FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 94–129; FCC 98–334]

Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Unauthorized Changes of Consumers' Long Distance Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted a Second Report and Order which establishes new rules and policies governing the unauthorized switching of subscribers telecommunications, an activity more commonly known as ''slamming.'' The Commission's decision is intended to deter and ultimately eliminate unauthorized changes in subscribers telecommunications carriers.

DATES: The effective date of the rules adopted in this Order is April 29, 1999, except for 47 CFR 64.1100(c), 64.1100(d), 64.1170, and 64.1180, which contain information collection requirements which have not been approved by OMB and which will be effective 90 days after publication in the **Federal Register** to enable carriers to develop and implement an alternative carrier dispute resolution mechanism involving an independent administrator. The Commission will publish a document announcing the effective date of these rules.

FOR FURTHER INFORMATION CONTACT: Kimberly Parker, Enforcement Division, Common Carrier Bureau (202) 418–7393. For additional information concerning the information collections contained in this Order contact Judy Boley at 202–418–0214, or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order in CC Docket No. 94–129 [FCC 98–334], adopted on December 17, 1998 and released on December 23, 1998. The full text of the Order is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, N.W., Washington, D.C.

Paperwork Reduction Act: This Report and Order contains a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the following information collections contained in the Report and Order as required by the Paperwork Reduction Act of 1995, Public Law 104–13. OMB notification of action is due 60 days from the date of publication of the Report and Order in the **Federal Register**. Comments should address: (a) whether the new or modified information collection is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–0787.

Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94–129.

Form No.: N/A.

Type of Review: Revised collections.

Respondents: Business or other for-profit.

Section/title	No. of Respondents	Est. time per response (hours)	Total annual burden (hours)
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a. Section 64.1100	1800	1.5	2,700
b. Section 64.1150	675	1.5	844
c. Section 64.1160	1800	1.5	2,700
d. Section 64.1170	1800	5	9,000
e. Section 64.1180	1800	4	7,200
f. Section 64.1190	1800	2	3,600

Total Annual Burden: 26,044 hours.

Estimated Costs Per Respondent: N/A.

Needs and Uses: Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996, makes it unlawful for any telecommunications carrier to ''submit or execute a change in a subscriber's selection of a provider of telecommunications exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.'' The section further provides that any telecommunications carrier that violates such verification procedures and that collects charges for telephone exchange service or telephone toll service from a subscriber, shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by the subscriber after such violation. The information collections contained within the Report and Order are necessary to accommodate the Commission's implementation of Section 258.

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration (*Further Notice and Order*) in Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carrier. The Commission sought written public comment on the proposals in the *Further Notice and Order,* including comment on the IRFA. The comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

i. Need for and Objectives of This *Order* and the Rules Adopted Herein

2. 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 service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.'' Accordingly, the Commission adopts rules to implement this provision.

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

3. In the IRFA, the Commission found that the rules it proposed to adopt in this proceeding may have a significant impact on a substantial number of small businesses as defined by 5 U.S.C. 601(3). The IRFA solicited comment on the number of small businesses that would be affected by the proposed regulations and on alternatives to the proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding.

4. America's Carriers Telecommunications Association (ACTA) has submitted comments directly in response to the IRFA. ACTA states that the Commission violated the RFA in its IRFA by not addressing sufficiently the ''impact of the vague and standardless environment surrounding enforcement of the anti-slamming campaign on small carriers.'' ACTA asserts that because the proposed rules define slamming to include unintentional acts, small carriers will suffer disproportionately. ACTA states that the only proposal the Commission made to minimize the impact of its proposed rules on small carriers was the proposal to require private settlement negotiations regarding the transfer of charges arising due to section 258 liability. ACTA states that this proposal is inadequate because liability for inadvertent slams should not be imposed in the first place. ACTA submits that imposing liability for inadvertent slams will allow dishonest customers to claim falsely that they were slammed in order to avoid payment for legitimate services. Even when a complaint is not prosecuted to a formal decision, ACTA states, handling allegations of slamming are expensive and time-consuming for small carriers. ACTA also claims that the Commission is prejudiced against small carriers and that this attitude is reflected in unbalanced proposals that will allow large carriers and the Commission to subject small carriers to misdirected enforcement efforts and monetary losses and fines, as well as skew competition. ACTA also objects to the following as being harmful to small carriers: (1) elimination of the welcome package because it is an economical verification method for small carriers; (2) imposing the same verification procedures for in-bound and out-bound calls because that would overburden small carriers; (3) non-preemption of state regulation because small carriers would have difficulty in meeting the requirements of different states.

5. We disagree with ACTA's contentions. We believe that imposing liability for all intentional and unintentional unauthorized changes is not vague, but rather that it is so clear as to eliminate any doubts as to the circumstances that would constitute a slam. The bright-line standard that we adopt in this *Order* should help all carriers, including small carriers, to avoid making unauthorized changes to a subscriber's selection of telecommunications provider. We also disagree with ACTA's contention that defining slamming to include accidental slams would disproportionately affect small carriers. Section 258 prohibits slamming by any telecommunications carrier and does not distinguish between intentional and inadvertent conduct. Regardless of its size, no carrier has the right to commit unlawful acts. We believe that holding carriers liable for intentional and inadvertent unauthorized changes to subscribers' preferred carriers will reduce the overall incidence of slamming.

We also disagree with ACTA's allegation that the Commission is biased against small carriers and that this bias is evident in the rules we proposed in the Further Notice and Order. The rules we adopt require all carriers, regardless of size, to take precautions to guard against the harm to consumers that is caused by slamming. Finally, regarding the preemption of state law, we decline to exercise our preemption authority at this time because the commenters have failed to establish a record upon which a specific preemption finding could be made.

iii. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in the *Order* in CC Docket No. 94–129 Will Apply

6. 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 adopted rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 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).

7. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 3,459 interstate carriers. 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 toll service, providers of telephone exchange service, and resellers.

8. 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. 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.

9. Although some affected incumbent local exchange carriers (ILECs) may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not ''small entities'' or ''small business concerns'' under the RFA. Accordingly, our use of the terms ''small entities'' and ''small businesses'' does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term ''small ILECs'' to refer to any ILECs that arguably might be defined by the SBA as ''small business concerns.''

10. 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. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the proposed rules, if adopted.

11. Wireline Carriers and Service Providers. We estimate that fewer than 2,295 small telephone communications

companies other than radiotelephone companies are small entities or small ILECs that may be affected by the proposed rules, if adopted.[1]

12. Local Exchange Carriers. We estimate that fewer than 1,371 providers of local exchange service are small entities or small ILECs that may be affected by the proposed rules, if adopted.

13. Interexchange Carriers. We estimate that there are fewer than 143 small entity IXCs that may be affected by the proposed rules, if adopted.

14. Competitive Access Providers. We estimate that there are fewer than 109 small entity CAPs that may be affected by the proposed rules, if adopted.

15. Resellers (including debit card providers). We estimate that there are fewer than 339 small entity resellers that may be affected by the proposed rules, if adopted.

16. Cellular Licensees. We estimate that there are fewer than 804 small cellular service carriers that may be affected by the proposed rules, if adopted.

iv. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

17. Below, we analyze the projected reporting, recordkeeping, and other compliance requirements that may affect small entities and small incumbent LECs.

18. *Verification rules.* The Commission's verification rules shall apply to all carriers, excluding for the present time CMRS carriers, that submit or execute carrier changes on behalf of a subscriber.

19. *Elimination of the welcome package.* Carriers may not use the welcome package as a verification method.

20. *Verification of in-bound telemarketing sales.* Carriers must comply with our verification rules for all calls that result in carrier changes that are submitted on behalf of subscribers, whether those calls are consumer-initiated or carrier-initiated.

21. *Third Party Administrator for Dispute Resolution.* The effective date of the Commission's liability rules (47 CFR 64.1100(c), 64.1100(d), 64.1170, and 64.1180) is delayed until 90 days after publication in the **Federal Register** to enable carriers to develop and implement an alternative carrier dispute resolution mechanism involving an independent administrator. If carriers successfully implement such a plan, the Commission will entertain carriers' requests for waiver of the administrative requirements of our liability rules where such carriers voluntarily agree to use the independent administrator.

22. *Preferred Carrier Freeze Procedures.* The Commission's rules require carriers who offer preferred carrier freeze protection to follow certain procedures.

v. Steps Taken To Minimize the Significant Economic Impact of This *Order* on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered

23. *Verification rules.* Ameritech, SBC, and U S WEST propose systems that would impose fines or more stringent verification requirements on carriers with a history of slamming, as determined by the LEC or otherwise. We decline to adopt such proposals because they would impose more stringent verification requirements on carriers only after such carriers have slammed significant numbers of consumers. Furthermore, we find such proposals to be problematic because they could permit LECs to target certain carriers for ''punishment.''

24. *Elimination of the welcome package.* Several commenters propose modifications to the welcome package, rather than elimination of it entirely, because the welcome package is an inexpensive verification option that is suitable for use by smaller carriers. We conclude that it is better to eliminate the welcome package entirely, rather than attempt to ''fix'' it with modifications that fail to provide adequate protection against fraud or curtail its usefulness.

25. *Verification of in-bound telemarketing.* Several commenters propose that less burdensome verification procedures apply to in-bound telemarketing. We decline to adopt these proposals because we feel that they offer little protection to a consumer against an unscrupulous carrier.

26. *Independent Third Party Verification.* Several commenters submitted proposals for determining the independence of a third party verifier. These commenters support the criteria that the Commission has adopted in this *Order*.

27. *Verification Records.* Several commenters, including NAAG and NYSDPS, support a requirement that carriers retain verification records for a certain period of time. We choose a retention period of two years because any person desiring to file a complaint with the Commission alleging a violation of the Act must do so within two years of the alleged violation.

28. *Liability rules.* To address concerns that smaller carriers may suffer from the imposition of our liability rules, we note that a carrier accused of slamming has the opportunity to provide evidence of verification, in order to prove that it did not slam a subscriber, before having to remit any revenues to an authorized carrier.

29. *Third Party Administrator for Dispute Resolution.* This provision will benefit smaller carriers by providing them with an alternative means of compliance with our liability rules. Carriers are given a choice of complying with our liability rules in whole by administering the requirements themselves, or of complying by using an independent third party to administer the requirements.

30. *Preferred Carrier Freeze Procedures.* States are free to impose restrictions on the use of preferred carrier freezes for local exchange and intraLATA toll services if they determine that such steps are necessary in light of the availability of local competition in a particular market. Furthermore, we impose certain requirements that will prevent carriers from using preferred carrier freezes in an anticompetitive manner, such as easy procedures to lift freezes. In this way, the existence of preferred carrier freeze programs will not impede carriers wishing to compete in local services, especially smaller carriers.

31. The Commission will send a copy of the *Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. 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) will also be published in the **Federal Register**.

I. Introduction

32. In this Second Report and Order and Second Further Notice of Proposed Rulemaking (*Order*), we adopt rules proposed in the First Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration (*Further Notice and Order*) to implement section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act). Section 258 makes it unlawful for any telecommunications carrier to ''submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the

[1] The proposed rule referenced in paragraphs 10–16 are published in the same separate part of this issue.

Commission shall prescribe.'' The goal of section 258 and this *Order* is to eliminate the practice of ''slamming.'' Slamming occurs when a company changes a subscriber's carrier selection without that subscriber's knowledge or explicit authorization.

33. Despite the Commission's existing slamming rules, our records indicate that slamming has increased at an alarming rate. In 1997, the Commission processed approximately 20,500 slamming complaints and inquiries, which is an increase of approximately 61% over 1996 and an increase of approximately 135% over 1995. From January to the beginning of December 1998, the Commission processed 19,769 slamming complaints. Furthermore, the number of slamming complaints filed with the Commission is a mere fraction of the actual number of slamming incidents that occur.

34. The Commission recently has increased its enforcement actions to impose severe financial penalties on slamming carriers. Since April 1994, the Commission has imposed final forfeitures totaling $5,961,500 against five companies, entered into consent decrees with eleven companies with combined payments of $2,460,000, and has proposed $8,120,000 in penalties against six carriers. Additionally, the Commission may sanction a carrier by revoking its operating authority under section 214 of the Act.

35. The new rules we adopt in this *Order* operate to establish a new comprehensive framework to combat aggressively and deter slamming in the future. Our new rules absolve subscribers of liability for some slamming charges in order to ensure that carriers do not profit from slamming activities, as well as to compensate subscribers for the confusion and inconvenience they experience as a result of being slammed. As an additional deterrent, we strengthen our verification procedures and broaden the scope of our slamming rules.

II. Background

36. The Commission's current slamming rules, which apply only to long distance carriers, require such carriers to first obtain authorization from subscribers for preferred carrier changes and then to verify that authorization. The current rules also require IXCs to verify all PIC changes using either a written letter of agency (LOA) or, if the carrier has used telemarketing to solicit the customer, one of the following four procedures: (1) obtain an LOA from the subscriber; (2) receive confirmation from the subscriber via a call from the subscriber to a toll-free number provided exclusively for the purpose of confirming change orders electronically; (3) use an independent third party to verify the subscriber's order; or (4) send an information package, also known as the ''welcome package,'' that includes a postage-paid postcard which the subscriber can use to deny, cancel, or confirm a service order, and wait 14 days after mailing the packet before submitting the PIC change order. A carrier that makes unauthorized changes to a subscriber's selection of telecommunications provider and charges rates higher than that of the authorized carrier must re-rate that subscriber's bill to ensure that the subscriber pays no more than what he or she would have paid the authorized carrier. The unauthorized carrier must also pay for any carrier-change charges assessed by the LEC.

III. Discussion

A. Section 258(b) Liability

i. Liability of the Slammed Subscriber

37. We adopt a rule absolving consumers of liability for unpaid charges assessed by unauthorized carriers for 30 days after an unauthorized carrier change has occurred. Any carrier that the subscriber calls to report the unauthorized change, whether that entity is the subscriber's LEC, unauthorized carrier, or authorized carrier, is required to inform the subscriber that he or she is not required to pay for any slamming charges incurred for the first 30 days after the unauthorized change. If a subscriber pays charges to his or her unauthorized carrier, however, such subscriber's liability will be limited to the amount he or she would have paid the authorized carrier. We note that, as explained fully in the discussion on Third Party Administrator for Dispute Resolution, we delay the effective date of the liability rules for 90 days to provide interested carriers an opportunity to implement a dispute resolution mechanism involving an independent administrator.

38. Many state commissions and consumer protection organizations support absolving the consumer of liability for charges incurred after being slammed. Our liability rules that provide for limited absolution for slamming charges will deter slamming by minimizing the opportunity for unauthorized carriers to physically take control of slamming profits for any period of time. Even though section 258(b) requires the unauthorized carrier to remit to the authorized carrier all charges collected from the subscriber, several commenters state that absolution is preferable to using the remedy in section 258(b) because the slamming carrier is likely to refuse to remit revenues to the authorized carrier.

39. This rule also makes slamming unprofitable because it provides consumers with incentive to scrutinize their monthly telephone bills early and carefully. By providing subscribers with a remedy that is easy to administer, *i.e.*, consumers simply refuse to pay telephone bills containing slamming charges, we provide a quick and simple process to stop slamming. We also choose to absolve consumers of liability for a limited time because it provides some compensation to consumers for the time, effort, and frustration they experience as a result of being slammed, as well as for the loss of choice and privacy.

40. We balance this need to compensate the consumer, however, against the possibility of consumers improperly reporting that they were slammed in order to obtain free telephone service. To address such concerns about fraud, we point out that subscribers may only be absolved of liability if they have in fact been slammed. Carriers can, as described below, produce proof of valid verification to refute a subscriber's claim that he or she was slammed. This approach has the added benefit of strengthening carriers' incentive to comply strictly with our verification procedures in order to protect themselves from inappropriate claims by consumers that they have been slammed.

41. We limit the absolution period to 30 days after an unauthorized change has occurred. Several carriers support a 30-day limit to absolution. To the extent that the subscriber receives additional charges from the slamming carrier after the 30-day absolution period, the subscriber shall pay such charges to the authorized carrier at the authorized carrier's rates after the authorized carrier has re-rated such charges. In most cases, the consumer will discover the unauthorized change upon receipt of the first monthly bill after the unauthorized change occurs, because that bill generally provides the consumer with the first notice that a carrier change has been made. The limitation on absolution for the first 30 days after an unauthorized change may be waived by the Commission in circumstances where it is necessary to extend the period of absolution in order to provide a subscriber with a fair and equitable resolution. The special circumstances that may affect this period of absolution would likely be

practices used to delay the subscriber's realization of the carrier change. For example, a waiver of the 30-day limit might be appropriate if the subscriber's telephone bill failed to provide reasonable notice to the subscriber of a carrier change, or if the slamming carrier did not have a monthly billing cycle.

42. A limited absolution rule does not substantially harm the authorized carrier, who has not provided service to the slammed consumer during the period of absolution. We conclude that, although the authorized carrier is deprived of profits that it would have received but for the unauthorized change, it also has not actually provided any service to the subscriber and it appears that the authorized carrier is not out of pocket for most costs that it would have borne if it had in fact provided service. We emphasize that, should the authorized carrier conclude that it is entitled to any compensation from the slamming carrier that it does not receive under our rules, such as lost profits or other damages, the authorized carrier has recourse against the slamming carrier in the appropriate forum, such as before the Commission or in a state or federal court.

43. Several commenters, including AT&T and GTE, state that consumers should pay for services received in order to give effect to the remedy in section 258(b), which requires unauthorized carriers to give authorized carriers all charges collected from slammed subscribers. By its terms, that remedy applies only when the consumer has in fact made payment to the unauthorized carrier. Section 258(b) *does not require* the consumer to pay either the authorized carrier or the unauthorized carrier. As discussed in the following section, if a subscriber does pay his or her unauthorized carrier, the authorized carrier will be entitled to collect that amount from the unauthorized carrier in accordance with section 258(b).

44. We do recognize that by absolving the consumer of liability for a certain period of time, our remedy goes beyond the specific statutory remedy that is explicitly set forth in section 258(b) of the Act. Section 258(b) also states, however, that ''the remedies provided by this section are in addition to any other remedies available by law.'' Absolving slammed subscribers of liability for a limited period of time is within the Commission's authority under section 201(b) to ''prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of [the] Act,'' as well as under section 4(i) to ''perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the] Act, as may be necessary in the execution of its functions.'' Pursuant to such authority, we have determined that the most effective method of deterring slamming is to deprive carriers of revenue from slamming by absolving consumers of liability for 30 days after the unauthorized change. As we have already stated, by enabling the consumer to forgo payment to the slamming carrier, we limit the opportunities for slamming carriers to profit from slamming. Furthermore, the absolution remedy we adopt is not inconsistent with section 258 because the section 258(b) remedy only applies to charges that have been paid to the slamming carrier and does not reference charges that have not been paid.

45. We also recognize that, to the extent that our rules permit authorized carriers to collect some charges, at their rates, for services provided by slamming carriers beyond the 30-day absolution period, these requirements are not in accordance with Section 203(c), which requires carriers to collect charges in accordance with their filed tariffs. Because tariffs only permit carriers to collect charges for service they actually provide, our new rule requiring authorized carriers to collect charges for service provided by slamming carriers would not be in accordance with their tariffs. Section 10 of the Act, however, permits the Commission to forbear from applying section 203 tariff requirements to interstate, domestic, interexchange carriers if the Commission determines that three statutory forbearance criteria are satisfied. We conclude that these criteria are met.

46. First, we find that enforcement of section 203(c) in this instance is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that carrier or service are just and reasonable and are not unjustly or unreasonably discriminatory. The circumstances under which we permit the authorized carrier to collect charges that are not in accordance with its tariff are very limited. In fact, by requiring the subscriber to pay the authorized carrier rather than the slamming carrier, our rule helps to deter the unlawful, unjust, and unreasonable practices of slamming carriers by preventing them from making profits from slammed consumers. Under these limited circumstances, our rule is not necessary to ensure that the authorized carrier's charges, practices, classifications, or regulations from being just and reasonable, and not unjustly or unreasonably discriminatory.

47. Second, enforcement of section 203(c) under these circumstances is not necessary for the protection of consumers. On the contrary, requiring subscribers to pay their slamming carriers rather than their authorized carriers would be harmful to consumers. Our rule operates to protect consumers from the abusive practices of slamming carriers by depriving such carriers of slamming profits. Therefore enforcement of section 203(c) in this particular situation is not necessary to protect consumers.

48. Third, forbearance from applying section 203(c) in this instance is consistent with the public interest. In making this determination, section 10(b) also requires us to consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services. We conclude that permitting the subscriber to pay the authorized carrier for charges imposed by slamming carriers after the 30-day absolution period is consistent with the public interest. Slamming distorts competition in the marketplace because it rewards carriers who employ fraud and deceit over carriers that are conducting lawful activities. Slamming also deprives a consumer of choice. Because our rule deters slamming by making slamming unprofitable, it promotes the public interest, including enhancing competition for telecommunications services.

ii. When the Slammed Subscriber Pays the Unauthorized Carrier

49. We concluded above that a slammed subscriber is not liable for charges incurred during the first 30 days after an unauthorized carrier change. In the event that a subscriber nevertheless pays the unauthorized carrier for slamming charges, two rules shall govern. First, the unauthorized carrier is obligated to remit to the authorized carrier all charges paid by the subscriber. Second, after receiving this amount from the unauthorized carrier, the authorized carrier shall provide the subscriber with a refund or credit for any amounts the subscriber paid in excess of what he or she would have paid the authorized carrier absent the unauthorized change.

a. Liability of the Unauthorized Carrier

50. We adopt the rule proposed in the *Further Notice and Order* to provide that any telecommunications carrier that violates the Commission's verification procedures and that collects charges for

telecommunications service from a subscriber shall be liable to the subscriber's properly authorized carrier in an amount equal to all charges paid by such subscriber after such violation. This remedy is directed specifically by the language in section 258(b) of the Act.

51. We also impose certain additional penalties on unauthorized carriers. We also require the unauthorized carrier to pay for reasonable billing and collection expenses, including attorneys' fees, incurred by the authorized carrier in collecting charges from the unauthorized carrier. Requiring the unauthorized carrier to pay for expenses incurred by the authorized carrier in collecting charges from the unauthorized carrier ensures that the authorized carrier does not suffer further economic loss because of the unauthorized change, and adds an economic incentive for the authorized carrier to seek reimbursement for slamming. Additionally, since the rule increases the penalty for slamming, the unauthorized carrier may facilitate reimbursement to the authorized carrier in order to avoid payment of any additional expenses for billing and collection.

52. We also require the unauthorized carrier to pay for the expenses of restoring the subscriber to his or her authorized carrier. By requiring the unauthorized carrier to pay the change charge to the authorized carrier, we ensure that neither the authorized carrier nor the subscriber incurs additional expenses in restoring the subscriber to his or her preferred carrier. Furthermore, requiring the unauthorized carrier to pay these additional charges will serve as a further deterrent to unauthorized changes.

b. Subscriber Refunds or Credits

53. Our new rules will enable subscribers to prevent carriers from profiting by absolving them of liability for the first 30 days after an unauthorized change. We conclude, however, that the specific provisions of section 258(b) appear to prevent us from absolving consumers of liability to the extent that they have already made payments to their unauthorized carriers. We conclude that Congress intended that subscribers who pay for slamming charges should pay no more than they would have paid to their authorized carriers for the same service had they not been slammed. Indeed, the legislative history reflects Congressional intent that ''the Commission's rules should also provide that consumers be made whole.'' Therefore our rules will require the authorized carrier to refund or credit the subscriber for any charges collected from the unauthorized carrier in excess of what the subscriber would have paid the authorized carrier absent the switch. This approach is consistent with the Commission's current rules that ensure that the slammed subscriber pays no more for service than he or she would have paid before the unauthorized switch. Furthermore, we conclude that requiring a refund of the excess amounts paid by the subscriber does not harm the authorized carrier who has in fact received payment for service that it did not provide to the subscriber. Should the authorized carrier conclude that it is suffering some financial harm, nothing in our rules would preclude the carrier from filing a claim against the unauthorized carrier for lost profits or other damages.

54. If the authorized carrier fails to collect the charges paid by the subscriber from the unauthorized carrier, the authorized carrier is not required to provide a refund or credit to the subscriber. The authorized carrier, who has done no wrong, should not be penalized by having to provide the subscriber with a refund paid out of the authorized carrier's pocket. We require the authorized carrier, however, to notify the subscriber within 60 days after the subscriber has notified the authorized carrier of an unauthorized change, if the authorized carrier has failed to collect from the unauthorized carrier the charges paid by the slammed subscriber. Upon receipt of the notification, the subscriber will have the opportunity to pursue a claim against the slamming carrier for a full refund of all amounts paid to the slamming carrier. The subscriber is entitled to the entire amount paid, rather than merely a refund or credit of charges paid in excess of the authorized carrier's rates. This is because it is the subscriber who is collecting the charges from the slamming carrier rather than the authorized carrier. The language of section 258(b) generally prevents the subscriber from being absolved of liability for charges paid because it indicates that the authorized carrier may make a claim for, and keep, amounts paid to the slamming carrier. Where the authorized carrier has failed in collecting charges from the slamming carrier, however, the language of section 258(b) would not apply. Therefore the subscriber, who is not bound by the carrier remedy in section 258(b), would be entitled to a refund from the slamming carrier of all slamming charges paid. If the subscriber has difficulty in obtaining this refund from the slamming carrier, the subscriber has the option of filing a complaint with the Commission pursuant to section 208.

iii. Investigation and Reimbursement Procedures

a. When the Subscriber Has Not Paid the Unauthorized Carrier

55. A subscriber may refuse to pay any charges imposed by the slamming carrier for 30 days after the unauthorized change occurred. The record supports, however, giving the carrier who has been deprived of charges the opportunity to refute a subscriber's slamming claim. We therefore impose the following mechanism to limit the ability of subscribers to fraudulently claim that they have been slammed.

56. After the subscriber has reported an allegedly unauthorized change and requested to be switched back to the authorized carrier, the slamming carrier shall remove from the subscriber's bill, whether billed through a LEC or otherwise, all charges that were incurred for the first 30 days after the unauthorized change occurred. If the allegedly unauthorized carrier has proof of the consumer's valid verification of authorization to change to it, however, then the allegedly unauthorized carrier shall, within 30 days of the subscriber's return to the originally authorized carrier, submit to the originally authorized carrier a claim for the amount of charges for which the consumer was absolved, along with proof of the subscriber's verification of the disputed carrier change. The authorized carrier shall conduct a reasonable and neutral investigation of the claim, including, where appropriate, contacting the subscriber and the carrier making the claim. Within 60 days after receipt of the claim and the proof of verification, the originally authorized carrier shall issue a decision to the subscriber and the carrier making the claim. If the originally authorized carrier decides that the subscriber did in fact authorize a carrier change to the carrier making the claim, it shall place on the subscriber's bill a charge equal to the amount of charges for which the subscriber was previously absolved. Upon receiving this amount, the originally authorized carrier shall forward this amount to the carrier making the claim. If the authorized carrier determines that the subscriber was slammed by the carrier filing the claim, the subscriber shall not be required to make any payments for the charges for which he or she was absolved. If either the subscriber or the carrier making the claim believes that the authorized carrier's investigation or

adjudication of the dispute was in any way improper or wrong, then it has the option of filing a section 208 complaint.

b. When the Subscriber Has Paid the Unauthorized Carrier

57. When the subscriber has paid charges to the slamming carrier, the following procedures shall apply. First, we require the authorized carrier to submit to the allegedly unauthorized carrier, within 30 days of notification of an unauthorized change, a request for proof of verification of the subscriber's requested carrier change. Second, we require the allegedly unauthorized carrier to provide proof of verification to the authorized carrier within ten days of the authorized carrier's request. If the allegedly unauthorized carrier does provide proof of verification, consistent with the Commission's verification procedures, of the disputed carrier change request, then the burden shifts to the authorized carrier to prove that an unauthorized change occurred. The proof of verification must provide clear and convincing evidence that the subscriber provided knowing authorization of a carrier change.

58. If the allegedly unauthorized carrier cannot provide proof of verification, then it must provide to the authorized carrier, also within ten days of the authorized carrier's request for proof of verification, a copy of the subscriber's bill, an amount equal to any charge required to return the subscriber to his or her authorized carrier, and an amount equal to any charges paid by the subscriber, if applicable. In the event that the authorized carrier is unable to obtain an appropriate response from the slamming carrier, the authorized carrier may bring an action in federal or state court, where appropriate, or before the Commission, against the slamming carrier.

iv. Restoration of Premiums

59. Premiums are bonuses, such as frequent flier miles, that are given to subscribers as rewards for each dollar spent on telecommunications services. The legislative history of the 1996 Act states that ''the Commission's rules should require that carriers guilty of 'slamming' should be liable for premiums, including travel bonuses, that would otherwise have been earned by telephone subscribers but were not earned due to the violation of the Commission's rules. * * *'' Therefore we require an authorized carrier to reinstate the subscriber in any premium program in which the subscriber was enrolled prior to being slammed, if that subscriber's participation in the premium program was terminated because of the unauthorized change. We also require the authorized carrier restore to the subscriber any premiums that the subscriber lost due to slamming if a subscriber has paid the unauthorized carrier for slamming charges. We emphasize that the authorized carrier is entitled to receive from the slamming carrier charges paid by the slammed subscriber, and we expect that authorized carriers will make every effort to pursue their claims against slamming carriers. In the event that an authorized carrier is unable to recover from the unauthorized carrier charges that were paid by the subscriber, however, the authorized carrier is still required to restore the subscriber's premiums. On the other hand, an authorized carrier is not required to restore any premiums lost by that subscriber if the subscriber has not paid for the charges incurred after being slammed.

60. Although the Commission proposed in the *Further Notice and Order* to require the unauthorized carrier to remit to the properly authorized carrier an amount equal to the value of premiums to be restored to the subscriber, we find that this is not necessary to enable the authorized carrier to restore premiums to its subscribers. If the unauthorized change had never occurred, the authorized carrier would have provided the premium to the subscriber on the basis of the subscriber's payment to the authorized carrier. Therefore the authorized carrier is no worse off than it would have been if it is required to restore subscriber premiums upon receipt of the amount paid by the subscriber to the unauthorized carrier.

v. Liability for Inadvertent Unauthorized Changes

61. We reiterate that the statute and our rules impose liability for any unauthorized change in a subscriber's preferred carrier, whether intentional or inadvertent. Section 258 of the Act makes it illegal for a carrier to ''submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.'' Although several commenters assert that our rules should apply only to intentional acts that result in slamming, the statutory language does not establish an intent element for a violation of section 258. Several commenters, such as Ameritech, BellSouth, and the North Carolina Commission, support the application of a strict liability standard, in which a carrier would be liable for slamming if it was responsible for an unauthorized change, regardless of whether the unauthorized carrier did so intentionally. We agree that such a strict liability standard is required by the statute. We also find that the rights of the consumer and the authorized carrier to remedies for slamming should not be affected by whether the slam was an intentional or accidental act. Regardless of the intent, or lack thereof, behind the unauthorized change, the consumer and the authorized carrier have suffered injury. We recognize, however, that even with the greatest care, innocent mistakes will occur and may result in unauthorized changes. In such cases, we will take into consideration in any enforcement action the willfulness of the carriers involved.

vi. Determining Liability Between Carriers

62. In order to avoid or minimize disputes over the source or cause of unauthorized carrier changes, or over liability for such carrier changes, we delineate the duties and obligations of the submitting and executing carriers.

63. As proposed in the *Further Notice and Order*, we adopt the following ''but for'' liability test: (1) 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; (2) where the submitting carrier submits a change request that conforms with our rules and the executing carrier fails to execute the change in conformance with the submission, only the executing carrier is liable for the unauthorized change; and (3) finally, where the submitting carrier submits a carrier change request that fails to comply with our rules and the executing carrier fails to perform the change in accordance with the submission, only the submitting carrier is liable as an unauthorized carrier.

B. Third Party Administrator for Dispute Resolution

64. We have formulated several mechanisms in this *Order* that rely on the authorized carrier to provide relief to its slammed subscribers and to determine whether its subscriber was slammed. We recognize, however, that some carriers may find it to be in their interest to make other mutually agreeable arrangements that might better serve to address our concerns. For instance, several carriers, particularly MCI, have indicated that they are willing and able to create quickly a system using an independent third party

administrator to discharge carrier obligations for resolving disputes among carriers and subscribers with regard to slamming, including re-rating subscriber telephone bills and returning the subscriber to the proper carrier. We agree that this concept has merit. Consumers would benefit by having one point of contact to resolve slamming problems. Carriers would benefit by having a neutral body to resolve disputes regarding slamming liability. LECs would no longer be the recipients of angry phone calls from consumers who have been slammed by long distance carriers, while IXCs would be able to divert their resources to preventing slamming rather than resolving slamming disputes. Although this approach holds promise, we do not believe that we should abandon the rules adopted herein because they provide an appropriate mechanism for all carriers to render appropriate relief and dispute resolution to slammed consumers and carriers. We do, however, encourage carriers to work out such arrangements and we will be open to receiving requests for waiver of the liability provisions of our rules for carriers that agree to implement an acceptable alternative.

65. To afford carriers time to develop and implement an industry-funded independent dispute resolution mechanism and to file waiver requests as described above, we delay the effective date of the liability rules set forth above until 90 days after **Federal Register** publication of this Order. Any waiver request must be filed in a timely manner so that the Commission may evaluate and grant or deny such request in enough time to enable carriers to implement and utilize the mechanism by the effective date of the liability rules. In submitting waiver requests, carriers should bear in mind that we would be inclined to grant a waiver only if we are satisfied that any such neutral entity would fulfill the obligations imposed by our rules with regard to liability, in the timeframes specified in the rules. We note that nothing in the Commission's liability rules or the use of the third party administrator shall preclude a consumer or carrier from filing a section 208 complaint or other action in state or federal court.

C. Verification Rules

i. The Welcome Package

66. One of the verification procedures available to carriers under the Commission's rules is the ''welcome package.'' As set forth in section 64.1100(d), after obtaining the subscriber's authorization to make a carrier change, the IXC may send the consumer a welcome package containing information and a prepaid postcard, which the customer can use to deny, cancel, or confirm the change order. Section 64.1100(d)(8) provides that the package must contain a statement that if the subscriber does not return the postcard, the subscriber's long distance service will be switched within 14 days after the date the package was mailed. In the *Further Notice and Order*, the Commission sought comment on whether the welcome package verification option should be eliminated because it could be used in the same manner as a negative-option LOA.

b. Discussion

67. The record, as well as our experience with consumer complaints, supports our decision to eliminate the welcome package as a verification option. The welcome package has been a significant source of consumer complaints regarding slamming. As many of the commenters note, consumers often fail to receive the welcome package, or they throw it away as junk mail, or they have their service switched despite the fact that they returned postcards requesting that their service not be changed. The welcome package becomes a particularly ineffective verification method when used in combination with a misleading telemarketing script. If a subscriber does not even realize that he or she has agreed to change his or her service because the telemarketing solicitation was so misleading, that subscriber would reasonably conclude that the welcome package is a solicitation, not a confirmation, and thus discard it without examination. In all instances, however, we find that the welcome package is an ineffective verification method because it does not provide evidence, such as a written signature or recording, that the subscriber has in fact authorized a carrier change. Moreover, even where the subscriber actually receives and reads the information in a welcome package, this approach places an affirmative burden on the subscriber to avoid having his or her preferred carrier switched. As with negative-option LOAs, we do not think consumers should have to take affirmative action to avoid being slammed.

ii. Application of the Verification Rules to In-Bound Calls

68. The Commission concluded in the *1995 Report and Order* that it should extend our verification procedures to consumer-initiated ''in-bound'' calls. On its own motion the Commission stayed the application of the verification rules to in-bound calls pending its decision on several petitions for reconsideration by AT&T, MCI, and Sprint. We now find that verification of in-bound calls is necessary to deter slamming and, accordingly, we lift the stay imposed in the *In-bound Stay Order*. We apply the same verification requirements to in-bound and out-bound calls. This will enable carriers to adopt uniform verification procedures for all calls. We agree with the state commissions and some IXCs that the opportunity for slamming is as great with in-bound calls as with out-bound calls. Equally important, we recognize that excluding in-bound calls from our verification requirements would open a loophole for slammers. Through this loophole, unscrupulous carriers could slam not only consumers who initiate calls for reasons other than to change carriers, but also consumers who have simply never called in. Consumers slammed in this way would have difficulty proving that they had never initiated calls to a carrier.

69. U S WEST included in its comments a Petition for Reconsideration of that portion of the *1995 Report and Order* that applied the Commission's verification rules to in-bound calls. U S WEST states that because the *1995 Report and Order* pertained only to interexchange services and IXCs, a LEC such as U S WEST would not have been expected to seek reconsideration of those rules at that time. We find that U S WEST's Petition for Reconsideration of the Commission's *1995 Report and Order* is untimely filed. Nevertheless, in making our decision regarding in-bound verification in this *Order*, we have taken into consideration the comments regarding in-bound verification submitted by U S WEST in its Petition for Reconsideration. Based on the evidence in the record, the additional comments sought and received, and the anticipated competitive climate, we conclude that imposing verification rules on in-bound calls is in the public interest and that U S WEST's request to the contrary should be denied.

iii. Independent Third Party Verification

70. Our existing rules provide for verification by using an ''appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative'' who obtained the carrier change request. We now set forth the following specific criteria to determine a third party verifier's independence. These criteria are not intended to be exhaustive, but rather the Commission

will evaluate the particular circumstances of each case. First, the third party verifier should not be owned, managed, controlled, or directed by the carrier. Ownership by the carrier would give the third party verifier incentive to affirm carrier changes, rather than to determine whether the consumer has given authorization for a carrier change. Second, the third party verifier should not be given financial incentives to approve carrier changes. For example, an independent third party verifier should not receive commissions for telemarketing sales that are confirmed because such a compensation scheme provides the third party verifier with incentive to falsely confirm sales. As another example, a carrier should not require an independent third party verifier to agree to an exclusive contract with the carrier, such that the independent verifier is wholly dependent on that particular carrier for revenue. Third, we reiterate that the third party verifier must operate in a location physically separate from the carrier. We note that our rules already require this, but we highlight this requirement because we find it to be an important one. Requiring third party verifiers to be in different physical locations from carriers reinforces the arms-length nature of their relationship.

71. Several commenters also propose disclosure requirements for the scripts used by third party verifiers. Based on the record, we conclude that the scripts used by the independent third party verifier should clearly and conspicuously confirm that the subscriber has previously authorized a carrier change. The script should not mirror any carrier's particular marketing pitch, nor should it market the carrier's services. Instead, it should clearly verify the subscriber's decision to change carriers. We note that we seek additional comment on proposals for script requirements in the Further Notice of Proposed Rulemaking.

iv. Other Verification Mechanisms

72. The Commission sought comment in the *Further Notice and Order* on additional mechanisms for reducing slamming. We received multiple proposals and have evaluated them accordingly. We adopt a rule requiring carriers to retain LOAs and other verification records for two years. We choose a retention period of two years because any person desiring to file a complaint with the Commission alleging a violation of the Act must do so within two years of the alleged violation. We reject remaining proposals made by the commenters because, although they might be helpful in preventing slamming, they would be impractical to implement. These proposals include, for example, ideas for assigning subscribers personal identification numbers (PINs). Several commenters suggest limiting our verification options to only written LOAs or to independent third party verification, while others propose to add more options, such as audio recording. We decline to further limit the verification options because we find that a range of verification options is necessary to continue to give carriers the maximum flexibility to choose a verification method appropriate for their needs. Furthermore, the verification rules, as we have modified them in this *Order* will provide consumers with protection against slamming while still providing them with the ability to change carriers without unnecessary burdens.

73. We clarify that, regardless of the solicitation method used, all carrier changes must be verified. We modify our rules to make clear that a carrier must use of one of our three verification options (written LOA, electronic author ization, and independent third party verification) to verify any carrier change. Specifically, the current rules appear to create a dichotomy between verification methods to be used when a carrier change is obtained through telemarketing, and when other marketing methods are used. A strict reading of the rules would indicate that, pursuant to current section 64.1100, a telemarketing carrier has several verification options, but that a carrier that does not telemarket must obtain a written LOA pursuant to current section 64.1150. This would seem to penalize carriers that use methods other than telemarketing, such as in-person solicitations or Internet sign ups, by denying them flexibility in their verification methods. We are also aware that some carriers have interpreted the difference between current sections 64.1100 and 64.1150 to argue that they are not required to verify their carrier change requests because such changes were not obtained through telemarketing. This is incorrect, as the Commission's previous orders have clearly stated that *all* carrier changes must be authorized and verified. Because some confusion appears to exist among carriers regarding this subject, we modify our rules accordingly.

v. Use of the Term ''Subscriber''

74. We modify current section 64.1100 to use the term ''subscriber'' in place of ''customer,'' as proposed in the Further Notice and Order. We also amend current section 64.1150(e)(4) to change the word ''consumer'' to ''subscriber.'' Because section 258 uses the term ''subscriber'' rather than ''customer,'' this will make the language in our rules consistent with the statutory language.

D. Extension of the Commission's Verification Rules to the Local Market

i. Application of the Verification Rules to the Local Market

75. In the *Further Notice and Order,* the Commission sought comment on whether the current verification rules, which apply only to IXCs, should be applied to the local market (*i.e.,* local exchange service and intraLATA toll service). We adopt a rule requiring that all changes to a subscriber's preferred carrier, including local exchange, intraLATA toll, and interLATA toll services, must be authorized by that subscriber and verified in accordance with our procedures. With the advent of competition in the provision of local exchange and intraLATA toll services we anticipate a greater incidence of slamming generally if effective rules are not put into place.

76. We also require carriers to identify specifically the types of service or services being offered (*e.g.,* interLATA toll, intraLATA toll, local exchange) in any preferred carrier solicitation or letter of agency, and to obtain separate authorization and verification for each service that is being changed. The separate authorization and verification may be received and conducted during the same telemarketing solicitation or obtained in separate statements on the same LOA form. By requiring carriers to describe fully the services they offer, and obtain separate authorization and verification for different services, carriers will be prevented from taking advantage of consumer confusion and changing the preferred carriers for all of a subscriber's telecommunications services where the subscriber merely intended to change one. Several commenters support more targeted proposals, rather than the general application of more rigorous verification rules, purportedly to avoid unnecessary costs and harm to competition. For example, Ameritech, SBC, and U S WEST propose systems that would impose fines or more stringent verification requirements on carriers with a history of slamming, as determined by the LEC or otherwise. In light of the high incidence of slamming violations we currently face, we prefer to adopt the approach taken in the rules in this *Order* because they will help to prevent carriers from slamming consumers in the first place. Furthermore, such proposals could

permit LECs to target certain carriers, including those that are offering competing services.

ii. Application of the Verification Rules to All Telecommunications Carriers

77. We adopt a rule requiring that no telecommunications carrier shall submit or execute a change on behalf of a subscriber in the subscriber's selection of a provider of telecommunications service except in accordance with the Commission's verification procedures, consistent with the language of section 258. Based on the record, however, we create an exception for CMRS providers. We conclude that CMRS providers should not be subject to our verification rules at this time because slamming does not occur in the present CMRS market. CMRS providers are not currently subject to equal access requirements. In other words, a CMRS provider is free to designate any toll carrier for its subscribers unless it has voluntarily chosen not to do so. It is our understanding that the CMRS carrier, which has made contractual arrangements with the toll carriers, is in control of this selection process and must be contacted by the subscriber in order for any change in toll carriers to occur. Furthermore, Bell Atlantic Mobile and CTIA state that, at this time, a CMRS carrier cannot change a customer's wireless local exchange service without that customer's express approval, because the customer must typically physically reprogram the handset to initiate service with a new carrier. In light of these considerations, we believe that unauthorized changes are much less likely to occur and we are not aware of any slamming complaints in this area. We may revisit this issue should slamming become a problem in the CMRS market.

iii. The States' Role

78. Section 258 charges the Commission with the responsibility for establishing verification procedures for carriers who ''submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.'' Therefore, section 258 explicitly grants the Commission authority to create verification procedures for both interstate and intrastate services, and our rules here indeed apply to both sets of services. Many carriers urge us generally to preempt state regulation of slamming by local exchange and intrastate interexchange carriers in order to create uniform rules.

79. We decline to preempt generally state regulation of carrier changes. The states and the Commission have a long history of working together to combat slamming, and we conclude that state involvement is of greater importance than ever before. We find that, although a state must accept the same verification procedures as prescribed by the Commission, a state may accept additional verification procedures for changes to intrastate service if such state concludes that such action is necessary based on its local experiences. We further note that nothing in our rules prohibits states from deterring slamming through means other than regulation of verification procedures, such as general consumer protection requirements or direct regulation of telemarketing sales. States must, however, write and interpret their statutes and regulations in a manner that is consistent with our rules and orders, as well as section 258. For example, a state may not adopt the welcome package as an additional verification method because we have determined that the welcome package fails to protect consumers.

80. Furthermore, we are obligated and willing to examine state rules on a case-by-case basis if it appears that they conflict with the purpose of our rules, for instance, by prohibiting or having the effect of prohibiting the ability of any entity to provide telecommunications service. With regard to the issue of preemption of state verification procedures, the Commission will not make a preemption determination in the absence of an adequate record clearly describing the state law or action to be preempted and precisely how that state law or action conflicts with federal law or obstructs federal objectives. The record in this proceeding does not contain any comprehensive identification or analysis of which particular state laws would be inconsistent with our verification rules or would obstruct federal objectives. Accordingly, the record does not contain sufficient information about various state requirements to allow us to assess the ability of carriers to comply with both federal and state anti-slamming mechanisms.

81. Section 258 expressly grants to the states authority to enforce the Commission's verification procedure rules with respect to intrastate services. A state therefore may commence proceedings against a carrier for violation of the Commission's rules governing changes to a subscriber's intrastate service. We conclude that enforcement is another area in which the states and the Commission may work together to eradicate slamming. A single unauthorized change may result in the switching of both a subscriber's intrastate and interstate service in violation of the Commission's verification procedures. In the case of an unauthorized change that results in changes to intrastate and interstate service, a state's proceeding to enforce the Commission's rules with respect to the intrastate violation will yield factual findings regarding the interstate violation as well. The state's factual finding in such a case will be given great weight in the Commission's proceeding to determine whether the carrier violated the Commission's interstate verification procedures.

E. Submitting and Executing Carriers

i. Definition of ''Submitting'' and ''Executing'' Carriers

82. A submitting carrier will be generally any carrier that (1) requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed; and (2) seeks to provide retail services to the end user subscriber. We have modified the rule proposed in the *Further Notice and Order* to take into account the roles of underlying carriers and their resellers. We note, however, that either the reseller or the facilities-based carrier may be treated as a submitting carrier if it is responsible for any unreasonable delays in the submission of carrier change requests or if it is responsible for submitting unauthorized carrier change requests, including fraudulent authorizations.

83. We note that in situations in which a customer initiates or changes long distance service by contacting the LEC directly, verification of the customer's choice would not need to be verified by either the LEC or the chosen IXC. In this situation, neither the LEC nor the IXC is the submitting carrier as we have defined it. The LEC is not providing interexchange service to that subscriber. The IXC has not made any requests—it has merely been chosen by the consumer. Furthermore, because the subscriber has personally requested the change from the executing carrier, the IXC is not requesting a change on the subscriber's behalf. If a LEC's actions in this situation resulted in the subscriber being assigned to a different interexchange carrier than the one originally chosen by the subscriber, however, then that LEC could be liable for violations of its duties as an executing carrier.

84. We adopt the definition proposed in the *Further Notice and Order* for an executing carrier, so that an executing carrier is generally any carrier that effects a request that a subscriber's telecommunications carrier be changed.

This rule will apply even where a reseller competitive local exchange company (CLEC) receives carrier changes and submits such changes to its underlying facilities-based LEC. We conclude that the executing carrier should be the carrier who has actual physical responsibility for making the change to the subscriber's service, rather than a carrier that is merely forwarding a carrier change request on behalf of a subscriber. We also emphasize, however, that either the reseller or the facilities-based carrier may be treated as an executing carrier if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

85. We also note that our definition of an executing carrier could also include an IXC in the current environment. When a facilities-based IXC resells service to a switchless reseller, the switchless reseller uses the same carrier identification code (CIC) as the facilities-based IXC. Subscribers of both the facilities-based IXC and the switchless reseller would therefore be on the network of the facilities-based IXC, with the same CIC. CICs are used by LECs to identify different IXCs so that LECs will know to which carrier they should route a subscriber's interexchange traffic. Where a subscriber changes from a facilities-based IXC to a reseller of that facilities-based IXC's services, the reseller submits a carrier change order to the facilities-based IXC. That facilities-based IXC does not submit that change order to the subscriber's LEC because, as far as the LEC is concerned, the routing of calls for that subscriber has not changed due to the fact that the CIC remains the same (i.e., the LEC will still send interexchange calls from that subscriber to the same facilities-based carrier). The facilities-based IXC uses the carrier change request to process the change in its own system, which enables the reseller to begin billing the subscriber. Therefore, in this very limited situation, the executing carrier is the facilities-based IXC, not the LEC. In fact, the facilities-based IXC would be the executing carrier for all carrier changes in which the subscriber remains on the facilities-based IXC's network, regardless of whether the subscriber has changed from a switchless reseller to the reseller's facilities-based IXC, from the facilities-based IXC to a switchless reseller of that IXC's service, or from a switchless reseller of the facilities-based IXC's service to another switchless reseller of that same IXC's service.

86. Based on BellSouth's recommendation, we clarify that a billing agent has no liability under our verification rules if it is neither an executing or submitting carrier, as defined by our rules.

ii. Application of Verification Rules to Submitting and Executing Carriers

87. In the *Further Notice and Order*, the Commission tentatively concluded that the submitting carrier's compliance with our verification rules would facilitate timely and accurate execution of any carrier change, and that an executing carrier would not be required to duplicate the carrier change verification efforts of the submitting carrier. We conclude that executing carriers should not verify carrier changes prior to executing the change. We agree with several commenters that requiring such verification would be expensive, unnecessary, and duplicative of the submitting carrier's verification. Although executing carriers do not have verification obligations under our rules, they do have a responsibility to ensure that subscribers' carrier changes are executed as soon and as accurately as possible, using the most technologically efficient means available. Executing carriers are required to execute promptly and without any unreasonable delay changes that have been verified by the submitting carrier.

88. Some LECs believe that additional verification of carrier changes by executing carriers would further reduce the incidence of slamming. We find that permitting executing carriers to verify independently carrier changes that have already been verified by submitting carriers could have anticompetitive effects. We have concerns that executing carriers would have both the incentive and ability to delay or deny carrier changes, using verification as an excuse, in order to benefit themselves or their affiliates. Furthermore, we find that an executing carrier that attempts to verify a carrier change request would be acting in violation of section 222(b), which states that a carrier that ''receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose[.]'' The information contained in a submitting carrier's change request is proprietary information because it must submit that information to the executing carrier in order to obtain provisioning of service for a new subscriber. Therefore, pursuant to section 222(b), the executing carrier may only use such information to provide service to the submitting carrier, *i.e.*, changing the subscriber's carrier, and may not attempt to verify that subscriber's decision to change carriers.

89. Notwithstanding our prohibition on verification of carrier changes by executing carriers, we find that executing carriers may still provide a similar level of protection to their customers in ways that do not raise anticompetitive concerns, by making preferred carrier freezes available for subscribers who have concerns about slamming. Executing carriers also have a variety of methods to notify their subscribers that their carriers have changed. For example, as discussed in the *Truth-in-Billing NPRM*, carriers may choose to include a separate section in their subscriber bills to highlight any changes that have occurred on a subscriber's account, including changes to preferred carriers.

iii. Concerns With Certain Executing Carriers

a. Interference With the Execution Process

90. The Commission sought comment in the *Further Notice and Order* on whether ILECs should be subject to different requirements and prohibitions because they may have the incentive and the ability to delay or refuse to process carrier change orders in order to avoid losing local customers, or in order to favor an affiliated IXC. Although we find that ILECs may very well have incentive to act anticompetitively, their ability to do so is limited by several statutory provisions in the Act. For example, section 251 requires incumbent LECs to provide facilities and services to requesting telecommunications carriers in a nondiscriminatory manner, section 201(b) prohibits unjust and unreasonable practices, and section 202(a) prohibits unjust and unreasonable discrimination. Furthermore, any carrier that imposes unreasonable delays in executing carrier changes, both for itself and others, will be in violation of our verification procedures or acting unreasonably in violation of section 201(b), even if it is not acting in violation of a non-discrimination requirement.

b. Timeframe for Execution of Carrier Changes

91. We decline at this time to adopt any deadlines for execution of carrier changes. Mandating a specific deadline for execution of all carrier changes could be problematic because there may be many legitimate reasons for a delay

in the execution of a carrier change, such as a consumer request for a delay in implementation, or the administrative burden of processing a large number of change orders. We also find that it would not be feasible to establish a specific deadline for execution of changes that would accommodate the needs of the wide variety of carriers in the marketplace, including smaller carriers. We believe, however, that subscribers should be informed of how long it will take for a carrier change to become effective and therefore we strongly encourage a submitting carrier to inform subscribers of the expected timeframe for implementing the carrier change, if it is able to obtain such information from the executing carrier.

c. Marketing Use of Carrier Change Information

92. In the *Further Notice and Order*, the Commission voiced concern that an incumbent LEC might attempt to engage in conduct that would blur the distinction between its role as a neutral executing carrier and its objectives as a marketplace competitor. Specifically, the Commission stated that an example of this type of conduct could occur if an incumbent executing carrier sends a subscriber who has chosen a new carrier a promotional letter (winback letter) in an attempt to change the subscriber's decision to switch to another carrier. We conclude that this is a valid concern and therefore find that an executing carrier may not use information gained from a carrier change request for any marketing purposes, including any attempts to change a subscriber's decision to switch to another carrier. Many commenters support this decision. As explained above, we find that carrier change information is carrier proprietary information and, therefore, pursuant to section 222(b), the executing carrier is prohibited from using such information to attempt to change the subscriber's decision to switch to another carrier. The executing carrier otherwise would have no knowledge at that time of a consumer's decision to change carriers, were it not for the executing carrier's position as a provider of switched access services. Therefore, when an executing carrier receives a carrier change request, section 222(b) prohibits the executing carrier from using that information to market services to that consumer.

F. Use of Preferred Carrier Freezes

i. Background

93. In the *Further Notice and Order*, the Commission sought comment on whether it should adopt rules to address preferred carrier freeze practices. The Commission noted that, although neither the Act nor its rules and orders specifically address preferred carrier freeze practices, concerns about carrier freeze solicitations have been raised with the Commission. The Commission noted, moreover, that MCI filed a Petition for Rulemaking on March 18, 1997, requesting that the Commission institute a rulemaking to regulate the solicitation, by any carrier or its agent, of carrier freezes or other carrier restrictions on a consumer's ability to switch his or her choice of interexchange (interLATA or intraLATA toll) and local exchange carrier. The Commission determined that it was appropriate to consider MCI's petition in the *Further Notice and Order* and, therefore, incorporated MCI's petition and all responsive pleadings into the record of this proceeding.

ii. Overview and Jurisdiction

94. We adopt rules to clarify the appropriate use of preferred carrier freezes because we believe that, although preferred carrier freezes offer consumers an additional and beneficial level of protection against slamming, they also create the potential for unreasonable and anticompetitive behavior that might affect negatively efforts to foster competition in all markets. While we are confident that our carrier change verification rules, as modified in this *Order*, will provide considerable protection for consumers against unauthorized carrier changes, we recognize that many consumers wish to utilize preferred carrier freezes as an additional level of protection against slamming. As noted in the *Further Notice and Order*, a carrier freeze prevents a change in a subscriber's preferred carrier selection until the subscriber gives the carrier from whom the freeze was requested his or her written or oral consent.

95. In the *Further Notice and Order*, however, we stated that preferred carrier freezes may have the effect of limiting competition among carriers. We share commenters' concerns that in some instances preferred carrier freezes are being, or have the potential to be, implemented in an unreasonable or anticompetitive manner. By definition, preferred carrier freezes create an additional step (namely, that subscribers contact directly the LEC that administers the preferred carrier freeze program) that customers must take before they are able to obtain a change in their carrier selection. Incumbent LECs may have incentives to market preferred carrier freezes aggressively to their customers and to use different standards for placing and removing freezes depending on the identity of the subscriber's carrier. It also appears that, at this time, facilities-based LECs—most of which are incumbent LECs—are uniquely situated to administer preferred carrier freeze programs.

96. We conclude, contrary to the assertions of Bell Atlantic, that we have authority under section 258 to address concerns about anticompetitive preferred carrier freeze practices for intrastate, as well as interstate, services. Congress, in section 258 of the Act, has granted this Commission authority to adopt verification rules applicable to both submission and execution of changes in a subscriber's selection of a provider of local exchange or telephone toll services. Preferred carrier freezes directly impact the verification procedures which Congress instructed the Commission to adopt because they require subscribers to take additional steps beyond those described in the Commission's verification rules to effectuate a carrier change. Moreover, where a preferred carrier freeze is in place, a submitting carrier that complies with our verification rules may find that its otherwise valid carrier change order is rejected by the LEC administering the freeze program. Since preferred carrier freeze mechanisms can essentially frustrate the Commission's statutorily authorized procedures for effectuating carrier changes, we conclude that the Commission has authority to set standards for the use of preferred carrier freeze mechanisms.

iii. Nondiscrimination and Application of Rules to All Local Exchange Carriers

97. We conclude that preferred carrier freezes should be implemented on a nondiscriminatory basis so that LECs do not use freezes as a tool to gain an unreasonable competitive advantage. Accordingly, local exchange carriers must make available any preferred carrier freeze mechanism to all subscribers, under the same terms and conditions, regardless of the subscribers' carrier selection. We also conclude that our rules for preferred carrier freezes should apply to all local exchange carriers and reject those proposals to place additional requirements on incumbent LECs, to the exclusion of competitive LECs.

iv. Solicitation and Implementation of Preferred Carrier Freezes

98. We find that the most effective way to ensure that preferred carrier freezes are used to protect consumers, rather than as a barrier to competition, is to ensure that subscribers fully

understand the nature of the freeze, including how to remove a freeze if they chose to employ one. We thus conclude that any solicitation and other carrier-provided information concerning a preferred carrier freeze program should be clear and not misleading. We specifically decide that, at a minimum, carriers soliciting preferred carrier freezes must provide: (1) an explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a preferred carrier freeze; (2) a description of the specific procedures necessary to lift a preferred carrier freeze and an explanation that these steps are in addition to the Commission's regular verification rules for changing subscribers' carrier selections and that the subscriber will be unable to make a change in carrier selection unless he or she lifts the freeze; and (3) an explanation of any charges associated with the preferred carrier freeze service. We also conclude that preferred carrier freeze procedures, including any solicitation, must clearly distinguish among telecommunications services subject to a freeze, i.e., between local, intraLATA toll, interLATA toll, and international toll services. We do this to reduce consumer confusion about the differences among telecommunications services and to prevent unscrupulous carriers from placing freezes on all of a subscriber's services when the subscriber only intended to authorize a freeze for a particular service or services.

99. We adopt our proposal to extend our carrier change verification procedures to preferred carrier freeze solicitations and note that this proposal was supported by a wide range of carriers, state commissions, and consumer organizations. This will reduce customer confusion about preferred carrier freezes and prevent unscrupulous carriers from imposing preferred carrier freezes without the consent of subscribers.

v. Procedures for Lifting Preferred Carrier Freezes

100. We conclude that a LEC administering a preferred carrier freeze program must accept the subscriber's written and signed authorization stating an intent to lift a preferred carrier freeze. Such written authorization—like the LOAs authorized for use in carrier changes and to place a preferred carrier freeze—should state the subscriber's billing name and address and each telephone number to be affected. In addition, the written authorization should state the subscriber's intent to lift the preferred carrier freeze for the particular service in question. We also require that LECs must accept oral authorization from the customer to remove a freeze and must permit submitting carriers to conduct a three-way conference call with the LEC and the subscriber in order to lift a freeze. Three-way calling allows a submitting carrier to conduct a three-way conference call with the LEC administering the freeze program while the consumer is still on the line, *e.g.*, during the initial telemarketing session, so that the consumer can personally request that a particular freeze be lifted. We believe that three-way calling will effectively prevent fraud because a three-way call establishes direct contact between the LEC and the subscriber.

101. We decline to enumerate all acceptable procedures for lifting preferred carrier freezes. Rather, we encourage parties to develop new means 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. Other methods should be secure, yet impose only the minimum burdens necessary on subscribers who wish to lift a preferred carrier freeze.

102. The essence of the preferred carrier freeze is that a subscriber must specifically communicate his or her intent to request or lift a freeze. We therefore disagree with MCI that third-party verification of a carrier change alone should be sufficient to lift a preferred carrier freeze because it does not offer the subscriber any additional protection from slamming.

103. We conclude that, depending on the circumstances, a carrier that is asked to lift a freeze should not be permitted to attempt to change the subscriber's decision to change carriers. This practice could violate the ''just and reasonable'' provisions of section 201(b). Much as in the context of executing carriers and carrier change requests, we think it is imperative to prevent anticompetitive conduct on the part of executing carriers and carriers that administer preferred carrier freeze programs. Carriers that administer freeze programs otherwise would have no knowledge at that time of a consumer's decision to change carriers, were it not for the carrier's position as a provider of switched access services. Therefore, LECs that receive requests to lift a preferred carrier freeze must act in a neutral and nondiscriminatory manner. To the extent that carriers use the opportunity with the customer to advantage themselves competitively, for example, through overt marketing, such conduct likely would be viewed as unreasonable under our rules.

vi. Information About Subscribers With Preferred Carrier Freezes

104. We do not require LECs administering preferred carrier freeze programs to make subscriber freeze information available to other carriers because we expect that, particularly in light of our new preferred carrier freeze solicitation requirements, more subscribers should know whether or not there is a preferred carrier freeze in place on their carrier selection. We encourage LECs, however, to consider whether preferred carrier freeze indicators might be a part of any operational support system that is made available to new providers of local telephone service.

vii. When Subscribers Change LECs

105. Based on the record developed on this issue, we conclude that when a subscriber switches LECs, he or she should request the new LEC to implement any desired preferred carrier freezes, even if the subscriber previously had placed a freeze with the original LEC. We are persuaded by the substantial number of LEC commenters asserting that it would be technically difficult or impossible to transfer information about existing preferred carrier freezes from the original LEC to the new LEC.

viii. Preferred Carrier Freezes of Local and IntraLATA Services

106. We decline the suggestion of a number of commenters that we prohibit incumbent LECs from soliciting or implementing preferred carrier freezes for local exchange or intraLATA services until competition develops in a LEC's service area. We remain convinced of the value of preferred carrier freezes as an anti-slamming tool and do not wish to limit consumer access to this consumer protection device. We do recognize, however, that preferred carrier freezes can have a particularly adverse impact on the development of competition in markets soon to be or newly open to competition. We encourage parties to bring to our attention, or to the attention of the appropriate state commissions, instances where it appears that the intended effect of a carrier's freeze program is to shield that carrier's customers from any developing competition.

107. We also make clear that states may adopt moratoria on the imposition or solicitation of intrastate preferred carrier freezes if they deem such action appropriate to prevent incumbent LECs

from engaging in anticompetitive conduct. We note that a number of states have imposed some form of moratorium on the implementation of preferred carrier freezes in their nascent markets for local exchange and intraLATA toll services. We find that states—based on their observation of the incidence of slamming in their regions and the development of competition in relevant markets, and their familiarity with those particular preferred carrier freeze mechanisms employed by LECs in their jurisdictions—may conclude that the negative impact of such freezes on the development of competition in local and intraLATA toll markets may outweigh the benefit to consumers.

IV. Ordering Clauses

108. 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*.

109. *It is further ordered* that 47 CFR 64 is *Amended* as set forth below, effective 70 days after publication of the text thereof in the **Federal Register**, except that the following rules set forth below will not become effective until 90 days after publication of the text in the **Federal Register**: sections 64.1100(c), 64.1100(d), 64.1170, and 64.1180.

110. *It is further ordered* that the stay of the application of the Commission's verification rules to in-bound calls imposed in *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, Order, 11 FCC Rcd 856 (1995) is lifted.

111. *It is further ordered* that pursuant to section 1.429(d) of the Commission's rules, 47 CFR 1.429(d), U S WEST's Petition for Reconsideration is dismissed as being untimely filed.

112. *It is further ordered* that a *further Notice of Proposed Rulemaking is issued*.[2]

113. *It is further ordered* that the Chief of the Common Carrier Bureau is delegated authority to require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

114. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *shall send* a copy of this *Order*, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

115. The *Order is adopted*, and the requirements contained herein will become effective 70 days after publication of a summary in the **Federal Register**, except §§ 64.1100(c), 64.1100(d), 64.1170, and 64.1180 which contain information that is contingent upon approval by OMB. The effective date of §§ 64.1100(c), 64.1100(d), 64.1170, and 64.1180 is delayed until 90 days after publication in the **Federal Register** to enable carriers to develop and implement an alternative carrier dispute resolution mechanism involving an independent administrator. The Commission will publish a document in the **Federal Register** announcing the effective date for §§ 64.1100(c), 64.1100(d), 64.1170, and 64.1180.

List of Subjects in 47 CFR Part 64

Communications common carriers, Consumer protection, Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 64 of the Commission's Rules and Regulations, Chapter I of Title 47 of the Code of Federal Regulations, is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. secs 201, 218, 226, 228, and 254(k) unless otherwise noted.

2. Revise § 64.1100 to read as follows:

§ 64.1100 Changes in subscriber carrier selections.

(a) No telecommunications carrier shall submit or execute a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service except in accordance with the procedures prescribed in this part. Nothing in this section shall preclude any State commission from enforcing these procedures with respect to intrastate services.

(1) No submitting carrier shall submit a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service prior to obtaining:

(i) authorization from the subscriber, and

(ii) verification of that authorization in accordance with the procedures prescribed in § 64.1150. For a submitting carrier, compliance with the verification procedures prescribed in this part shall be defined as compliance with sections (a) and (b) of this section, as well with § 64.1150. The submitting carrier shall maintain and preserve records of verification of subscriber authorization for a minimum period of two years after obtaining such verification.

(2) An executing carrier shall not verify the submission of a change in a subscriber's selection of a provider of telecommunications service received from a submitting carrier. For an executing carrier, compliance with the procedures prescribed in this part shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting carrier.

(3) Commercial mobile radio services (CMRS) providers shall be excluded from the verification requirements of this part as long as they are not required to provide equal access to common carriers for the provision of telephone toll services, in accordance with 47 U.S.C. 332(c)(8).

(b) Where a telecommunications carrier is selling more than one type of telecommunications service (*e.g.*, local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) that carrier must obtain separate authorization from the subscriber for each service sold, although the authorizations may be made within the same solicitation. Each authorization must be verified separately from any other authorizations obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in this part.

(c) *Carrier liability for charges.* Any submitting telecommunications carrier that fails to comply with the procedures prescribed in this part shall be liable to the subscriber's properly authorized carrier in an amount equal to all charges paid to the submitting telecommunications carrier by such subscriber after such violation, as well as for additional amounts as prescribed in § 64.1170 of this part. The remedies provided in this part are in addition to any other remedies available by law.

(d) *Subscriber liability for charges.* Any subscriber whose selection of telecommunications service provider is changed without authorization verified in accordance with the procedures set forth in this part is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. Upon being

[2] See the proposed rule published in the same separate part of this issue.

informed by a subscriber that an unauthorized change has occurred, the authorized carrier, the unauthorized carrier, or the executing carrier shall inform the subscriber of this 30-day absolution period. The subscriber shall be absolved of liability for this 30-day period only if the subscriber has not already paid charges to the unauthorized carrier.

(1) Any charges imposed by the unauthorized carrier on the subscriber after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. Upon the subscriber's return to the authorized carrier, the subscriber shall forward to the authorized carrier a copy of any bill that contains charges imposed by the unauthorized carrier after the 30-day period of absolution. After the authorized carrier has re-rated the charges to reflect its own rates, the subscriber shall be liable for paying such re-rated charges to the authorized carrier.

(2) If the subscriber has already paid charges to the unauthorized carrier, and the authorized carrier recovers such charges as provided in paragraph (c), the authorized carrier shall refund or credit to the subscriber any charges recovered from the unauthorized carrier in excess of what the subscriber would have paid for the same service had the unauthorized change not occurred, in accordance with the procedures set forth in § 64.1170 of this part.

(3) If the subscriber has been absolved of liability as prescribed by this section, the unauthorized carrier shall also be liable to the subscriber for any charge required to return the subscriber to his or her properly authorized carrier, if applicable.

(e) *Definitions.* For the purposes of this part, the following definitions are applicable:

(1) *Submitting carrier.* A submitting carrier is generally any telecommunications carrier that requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed, and seeks to provide retail services to the end user subscriber. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

(2) *Executing carrier.* An executing carrier is generally any telecommunications carrier that effects a request that a subscriber's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

(3) *Authorized carrier.* An authorized carrier is generally any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service with the subscriber's authorization verified in accordance with the procedures specified in this part.

(4) *Unauthorized carrier.* An unauthorized carrier is generally any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service but fails to obtain the subscriber's authorization verified in accordance with the procedures specified in this part.

(5) *Unauthorized change.* An unauthorized change is a change in a subscriber's selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures specified in this part.

3. Revise § 64.1150 to read as follows:

§ 64.1150 Verification of orders for telecommunications service.

(a) No telecommunications carrier shall submit a preferred carrier change order unless and until the order has first been confirmed in accordance with one of the following procedures:

(b) The telecommunications carrier has obtained the subscriber's written authorization in a form that meets the requirements of § 64.1160; or

(c) The telecommunications carrier has obtained the subscriber's electronic authorization to submit the preferred carrier change order. Such authorization must be placed from the telephone number(s) on which the preferred carrier is to be changed and must confirm the information required in paragraph (a) of this section. Telecommunications carriers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier change, including automatically recording the originating automatic numbering identification; or

(d) An appropriately qualified independent third party has obtained 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 or the carrier's marketing agent; and must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier change; or

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

4. Add § 64.1160 to read as follows:

§ 64.1160 Letter of agency form and content.

(a) A telecommunications carrier may use a letter of agency to obtain written 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) 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 with inducements of any kind.

(d) Notwithstanding paragraphs (b) and (c) of this section, the letter of agency may be combined with checks that contain only the required letter of agency language as prescribed in paragraph (e) of this section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain in easily readable, bold-face type on the front of the check, a notice that the subscriber is authorizing a preferred carrier change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

(e) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly

legible and must contain clear and unambiguous language that confirms:

(1) The subscriber's billing name and address and each telephone number to be covered by the preferred carrier change order;

(2) The decision to change the preferred carrier from the current telecommunications carrier to the soliciting telecommunications carrier;

(3) That the subscriber designates [insert the name of the submitting carrier] to act as the subscriber's agent for the preferred carrier change;

(4) That the subscriber understands that only one telecommunications carrier may be designated as the subscriber's interstate or interLATA preferred interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional preferred carriers (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, or international interexchange) the letter of agency must contain separate statements regarding those choices, although a separate letter of agency for each choice is not necessary; and

(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.

(f) Any carrier designated in a letter of agency as a preferred carrier must be the carrier directly setting the rates for the subscriber.

(g) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current telecommunications carrier.

(h) If any portion of a letter of agency is translated into another language then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

5. Add § 64.1170 to read as follows:

§ 64.1170 Reimbursement procedures.

(a) The procedures in this section shall apply only after a subscriber has determined that an unauthorized change has occurred, as defined by § 64.1100(e)(5) of this part, and the subscriber has paid charges to an allegedly unauthorized carrier. Upon receiving notification from the subscriber or a carrier that a subscriber has been subjected to an unauthorized change and that the subscriber has paid charges to an allegedly unauthorized carrier, the properly authorized carrier must, within 30 days, request from the allegedly unauthorized carrier proof of verification of the subscriber's authorization to change carriers. Within ten days of receiving such request, the allegedly unauthorized carrier shall forward to the authorized carrier either:

(1) Proof of verification of the subscriber's authorization to change carriers; or

(2) The following:

(i) An amount equal to all charges paid by the subscriber to the unauthorized carrier; and

(ii) An amount equal to any charge required to return the subscriber to his or her properly authorized carrier, if applicable;

(iii) Copies of any telephone bill(s) issued from the unauthorized carrier to the subscriber.

(b) If an authorized carrier incurs any billing and collection expenses in collecting charges from the unauthorized carrier, the unauthorized carrier shall reimburse the authorized carrier for reasonable expenses.

(c) Where a subscriber notifies the unauthorized carrier, rather than the authorized carrier, of an unauthorized subscriber carrier selection change, the unauthorized carrier must immediately notify the authorized carrier.

(d) *Subscriber refunds or credits.* Upon receipt from the unauthorized carrier of the amount described in paragraph (a)(2)(i), the authorized carrier shall provide a refund or credit to the subscriber of all charges paid in excess of what the authorized carrier would have charged the subscriber absent the unauthorized change. If the authorized carrier has not received from the unauthorized carrier an amount equal to charges paid by the subscriber to the unauthorized carrier, the authorized carrier is not required to provide any refund or credit. The authorized carrier must, within 60 days after it receives notification of the unauthorized change, inform the subscriber if it has failed to collect any charges from the unauthorized carrier and inform the subscriber of his or her right to pursue a claim against the unauthorized carrier for a refund of all charges paid to the unauthorized carrier.

(e) *Restoration of premium programs.* Where possible, the properly authorized carrier must reinstate the subscriber in any premium program in which that subscriber was enrolled prior to the unauthorized change, if that subscriber's participation in the premium program was terminated because of the unauthorized change. If the subscriber has paid charges to the unauthorized carrier, the properly authorized carrier shall also provide or restore to the subscriber any premiums to which the subscriber would have been entitled had the unauthorized change not occurred. The authorized carrier must comply with the requirements of this section regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the subscriber.

6. Add § 64.1180 to read as follows:

§ 64.1180 Investigation procedures.

(a) The procedures in this section shall apply only after a subscriber has determined that an unauthorized change has occurred and such subscriber has not paid for charges imposed by the unauthorized carrier for the first 30 days after the unauthorized change, in accordance with § 64.1100(d) of this part.

(b) The unauthorized carrier shall remove from the subscriber's bill all charges that were incurred for service provided during the first 30 days after the unauthorized change occurred.

(c) The unauthorized carrier may, within 30 days of the subscriber's return to the authorized carrier, submit to the authorized carrier a claim that the subscriber was not subjected to an unauthorized change, along with a request for the amount of charges for which the consumer was credited pursuant to paragraph (b) of this section and proof that the change to the subscriber's selection of telecommunications carrier was made with authorization verified in accordance with the verification procedures specified in this part.

(d) The authorized carrier shall conduct a reasonable and neutral investigation of the claim, including, where appropriate, contacting the subscriber and the carrier making the claim.

(e) Within 60 days after receipt of the claim and the proof of verification, the authorized carrier shall issue a decision on the claim to the subscriber and the carrier making the claim.

(1) If the authorized carrier decides that the subscriber was not subjected to an unauthorized change, the authorized carrier shall place on the subscriber's bill a charge equal to the amount of charges for which the subscriber was previously credited pursuant to paragraph (b) of this section. Upon receiving this amount, the authorized carrier shall forward this amount to the carrier making the claim.

(2) If the authorized carrier decides that the subscriber was subjected to an unauthorized change, the subscriber shall not be required to pay the charges for which he or she was previously absolved.

7. Add § 64.1190 to read as follows:

§ 64.1190 Preferred carrier freezes.

(a) 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. All local exchange carriers who offer preferred carrier freezes must comply with the provisions of this section.

(b) All local exchange carriers who offer preferred carrier freezes shall offer freezes on a nondiscriminatory basis to all subscribers, regardless of the subscriber's carrier selections.

(c) Preferred carrier freeze procedures, including any solicitation, must clearly distinguish among telecommunications services (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) subject to a preferred carrier freeze. The carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested.

(d) *Solicitation and imposition of preferred carrier freezes.*

(1) All carrier-provided solicitation and other materials regarding preferred carrier freezes must include:

(i) An explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a freeze;

(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 §§ 64.1150 and 64.1160 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; and

(iii) An explanation of any charges associated with the preferred carrier freeze.

(2) No local exchange carrier shall implement a preferred carrier freeze unless the subscriber's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

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

(ii) The local exchange carrier has obtained the subscriber's electronic authorization, placed from the telephone number(s) on which the preferred carrier freeze is to be imposed, to impose a preferred carrier freeze. The electronic authorization should confirm appropriate verification data (*e.g.,* the subscriber's date of birth or social security number) and the information required in §§ 64.1190(d)(3)(ii)(A) through (D). Telecommunications carriers electing to confirm preferred carrier freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier freeze request, including automatically recording the originating automatic numbering identification; or

(iii) An appropriately qualified independent third party has obtained the subscriber's oral authorization to submit the preferred carrier freeze and confirmed the appropriate verification data (*e.g.,* the subscriber's date of birth or social security number) and the information required in § 64.1190(d)(3)(ii)(A) through (D). The independent third party must not be owned, managed, or directly controlled by the carrier or the carrier's marketing agent; must not have any financial incentive to confirm preferred carrier freeze requests for the carrier or the carrier's marketing agent; and must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier freeze.

(3) *Written authorization to impose a preferred carrier freeze.* A local exchange carrier may accept a subscriber's written and signed authorization to impose a freeze on his or her preferred carrier selection. Written authorization that does not conform with this section is invalid and may not be used to impose a preferred carrier freeze.

(i) The written authorization shall comply with §§ 64.1160(b), (c), and (h) of the Commission's rules concerning the form and content for letters of agency.

(ii) At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(A) The subscriber's billing name and address and the telephone number(s) to be covered by the preferred carrier freeze;

(B) The decision to place a preferred carrier freeze on the telephone number(s) and particular service(s). To the extent that a jurisdiction allows the imposition of preferred carrier freezes on additional preferred carrier selections (*e.g.,* for local exchange, intraLATA/intrastate toll, interLATA/interstate toll service, and international toll), the authorization must contain separate statements regarding the particular selections to be frozen;

(C) That the subscriber understands that she or he will be unable to make a change in carrier selection unless she or he lifts the preferred carrier freeze; and

(D) That the subscriber understands that any preferred carrier freeze may involve a charge to the subscriber.

(e) *Procedures for lifting preferred carrier freezes.* All local exchange carriers who offer preferred carrier freezes must, at a minimum, offer subscribers the following procedures for lifting a preferred carrier freeze:

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

(2) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's oral authorization stating her or his intent to lift a preferred carrier freeze and must offer a mechanism that allows a submitting carrier to conduct a three-way conference call with the carrier administering the freeze and the subscriber in order to lift a freeze. When engaged in oral authorization to lift a preferred carrier freeze, the carrier administering the freeze shall confirm appropriate verification data (*e.g.,* the subscriber's date of birth or social security number) and the subscriber's intent to lift the particular freeze.

[FR Doc. 99–3657 Filed 2–12–99; 8:45 am]

BILLING CODE 6712–01–P