The Commission clarifies that only subscribers may submit freeze requests to LECs. The Commission also clarifies that a subscriber may request a preferred carrier change and obtain a preferred carrier freeze in the same transaction. In addition, the Commission declines to prohibit LECs from requiring submitting carriers to use separate methods for lifting a preferred carrier freeze and submitting a carrier change request, or to require LECs to make subscriber freeze information available to other carriers.

125. **Verification of Preferred Carrier Changes**. The Commission clarifies that an

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310 *See Section 258 Order*, 14 FCC Rcd at 1510-12, ¶¶ 1-4. *See also supra*, ¶ 2.

311 *See supra*, ¶¶ 69-76.

312 *See supra*, ¶ 87.

313 *See supra*, ¶¶ 80-81.

314 *See supra*, ¶¶ 84-86.

315 *See supra*, ¶¶ 93-106.

executing carrier that fails to promptly execute a properly submitted and verified change request has violated section 258 and the Commission's slamming rules. In addition, the Commission reaffirms its prior decision to require separate authorization for each service for which a subscriber requests a carrier change and/or freeze, and clarifies that the separate authorization requirement does not prohibit carriers from obtaining authorization to change more than one service in the same LOA.

126. **Rules Governing Letters of Agency (LOAs)**. The Commission declines to adopt 30-day limit on the amount of time that an LOA confirming a carrier change request is considered valid, instead adopting a 60-day limit as a more reasonable limitation. The 60-day limit applies to submitting carriers only. To avoid customer confusion as to whether a preferred carrier change charge applies for a change in local service providers, the Commission also amends its rules to provide that LOAs must contain language giving a subscriber the option of consulting with the carrier as to whether a fee applies to his or her preferred carrier change.

127. **Payment of Preferred Carrier Change Charge After Slam**. The Commission clarifies that the unauthorized carrier shall pay the preferred carrier change charge assessed when the LEC executes the slamming carrier's preferred carrier change order and the change charge assessed when the LEC returns the subscriber to his or her authorized carrier. The Commission also clarifies that slamming carriers are responsible for payment of all preferred carrier change charges associated with a slam, including both the charge assessed when the LEC executes the slamming carrier's preferred carrier change order and the charge assessed when the LEC returns the subscriber to his or her authorized carrier.

128. **Preemption of State Regulations**. The Commission reaffirms its decision in the *Section 258 Order* not to preempt state regulations regarding slamming.

### 5. Steps Taken to Minimize the Significant Economic Impact of This Action on Small Entities, and Significant Alternatives Considered

129. The clarifications and minor modifications to the Commission's slamming rules made in this *Second Order on Reconsideration* will benefit all carriers, including small carriers, by providing certainty and guidance in the preferred carrier change process. For instance, the Commission declines to adopt a 30-day time limit on the amount of time that an LOA confirming a carrier change request is considered valid because it does not provide enough flexibility to submitting carriers. Instead, the Commission adopts a 60-day time limit as a reasonable time frame which will provide flexibility but will also avoid consumer confusion that may be produced by a indefinite period of validity. We expect that the 60-day time limit will have no significant economic impact.

### 6. Report to Congress

130. The Commission will send a copy of the *Second Order on Reconsideration,* including this SFRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[316] In addition, the Commission will send a copy of the *Second Order on Reconsideration*, including the SFRFA, to the Chief Counsel for Advocacy of the Small

[316] *See* 5 U.S.C. § 801(a)(1)(A).

Business Administration. A copy of the *Second Order on Reconsideration* and SFRFA (or summaries thereof) also will be published in the Federal Register.[317]

### C. Paperwork Reduction Act

131. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act and will go into effect upon announcement in the Federal Register of OMB approval.

## VI. ORDERING CLAUSES

132. Accordingly, IT IS ORDERED that pursuant to sections 1, 4, 201-205, and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, and 258, the policies, rules, and requirements set forth herein ARE ADOPTED. IT IS FURTHER ORDERED that 47 C.F.R. Part 64 IS AMENDED as set forth in Appendix A.

133. IT IS FURTHER ORDERED that pursuant to sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154 that the petitions for reconsideration or clarification filed by AT&T Corp., Excel Telecommunications, Inc., MediaOne Group, National Telephone Cooperative Association, RCN Telecom Services, Inc., Rural LECs, and SBC Communications, Inc. ARE GRANTED IN PART AND DENIED IN PART to the extent discussed above.

134. IT IS FURTHER ORDERED that the requirements contained herein not pertaining to new or modified reporting or recordkeeping requirements shall become effective 30 days after publication of a summary in the Federal Register. The requirements or rules adopted herein pertaining to new or modified reporting or recordkeeping requirements are subject to approval by the Office of Management and Budget (OMB) and shall become effective upon announcement in the Federal Register of OMB approval.

135. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Analysis and the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

[317] *See* 5 U.S.C. § 604(b).

## APPENDIX A

## RULES AMENDED

**Part 64 of the Commissions Rules and Regulations, Chapter 1 of Title 47 of the Code of Federal Regulations, is amended as follows:**

1. Part 64, Subpart K, is amended by modifying section 64.1100 to read as follows:

**§ 64.1100 Definitions**

(a) * * *

(b) * * *

(c) * * *

(d) * * *

(e) * * *

(f) * * *

(g) * * *

(h) The term *subscriber* is any one of the following:

(1) the party identified in the account records of a common carrier as responsible for payment of the telephone bill;

(2) any adult person authorized by such party to change telecommunications services or to charge services to the account; or

(3) any person contractually or otherwise lawfully authorized to represent such party.

2. Part 64, Subpart K, is amended by redesignating section 64.1120(c)(4) as section 64.1120(c)(5).

3. Part 64, Subpart K, is further amended by modifying section 64.1120 to read as follows:

**§ 64.1120 Verification of Orders for Telecommunications Service**

(a) * * *

(b) * * *

(c) * * *

(1) The telecommunications carrier has obtained the subscriber's written or electronically signed authorization in a form that meets the requirements of § 64.1130; or

(2) An appropriately qualified independent third party has obtained, in accordance with the procedures set forth in sections (i)-(iv) of this subsection, the subscriber's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification data (*e.g*., the subscriber's date of birth or social security number). The independent third party must not be owned, managed, controlled, or directed by the carrier or the carrier's marketing agent; must not have any financial incentive to confirm preferred carrier change orders for the carrier of the carrier's marketing agent; and must operate in a location physically separate from the carrier or the carrier's marketing agent.

(i) *Methods of Third Party Verification*. Automated third party verification systems and three-way conference calls may be used for verification purposes so long as the requirements of sections (ii)-(iv) of this subsection are satisfied.

(ii) *Carrier Initiation of Third Party Verification*. A carrier or a carrier's sales representative initiating a three-way conference call or a call through an automated verification system must drop off the call once the three-way connection has been established.

(iii) *Requirements for Content and Format of Third Party Verification*. All third party verification methods shall elicit, at a minimum, the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the carrier change; the names of the carriers affected by the change; the telephone numbers to be switched; and the types of service involved.

(iv) *Other Requirements for Third Party Verification*. 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. In accordance with the procedures set forth in § 64.1120(a)(1)(ii), submitting carriers shall maintain and preserve audio records of verification of subscriber authorization for a minimum period of two years after obtaining such verification. Automated systems must provide consumers with an option to speak with a live person at any time during the call.

(4) Any State-enacted verification procedures applicable to intrastate preferred carrier change orders only.

(d) Telecommunications carriers must provide subscribers the option of using one of the authorization and verification procedures specified in § 64.1120(c) in addition to an electronically signed authorization and verification procedure under § 64.1120(c)(1).

4. Part 64, Subpart K, is further amended by revising section 64.1130 to read as follows:

**§ 64.1130 Letter of Agency Form and Content**

(a) A telecommunications carrier may use a written or electronically signed letter of agency to obtain authorization and/or verification of a subscriber's request to change his or her preferred carrier selection. A letter of agency that does not conform with this section is invalid for purposes of this part.

(b) The letter of agency shall be a separate document (or an easily separable document) or located on a separate screen or webpage containing only the authorizing language described in paragraph (e) of this section having the sole purpose of authorizing a telecommunications carrier to initiate a preferred carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the preferred carrier change.

(c) The letter of agency shall not be combined on the same document, screen, or webpage with inducements of any kind.

(d) * * *

(e) * * *

(1) * * *

(2) * * *

(3) * * *

(4) * * *

(5) That the subscriber understands that any preferred carrier selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's preferred carrier and that the subscriber may consult with the carrier as to whether a fee applies to the change.

(f) * * *

(g) * * *

(h) * * *

(i) Letters of agency submitted with an electronically signed authorization must include the consumer disclosures required by § 101(c) of the *Electronic Signatures in Global and National Commerce Act*.

(j) A telecommunications carrier shall submit a preferred carrier change order on behalf of a subscriber within no more than 60 days of obtaining a written or electronically signed letter of agency.

5. Part 64, Subpart K, is further amended by revising section 64.1180 to read as follows:

**§64.1180 Reporting Requirement**

(a) *Applicability*. Each carrier shall submit to the Commission via Internet (www.fcc.gov), U.S. Mail, or facsimile a slamming complaint report form identifying the number of slamming complaints received during the reporting period and other information as specified in subsection (b) of this section.

(b) *Contents of Report*. The report shall contain the following information:

(1) the information specified in subsection (a) of this section;

(2) the number of slamming complaints received during the reporting period that the carrier has investigated and found to be valid.

(3) the number of slamming complaints received during the reporting period, investigated or not, that the carrier has directly resolved with consumers;

(4) if the reporting carrier is a facilities-based local exchange carrier, the names of the entities against which the slamming complaints received during the reporting period were directed;

(5) if the reporting carrier is a facilities-based local exchange carrier, the number of slamming complaints received during the reporting period that were lodged against the entities identified in subsection (b)(4) of this section; and

(6) the total number of subscribers the reporting carrier is serving as of the date the report is filed.

(c) *Bi-Annual Reporting Requirement*. Reporting shall commence February 15, 2001, and shall continue on a bi-annual basis thereafter on August 15 (covering January 1 through May 31) and on February 15 (covering June 1 through December 31).

5. Part 64, Subpart K, is further amended by revising section 64.1190 to read as follows:

**§64.1190 Preferred carrier freezes.**

(a) * * *
(b) * * *
(c) * * *
(d) * * *

(1) * * *

(2) * * *

(i) The local exchange carrier has obtained the subscriber's written or electronically signed authorization in a form that meets the requirements of § 64.1190(d)(3); or

(ii) A description of the specific procedures necessary to lift a preferred carrier freeze; an explanation that these steps are in addition to the Commission's verification rules in §§64.1120 and 64.1130 for changing a subscriber's preferred carrier selections; and an explanation that the subscriber will be unable to make a change in carrier selection unless he or she lifts the freeze.

(iii) * * *

(3) * * *

(i) The written authorization shall comply with §§64.1130(b), (c), and (h) of the Commission's rules concerning the form and content for letters of agency.

(e) * * *

(1) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's written or electronically signed authorization stating his or her intent to lift a preferred carrier freeze; and

(2) * * *

6. Part 64, Subpart K, is amended by adding section 64.1195 to read as follows:

**§ 64.1195 Registration Requirement**

(a) *Applicability*. A telecommunications carrier shall not begin to provide interstate interexchange telecommunications service unless it has filed an FCC Form 499-A with the Commission in accordance with subsections (b) and (c) of this section. Any telecommunications carrier already providing interstate interexchange service on the effective date of these rules shall submit its FCC Form 499-A in accordance with subsections (b), (c), and (i).

(b) *Information Required for Purposes of Part 64*. A telecommunications carrier that is subject to the registration requirement pursuant to subsection (a) of this section shall provide the following information:

(1) the carrier's business name(s) and primary address;

(2) the names and business addresses of the carrier's chief executive officer, chairman, and president, or, in the event that a company does not have such executives, three similarly senior-level officials of the company;

(3) the carrier's regulatory contact and/or designated agent;

(4) all names that the carrier has used in the past; and

(5) the state(s) in which the carrier is certified to provide service.

(c) *Submission of Registration*. A carrier that is subject to the registration requirement pursuant to subsection (a) of this section shall submit FCC Form 499-A containing the information described in subsection (b) to the Commission via Internet (www.fcc.gov), U.S. Mail, or facsimile. FCC Form 499-A must be submitted under oath and penalty of perjury.

(d) *Rejection of Registration*. The Commission may reject or suspend a carrier's registration for any of the reasons identified in subsections (e) or (f) of this section.

(e) *Revocation or Suspension of Operating Authority*. After notice and opportunity to respond, the Commission may revoke or suspend the authorization of a carrier to provide service if the carrier provides materially false or incomplete information in its FCC Form 499-A or otherwise fails to comply with subsections (a), (b), and (c) of this section.

(f) *Imposition of Fine*. After notice and opportunity to respond, the Commission may impose a fine on a carrier that is subject to the registration requirement pursuant to subsection (a) of this section if that carrier fails to submit an FCC Form 499-A in accordance with subsections (a), (b), and (c).

(g) *Changes in Information*. A carrier must update its FCC Form 499-A to reflect any changes to the information provided pursuant to subsection (b) of this section within no more than one week of the change.

(h) *Duty to Confirm Registration of Other Carriers*. The Commission shall make available to the public a comprehensive listing of registrants and the information that they have provided pursuant to subsection (b) of this section. A facilities-based carrier shall have an affirmative duty to ascertain whether a potential carrier-customer (*i.e.*, reseller) that is subject to the registration requirement pursuant to subsection (a) of this section has filed an FCC Form 499-A with the Commission prior to offering service to that carrier-customer. After notice and opportunity to respond, the Commission may impose a fine on a carrier for failure to confirm the registration status of a potential carrier-customer before providing that carrier-customer with service.

## APPENDIX B

Parties Filing Petitions and Responsive Pleadings in CC Docket No. 94-129

Parties Filing Petitions

AT&T Corp.
Excel Communications, Inc.
Frontier
GTE Service Corp.
MediaOne Group
National Association of State Utility Consumer Advocates
National Telephone Cooperative Association
New York Consumer Protection Board
RCN Telecom Services, Inc.
Rural LECs
SBC Communications, Inc.
Sprint Corp.

Parties Filing Comments, Reply Comments, Responses, Oppositions

America Online, Inc.
Ameritech
AT&T Corp.
Bell Atlantic
BellSouth Telecommunications, Inc.
Cable & Wireless USA, Inc.
Cincinnati Bell Telephone Company
Competitive Telecom. Association/America's Carriers Telecom. Assoc.
CoreComm Ltd.
Excel Communications, Inc.
Frontier Corp.
GST Telecom., Inc.
GTE Service Corp.
GNVW Consulting, Inc.
IXC Communications Services, Inc.
MCI WorldCom
MediaOne Group, Inc.
Montana Public Service Commission
National Association of State Utility Consumer Advocates
National Telephone Cooperative Association
New York State Department of Public Service
PriceInteractive, Inc.
Qwest Communications Corp.
RCN Telecom Services, Inc.
Rural LECs

SBC Communications, Inc.
Sprint Corp.
TALK.com, Inc.
Telecommunications Resellers Association
Tel-Save.com, Inc.
Teltrust, Inc.
U S WEST Communications, Inc.
VoiceLog LLC