intermittent. The certification shall be based on the method or means designated in paragraph (c)(5)(iii)(B) of this section. The certification shall identify each deviation and take it into account in the compliance certification; and

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 94–129; FCC 00–255 and FCC 01–67]

Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rules proposed in the Second Report and Order and Further Notice of Proposed Rulemaking to implement the slamming provisions of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Telecommunications carriers are prohibited from carrier from submitting or executing an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service. This practice, known as ''slamming,'' enables those companies who engage in fraudulent activity to increase their customer and revenue bases at the expense of consumers and law-abiding companies. The rules adopted in this document will improve the carrier change process for consumers and carriers alike, while making it more difficult for unscrupulous carriers to perpetrate slams.

DATES: Effective April 2, 2001 except for §§ 64.1130(a) through (c), 64.1130(i), 64.1130(j), 64.1180, 64.1190(d)(2), 64.1190(d)(3), 64.1190(e), and 64.1195, which contain information collection requirements that have not yet been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

FOR FURTHER INFORMATION CONTACT: Dana Walton-Bradford, Attorney, Accounting Policy Division, Common Carrier Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order and Second Order on Reconsideration (*Third Report and Order*) in CC Docket No. 94–129, which was released on August 15, 2000. This summary also contains amendments and modifications to the *Third Report and Order* that were adopted in an Order released on February 22, 2001. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction and Background

1. In this Third Report and Order and Second Order on Reconsideration (Order), we adopt rules proposed in the Second Report and Order and Further Notice of Proposed Rulemaking (*Section 258 Order* or *FNPRM*, 64 FR 07745 (2/16/1999) to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act). Section 258 prohibits any telecommunications carrier from submitting or executing an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service. This practice, known as ''slamming,'' enables those companies who engage in fraudulent activity to increase their customer and revenue bases at the expense of consumers and law-abiding companies. The rules we adopt in this Order will improve the carrier change process for consumers and carriers alike, while making it more difficult for unscrupulous carriers to perpetrate slams.

2. In the *Section 258 Order,* we established a comprehensive framework designed to close loopholes used by carriers who slam consumers and to bolster certain aspects of our slamming rules to increase their deterrent effect. In particular, we adopted aggressive new liability rules designed to take the profit out of slamming. We also broadened the scope of our slamming rules to encompass all carriers and imposed more rigorous verification measures. In our *First Reconsideration Order,* we amended certain aspects of the slamming liability rules, granting in part petitions for reconsideration of our *Section 258 Order.* Although the petitions raised a broad range of issues relating to the slamming rules, the *First Reconsideration Order* addressed only those issues relating to our liability rules, which had been stayed by the D.C. Circuit. We chose to resolve those issues separately, and on an expedited basis, because of the overriding public interest in reinstating the liability rules in order to deter slamming.

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

4. On June 30, 2000, the President signed into law a piece of legislation that is relevant to our slamming rules and some of the issues pending in this proceeding, particularly our proposal in the *FNPRM* to allow the authorization and verification of preferred carrier changes using the Internet. The *Electronic Signatures in Global and National Commerce Act,* S. 761 (E-Sign Act) is intended to foster the development of e-commerce, or commerce conducted electronically over the Internet. To accomplish this goal, the E-Sign Act establishes a framework governing the use of electronic signatures and records in transactions in or affecting interstate and foreign commerce. With certain exceptions not relevant here, the provisions of the E-Sign Act took effect on October 1, 2000.

5. In this Order, we adopt a number of the proposals discussed in the *FNPRM,* and we also address the remaining issues that were raised on reconsideration of the *Section 258 Order.* Specifically, in this Order, we amend the current carrier change authorization and verification rules to expressly permit the use of Internet Letters of Agency (Internet LOAs) in a

manner consistent with the new E-Sign Act; we direct the North American Numbering Plan Administration (NANPA) to eliminate the requirement that carriers purchase Feature Group D access in order to obtain a CIC; we provide further guidance on independent third party verification; we define the term ''subscriber;'' we require each carrier providing telephone exchange and/or telephone toll service to submit a semiannual report on the number of slamming complaints it receives; and we expand the existing registration requirement on carriers providing interstate telecommunications service to include additional facts that will assist our enforcement efforts. This Order also contains a Second Order on Reconsideration, in which we uphold our rules governing the submission of preferred carrier freeze orders, the handling of preferred carrier change requests and freeze orders in the same transaction, and the automated submission and administration of freeze orders and changes. In addition, we reaffirm our decision not to preempt state regulations governing verification procedures for preferred carrier change requests that are consistent with the provisions of Section 258. We also decline to adopt a 30-day limit on the amount of time an LOA confirming a carrier change request should be considered valid and instead adopt a 60-day limit. Finally, we clarify certain of our rules regarding the payment of preferred carrier change charges after a slam.

II. Third Report and Order

A. Preferred Carrier Changes Using the Internet

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

1. Authorization and Verification of Internet LOAs.

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

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

9. We are aware that some consumers may be concerned about security and privacy issues associated with submitting carrier change requests and associated personal information over the Internet. Security and privacy issues arise because Internet communications are sent from computer to computer until the communications reach their final destinations. When information is sent from point A to point B over the Internet, every computer involved in the transmission path has an opportunity to intercept and view the information being sent. As a result, we acknowledge the concerns of commenters who argue that carriers should provide subscribers with a secured web transaction for submitting Internet LOAs. At this time, we decline to impose specific requirements regarding security and privacy as it relates to Internet LOAs, but we strongly encourage carriers who utilize Internet LOAs to sign up new subscribers to employ security measures in keeping with the best practices used for Internet transactions, such as providing subscribers with secured web access. In addition, we strongly encourage carriers to provide notice to subscribers regarding the level of security that applies to the submission of Internet LOAs. We also support the use of digital signatures, when they are made widely available, in order to more precisely establish the identity of the subscriber submitting an Internet LOA, the date of the submission, and other specifics.

10. We also acknowledge that consumers have a legitimate interest in the privacy of personal information that they may be asked to submit with an Internet LOA. Again, we decline to mandate a specific action with regard to such information at this time. However, we encourage carriers to keep such information confidential and not use a subscriber's information, including his or her electronic mail (e-mail) address, for marketing or other business purposes without the express consent of

the subscriber. In addition, we recognize that some consumers may prefer, for a variety of reasons, not to use the Internet to authorize carrier changes. Consistent with Section 101(b)(2) of the E-Sign Act, we will amend our rules to state that carriers must give subscribers the option of using one of the other authorization and verification methods specified in § 64.1120 of our rules, in addition to the use of Internet LOAs.

2. Pre-Existing Relationships

11. We recognize that some carriers and subscribers who have pre-existing business relationships may wish to follow a more truncated authorization and verification process for making carrier changes than required for written and Internet LOAs. AOL and other commenters assert that subscribers and carriers belonging to a closed user group (CUG) or linked in a similar ongoing business relationship should be permitted to utilize a less stringent verification method for Internet LOAs. However, we see no compelling reason to determine that our LOA rules, which are designed to protect subscribers, should apply to a lesser degree when the subscriber belongs to a CUG or has a similar type of pre-existing relationship with the carrier. Therefore, at this time, we decline to permit carriers and subscribers with pre-existing business relationships, such as CUG providers and members, to use less stringent verification methods to authorize and verify carrier changes processed over the Internet.

3. Separate Screen Requirement

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

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

4. Choice of Telecommunications Services

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

5. Preferred Carrier Freeze

15. Consistent with our amendment of the rules governing LOAs, we are also amending our rules to allow subscribers to submit, and carriers to process, the imposition and/or lifting of preferred carrier freezes over the Internet, as recommended by many commenters. Carriers must comply with the same verification requirements that apply to LOAs, as discussed, to help prevent the unauthorized imposition or lifting of preferred carrier freezes over the Internet. In addition, we encourage carriers to employ measures to protect the security and confidentiality of subscribers' personal information.

6. State Authority

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

B. Resellers and CICs

17. *Discussion.* As set forth below, we shall direct the NANPA to eliminate the requirement that carriers purchase ''Feature Group D'' to obtain CICs. This action will facilitate the assignment of CICs to switchless resellers and remove one obstacle to their independent use of CICs. At the present time, we are not requiring resellers to obtain their own CICs, nor are we adopting either of our other two proposals. Although we believe that requiring switchless resellers to obtain CICs may well be an effective solution to soft slamming and related carrier identification problems, commenters have raised a number of concerns regarding the potential impact of such a requirement on the carrier industry. Based on our review of the record, as discussed herein, we are not persuaded that we should adopt a CIC

requirement for switchless resellers at this time. However, in order to continue developing the record, we shall refer the CIC assignment and use issues discussed below to the North American Numbering Council (NANC) for analysis and recommendations. We intend to reevaluate the costs and benefits of the proposed CIC requirement when we receive the NANC's report.

18. Under the current CIC Assignment Guidelines, a carrier must purchase Feature Group D access service to be assigned a CIC. A switchless reseller does not require the physical or trunk access to the public switched telephone network (PSTN) available through the purchase of Feature Group D, and is unlikely to bear the expense simply to obtain a CIC. The NANC's CIC Ad Hoc Working Group has recommended elimination of the Feature Group D requirement as ''an unnecessary administrative burden for resale providers[.]'' In light of this recommendation, and based on our examination of the record in this proceeding, we direct the NANPA to eliminate the Feature Group D requirement. This action, which is an aspect of our first proposal, ''will facilitate the assignment of CICs to resellers, and thereby allow easier [carrier] identification * * *, enhancing the ability to resolve conflicts, including disputes which involve slamming.''

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

20. Turning to the first issue, the principal cost of the subject proposal for a switchless reseller would be deploying or loading a CIC in LEC switches in each LATA where it operates. In this regard, ''the use of translations access does not significantly reduce the time or expense required'' to deploy a CIC. On a nationwide basis, most estimates of this cost range from $500,000 to $1 million for a single CIC. Relying on such estimates, and on the small size of many resellers, opponents maintain that a CIC requirement would create a substantial market entry barrier for resellers. Our review of the record suggests that in many cases such estimates are unrealistic because resellers typically operate on a regional basis. In addition, CIC deployment costs may be viewed as ''a legitimate cost of doing business,'' and the independent use of CICs clearly has competitive advantages for resellers. Nevertheless, we are concerned about restricting competition in the wholesale long distance service market by limiting resellers' ability to change and/or use multiple underlying carriers. Although some resellers use their own CICs despite the asserted disadvantages, we are reluctant to adopt a requirement that resellers obtain their own CICs pending further review of the conclusions reached by the NANC.

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

> [GTE] generally averages over two hundred CICs per switch in its 1600 plus switches. Almost half of these switches have a capacity of only 255 codes today. * * * The GTD5 switch, which comprises over a third of [GTE's] total, has a capacity of only 500 CICs. A 500 CIC capacity could well be insufficient in some locations to handle all resellers who would obtain CICs. * * * [GTE] cannot add any new CICs to its switches in Hawaii because international operations have already utilized the total capacity.

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

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

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

24. Based on our review of the record as a whole, we are not persuaded that we should adopt a CIC requirement at this time. Rather, as explained below, we wish to have more information on the financial and competitive issues discussed herein before imposing a CIC requirement. By directing that the Feature Group D requirement be eliminated, we are taking a step that will facilitate the ability of switchless resellers to obtain and use their own

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

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

C. Independent Third Party Verification

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

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

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

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

38. With respect to the content and format of the third party verification, we asked parties in the *FNPRM* to comment on a possible requirement that all third party verifications include certain information, such as information on preferred carrier freezes or the carrier change process. We also asked parties to comment on any benefits that might be gained from permitting or requiring third party verifiers to provide subscribers with such additional information. This proposal generated both strong support and opposition. Although many commenters argue that requiring third party verifiers to follow a scripted format would impose unnecessary, additional rules on the carrier change process without producing a significant corresponding benefit, several other commenters ask the Commission for additional guidance regarding the format and content of the third party verification. For instance, Media One states that third party verifiers should be required to confirm the identity of the subscriber, to ascertain that the person contacted is authorized to make a change, and to frame the request for confirmation of the change as a simple yes/no question.

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

40. In addition, the third party verification must be conducted in the same language that was used in the underlying sales transaction. We also conclude that the entire third party verification transaction must be recorded, a practice that is already common in the industry. Consistent with our requirements under § 64.1120(a)(1)(ii), submitting carriers must maintain and preserve these recordings for a minimum period of two years after obtaining such verification. If a slamming dispute arises, having a recorded verification will help determine whether the subscriber was

simply seeking information or was in fact agreeing to change carriers and, if so, which service(s) the subscriber agreed to change.

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

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

43. Although several commenters argue that using automated verification systems that record the verification should obviate the need for more detailed script requirements, we conclude that these systems should elicit, at a minimum, the same information that our rules currently require, as well as the information specified. To reiterate, automated verification systems must elicit, at a minimum, the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the change; the names of the carriers affected by the change; the telephone numbers to be switched; and the types of service affected by the transaction (*i.e.,* local, in-state toll, out-of-state toll, or international service). In addition, automated verifications must be conducted in the same language that was used in the underlying sales transaction and must be recorded in their entirety to ensure that there is a record of the verification in the event of a slamming dispute. As with the three-way conference call, and for the same reasons, a carrier's sales representative initiating the automated verification call may not remain on the line after the connection has been established. We further conclude that automated verification systems should provide subscribers with an option of speaking with a live person at any time during the call. We believe that, in situations where the subscriber cannot follow the prompts of an automated system (or has questions once the automated verification commences), the subscriber should be able to reach a live person who can complete the process. If the subscriber does not want to complete the verification process, or is unable to do so, the third party verifier must end the call, and the transaction must be treated as unverified.

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

D. Definition of ''Subscriber''

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

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

47. The principal concern expressed by commenters opposed to a definition that allows customers of record to authorize additional persons to make telecommunications decisions is that such a definition invites disputes among household members. We conclude that this concern does not warrant restricting customer options. Commenters favoring a broad definition generally indicate that the current carrier practice is to allow persons other than the customer of record to make telecommunications

decisions subject to varying authorization procedures, and that consumers expect and value this service. Examination of the record does not indicate that this practice has given rise to a substantial number of slamming complaints. Moreover, as discussed below, we believe that our current rules provide sufficient incentives for carriers to adopt appropriate safeguards to ensure that only authorized persons are permitted to change telecommunications services. Absent more concrete evidence of the likelihood of harm to consumers, we agree with the majority of commenters that consumers ''should be able to make decisions about their preferred carrier [and] delegate that authority if needed[.]''

48. We emphasize that, by adopting a definition, we are not imposing additional responsibilities on carriers in the submission or execution of carrier changes. Rather, carriers' responsibilities are determined by the framework of the current rules. Under these rules, submitting carriers are subject to liability for the submission of unauthorized changes, regardless of intent. As we held in the *Section 258 Order,* strict liability ''provides appropriate incentives for carriers to obtain authorization properly and to implement their verification procedures in a trustworthy manner.'' Within this framework, the definition that we adopt will permit submitting carriers to utilize varying authorization procedures based on their own and their customers' needs, without tolerating procedures likely to enable unauthorized persons to make telecommunications decisions. With regard to executing carriers, their responsibility is limited to prompt execution of changes verified by a submitting carrier. Carriers that execute changes verified by submitting carriers are not subject to liability for unauthorized changes. For these reasons, we are not concerned that the definition we adopt will impose unreasonable burdens on executing carriers.

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

E. Submission of Reports by Carriers

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

51. We recognize that a subscriber complaint is not, in and of itself, dispositive proof of a slam. Nevertheless, an excessive number of complaints directed at a particular carrier, or an increase in the number of such complaints, suggests that an immediate investigation into that carrier's practices may be warranted. Accordingly, to assist our enforcement efforts in this area, we conclude that each carrier providing telephone exchange and/or telephone toll service must submit to the Commission via e-mail, U.S. Mail, or facsimile, a slamming complaint reporting form which will identify the number of slamming complaints received and state the number of such complaints that the carrier has investigated and found to be valid. This report also must include the number of slamming complaints involving local intrastate and interstate interexchange service, investigated or not, that the carrier has chosen to resolve directly with subscribers. Moreover, because most subscribers who are slammed by an IXC report the slam to their LEC, rather than the IXC, LECs should include in their reports the name of each entity against which slamming complaints have been directed and the number of complaints involving unauthorized changes that have been lodged against each entity. Carriers shall file their first slamming complaint reports on August 15, 2001, to cover the period commencing on the effective date of this requirement, as announced in the **Federal Register**, and ending on June 30, 2001. Reports for the second half of 2001 shall be filed on February 15, 2002, covering the period between July 1, 2001 and December 31, 2001. Thereafter, carriers shall submit their semiannual slamming complaint reports on August 15 (covering January 1 through June 30) and on February 15 (covering July 1 through December 31). The slamming complaint reporting form may be obtained in the Commission's Public Reference Room or by accessing the Commission's website.

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

F. Registration Requirement

53. *Discussion.* The Commission currently requires carriers providing interstate interexchange telecommunications service to submit various types of information, and the Commission recently streamlined many of these information collection requirements. For example, the Commission has consolidated several different worksheets into the Telecommunications Reporting Worksheet (FCC Form 499), which is used to calculate carriers' contributions to fund four different programs: interstate telecommunications relay service (TRS), federal universal service support mechanisms, the cost-recovery mechanism for the North American Numbering Plan Administration, and the cost recovery mechanism for the shared costs of long-term local number portability. In addition, to assist carriers in meeting the requirement of Section 1.47 of our rules that all common carriers must designate an agent for service of process in the District of Columbia, we have allowed carriers to report such information on the Form 499. Our rules now provide that carriers may file the relevant portion of the

Form 499 with the Commission to satisfy this requirement, and must update the information about the registered agent for service of process by submitting the revised portion of the Form 499 to the Chief of the Enforcement Bureau's Market Disputes Resolution Division within one week of any changes. The rules also provide that a paper copy of the designation list shall be maintained in the Office of the Secretary of the Commission.

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

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

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

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

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

G. Recovery of Additional Amounts from Unauthorized Carriers

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

III. Second Order on Reconsideration

A. Administration of Preferred Carrier Freezes

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

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

61. In the *Section 258 Order*, we decided carriers should not be permitted to submit preferred carrier freeze lifts, even if those lift orders were first verified by a neutral third party. We stated that ''the essence of a preferred carrier freeze is that a subscriber must specifically communicate his or her intent to request or lift a freeze [and it is this] limitation on lifting preferred carrier freezes that gives the freeze mechanism its protective effect.'' We determined that subscribers would gain no additional protection from the implementation of a preferred carrier freeze if we were to allow third party verification of a carrier change to override a preferred carrier freeze. Although such a proposal minimizes the risk that unscrupulous carriers might attempt to impose preferred carrier freezes without the consent of subscribers, we concluded that it frustrates the subscriber's ability to change carriers. Petitioners have not persuaded us that we erred in making these determinations. We therefore affirm our decision that only a subscriber may request or lift a preferred carrier freeze.

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

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

63. RCN and Excel seek clarification that a subscriber request a change and obtain a preferred carrier freeze in the same transaction. Nothing in our rules prohibits a subscriber from changing a carrier and requesting a freeze in the same transaction. We emphasize that the LEC must, however, verify both the freeze request and the carrier change request in accordance with our rules. Specifically, the LEC must obtain a Letter of Agency, electronic authorization, or third party verification that applies to the freeze request and, if the LEC is the provider of the requested long distance service, the LEC must also properly verify the carrier change request. We note that, in situations where a customer initiates or changes long distance service by contacting the LEC directly, verification of the customer's choice is not necessary by either the LEC or the chosen IXC because neither carrier is the ''submitting carrier'' as we have defined it.

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

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

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

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

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

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

B. Verification of Preferred Carrier Changes

1. Liability of an Executing Carrier

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

2. Separate Authorizations for Multiple Services

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

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

C. Rules Governing LOAs

1. Limitation on the Effectiveness of an LOA

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

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

2. Contents of LOA Regarding Preferred Carrier Change Charge

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

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

D. Payment of Preferred Carrier Change Charges After Slam

75. There are two preferred carrier change charges that can be involved in a slam. The first charge is assessed when the LEC executes the slamming carrier's preferred carrier change order. The second charge is assessed when the LEC returns the subscriber to his or her authorized carrier. SBC seeks clarification as to whether, under the new slamming procedures, the unauthorized carrier is responsible for paying the carrier change charge when

the subscriber is returned to his or her authorized carrier. SBC also requests clarification that, when a slam has been alleged, the LEC, acting as executing carrier, is no longer obligated to investigate or make a determination as to the validity of the initial carrier change.

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

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

E. Preemption of State Regulations

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

A. Procedural Matters

A. Final Regulatory Flexibility Analysis

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

1. Need For and Objectives of This Action

90. Section 258 of the Act makes it unlawful for any telecommunications carrier ''to submit or execute a change in a subscriber's selection of a provider of telephone exchange services or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.'' In the *Section 258 Order,* the Commission established a comprehensive framework of rules to implement Section 258 and strengthen its existing anti-slamming rules. Concurrent with the release of the *Section 258 Order,* the Commission issued a *FNPRM* seeking comment on a number of additional proposals to further improve the preferred carrier change process and to prevent unauthorized carrier changes. In the instant *Order,* the Commission adopts some of the proposals set forth in the *FNPRM.* Specifically, the Commission: (1) amends the current carrier change authorization and verification rules to expressly permit the use of Internet Letters of Agency (Internet LOAs) in a manner consistent with the new E-Sign Act; (2) directs the North American Numbering Plan Administration (NANPA) to eliminate the requirement that carriers purchase Feature Group D access in order to obtain a carrier identification code (CIC); (3) provides further guidance on the independent third party verification process; (4) defines the term ''subscriber'' for purposes of its slamming rules; (5) requires carriers providing telephone exchange and/or telephone toll service to submit a semiannual report on the number of slamming complaints it receives; and (6) expands the existing registration requirement on carriers providing interstate telecommunications service to include additional facts that will assist the Commission's enforcement efforts. The objectives of the modified rules adopted in this Order are to implement Section 258 by improving the preferred carrier change process and strengthening the Commission's framework of anti-slamming rules.

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

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

92. *Resellers and CICs.* Relying in part on the small size of many resellers, opponents of the Commission's proposal to require switchless resellers to use their own CICs argue that such a requirement would create a substantial market entry barrier for resellers. Others maintain that CIC deployment costs would be manageable for resellers because they typically operate on a regional rather than on a national basis, that such costs may be viewed as ''a

legitimate cost of doing business,'' and that the independent use of CICs has significant competitive advantages for switchless resellers. These comments are discussed in more detail in paragraph 27 above.

93. *Submission of Reports by Carriers.* Commenters contend that requiring each carrier to submit reports on the number of slamming complaints that it receives would create serious burdens for the Commission and compliant carriers alike. We do not believe that the reporting requirement adopted in this Order will impose significant additional costs or administrative burdens on carriers. Several carriers indicated that they already track slamming complaints received from subscribers. Thus, we do not believe that we are requiring carriers to keep information that they would not otherwise already keep. Moreover, this requirement will enable the Commission to identify the carriers who repeatedly initiate unauthorized changes. In addition, carriers may be compelled to reduce slamming on their own because the reports will be available for public inspection.

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

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

95. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' ''small governmental jurisdiction,'' and ''small business concern'' under section 3 of the Small Business Act. 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). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities. According to SBA reporting data, there were 4.44 million small business firms nationwide in 1992. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

96. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be data the Commission publishes in its *Trends in Telephone Service report.* In a recent news release, the Commission indicated that there are 4,144 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 service, providers of telephone exchange service, and resellers.

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

98. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

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

100. Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities. We do

not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that 2,295 or fewer small telephone communications companies other than radiotelephone companies are small entities that may be affected by the new rules.

101. Local Exchange Carriers. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 1,348 incumbent carriers reported that they were engaged in the provision of local exchange services. We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that 1,348 or fewer providers of local exchange service are small entities that may be affected by the new rules.

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

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

104. Operator Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Trends in Telephone Service* data, 24 carriers reported that they were engaged in the provision of operator services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 24 or fewer small entity operator service providers that may be affected by the new rules.

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

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

107. Toll-Free 800 and 800-Like Service Subscribers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 and 800-like service (''toll free'') subscribers. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use. According to our most recent data, at the end of January 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers that had been assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 7,692,955 or fewer small entity 800 subscribers, 7,706,393 or fewer small entity 888 subscribers, and 1,946,538 or fewer small entity 877 subscribers may be affected by the new rules.

108. Cellular Licensees. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company

employing no more than 1,500 persons. According to the Census Bureau, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Telecommunications Industry Revenue* data, 808 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 808 or fewer small cellular service carriers that may be affected by the new rules.

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

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

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

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

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

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

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

115. Registration Requirement. Each carrier is required to register with the Commission, and an affirmative duty is established on the part of a telecommunications carrier providing telecommunications service for resale to confirm that a reseller has registered with the Commission prior to providing that reseller with service. Specifically, the annually-filed Telecommunications Reporting Worksheet (FCC Form 499–A), which must be filed by all telecommunications carriers in April of each year, will be revised to include the following additional information that is targeted to assist the Commission's anti-slamming efforts: the carrier's business name(s) and primary address; the names and business addresses of the carrier's chief executive office, chairman, and president, or, in the event that a company does not have such executives, three similarly senior-level officials of the company; the carrier's regulatory contact and/or designated agent for service of process; all names under which the carrier has conducted business in the past; and the state(s) in which the carrier provides telecommunications service. The new registration requirement will enable the Commission to monitor the entry of carriers into the interstate telecommunications market and any associated increases in slamming, enhance the Commission's ability to take appropriate enforcement action against carriers that have demonstrated a pattern or practice of slamming, and deter carrier providing telecommunications service for resale from offering service to unregistered resellers.

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

116. Resellers and CICs. The Commission requested comment in the *FNPRM* on three possible approaches to the problems arising from the shared use of CICs by switchless resellers and their underlying, facilities-based carriers. The Commission believes that its proposal to require resellers to obtain their own CICs holds promise as a direct and effective solution to the significant problems that arise from the shared use of CICs. Based on review of the record as a whole, however, including concerns raised by some commenters regarding the financial and competitive impact of a CIC requirement on

resellers, many of which are small entities, the Commission is not adopting a CIC requirement at this time. By directing that the Feature Group D requirement be eliminated, the Commission is taking a step that will facilitate the ability of resellers to obtain and use their own CICs, while allowing them to choose whether to do so based on their own competitive needs.

117. Submission of Reports by Carriers. The Commission has considered whether the reporting requirements adopted herein will impose significant additional costs or administrative burdens on carriers. The Commission concludes that this requirement would not impose significant additional costs or administrative burdens on carriers. In this regard, the Commission notes the comments of several carriers that they already track slamming complaints received from subscribers, and reasons that it would be a reasonable business practice for all telecommunications carriers, including small carriers, to track slamming complaints they receive in the course of their business. Indeed, the Commission states that it would be surprised if carriers did not do this. Accordingly, the Commission concludes that it is not requiring carriers to keep information that they would not otherwise keep. Moreover, these modest reporting requirements will help the Commission to achieve important objectives: identifying carriers that repeatedly initiate unauthorized changes, and deterring carriers from slamming.

118. Registration Requirement. To minimize the administrative burden on carriers of the registration requirement adopted herein, the Commission makes the registration information part of an existing form that must be completed and submitted for other obligations. The Commission also observes that all carriers providing interstate telecommunications service, including small carriers providing such service, should be able to submit this information without much expense or difficulty because it is readily available, and to a large degree, must already be submitted in state jurisdictions.

6. Report to Congress

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

B. Supplemental Final Regulatory Flexibility Analysis

120. 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, 62 FR 43493, August 14, 1997, in this proceeding. The Commission sought written public comment on the proposals in the *FNPRM and Order,* including comment on the IRFA. A Final Regulatory Flexibility Analysis (FRFA) was incorporated in the subsequent *Section 258 Order* in this proceeding. The Commission received a number of petitions for reconsideration in response to the *Section 258 Order.* The instant *Second Order on Reconsideration* addresses issues raised in those reconsideration petitions. This associated Supplemental Final Regulatory Flexibility Analysis (SFRFA) reflects revised or additional information to that contained in the FRFA. This SFRFA is thus limited to matters raised in response to the *Section 258 Order* and addressed in the instant *Second Order on Reconsideration.* This SFRFA conforms to the RFA.

1. Need for and Objectives of this Action

121. Section 258 of the Act makes it unlawful for any telecommunications carrier ''to submit or execute a change in a subscriber's selection of a provider of telephone exchange services or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.'' In the *Section 258 Order,* the Commission established a comprehensive framework of rules to implement section 258 and strengthen its existing anti-slamming rules. In this *Second Order on Reconsideration*, the Commission upholds its rules governing the submission of preferred carrier freeze orders, the handling of preferred carrier change requests and freeze orders in the same transaction, and the automated submission and administration of freeze orders and changes. In addition, the Commission reaffirms its decision not to preempt state regulations governing verification procedures for preferred carrier change requests that are consistent with the provisions of Section 258. Furthermore, the Commission declines to adopt a 30-day limit on the amount of time an LOA confirming a carrier change request should be considered valid and instead adopts a 60-day limit. Finally, the Commission clarifies certain of its rules regarding the payment of preferred carrier change charges after a slam.

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

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

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

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

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

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

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

126. Rules Governing Letters of Agency (LOAs). The Commission declines to adopt 30-day limit on the amount of time that an LOA confirming a carrier change request is considered valid, instead adopting a 60-day limit as a more reasonable limitation. The 60-day limit applies to submitting carriers only. To avoid customer confusion as to whether a preferred carrier change

charge applies for a change in local service providers, the Commission also amends its rules to provide that LOAs must contain language giving a subscriber the option of consulting with the carrier as to whether a fee applies to his or her preferred carrier change.

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

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

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

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

6. Report to Congress

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

C. Paperwork Reduction Act

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

VI. Ordering Clauses

132. Pursuant to Sections 1, 4, 201–205, and 258 of the Communications Act of 1934, as amended, the policies, rules, and requirements set forth herein are adopted. It is further ordered that 47 CFR Part 64 is amended as set forth.

133. Pursuant to Sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, that the petitions for reconsideration or clarification filed by AT&T Corp., Excel Telecommunications, Inc., MediaOne Group, National Telephone Cooperative Association, RCN Telecom Services, Inc., Rural LECs, and SBC Communications, Inc. are granted in part and denied in part to the extent discussed.

134. The requirements contained herein not pertaining to new or modified reporting or recordkeeping requirements shall become effective April 2, 2001 except for §§ 64.1130(a) through (c), 64.1130(i), 64.1130(j), 64.1180, 64.1190(d)(2), 64.1190(d)(3), 64.1190(e), and 64.1195, which contain information collection requirements that have not yet been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

135. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Order, including the Final Regulatory Flexibility Analysis and the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 47 U.S.C. 225, 47 U.S.C. 251(e)(1). 151, 154, 201, 202, 205, 218–220, 254, 302, 303, and 337 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Section 64.1100 is amended by adding paragraph (h) to read as follows:

§ 64.1100 Definitions.

* * * * *

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

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

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

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

3. Section 64.1120 is amended by revising paragraphs (c)(1), (c)(3), and by adding paragraph (d).

§ 64.1120 Verification of orders for telecommunications service.

* * * * *

(c) * * *

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

* * * * *

(3) An appropriately qualified independent third party has obtained, in accordance with the procedures set forth in paragraphs (c)3)(i) through (c)(3)(iv) of this section, 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.

(i) *Methods of third party verification.* Automated third party verification systems and three-way conference calls may be used for verification purposes so long as the requirements of paragraphs (c)(3)(ii) through (c)(3)(iv) of this section are satisfied.

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

(iii) *Requirements for content and format of third party verification.* All third party verification methods shall elicit, at a minimum, the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the carrier change; the names of the carriers affected by the change; the telephone numbers to be switched; and the types of service involved. Third party verifiers may not market the carrier's services by providing additional information, including information regarding preferred carrier freeze procedures.

(iv) *Other requirements for third party verification.* All third party verifications shall be conducted in the same language that was used in the underlying sales transaction and shall be recorded in their entirety. In accordance with the procedures set forth in 64.1120(a)(1)(ii), submitting carriers shall maintain and preserve audio records of verification of subscriber authorization for a minimum period of two years after obtaining such verification. Automated systems must provide consumers with an option to speak with a live person at any time during the call.

* * * * *

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

3. Section 64.1130 is amended by revising paragraphs (a), (b), (c), and (e)(4), and by adding paragraphs (i) and (j) to read as follows:

§ 64.1130 Letter of Agency form and content.

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

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

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

* * * * *

(e) * * *

(4) That the subscriber may consult with the carrier as to whether a fee will apply to the change in the subscriber's preferred carrier.

* * * * *

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

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

4. Add § 64.1180 to subpart K to read as follows:

§ 64.1180 Reporting requirement.

(a) *Applicability.* Each provider of telephone exchange and/or telephone toll service shall submit to the Commission via e-mail (*slamming478@fcc.gov*), U.S. Mail, or facsimile a slamming complaint report form identifying the number of slamming complaints received during the reporting period and other information as specified in paragraph (b) of this section.

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

(1) The information specified in paragraph (a) of this section;

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

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

(4) If the reporting carrier is a wireline or fixed wireless local exchange carrier providing service to end user subscribers, the name of each entity against which the slamming complaints received during the reporting period were directed;

(5) If the reporting carrier is a wireline or fixed wireless local exchange carrier providing service to end user subscribers, the number of slamming complaints received during the reporting period that were lodged against each entity identified in paragraph (b)(4) of this section; and

(6) The total number of subscribers the reporting carrier is serving at the end of the relevant reporting period.

(c) *Semiannual reporting requirement.* Reporting shall commence on August 15, 2001, covering the effective date of this requirement, as announced in the **Federal Register**, through June 30, 2001. Reports filed on February 15, 2002 shall cover the period between July 1, 2001 and December 31, 2001. Thereafter, carriers subject to the reporting requirement pursuant to paragraph (a) of this section shall submit semiannual slamming complaint reports on August 15 (covering January 1 through June 30) and on February 15 (covering July 1 through December 31).

5. Section 64.1190 is amended by revising paragraphs (d)(1)(ii), (d)(2)(i), (d)(3)(i), and (e)(1) to read as follows:

§ 64.1190 Preferred carrier freezes.

* * * * *

(d) * * *

(1) * * *

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

* * * * *

(2) * * *

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

* * * * *

(3) * * *

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

* * * * *

(e) * * *

(1) A local exchange carrier administering a preferred carrier freeze

must accept a subscriber's written or electronically signed authorization stating his or her intent to lift a preferred carrier freeze; and

* * * * *

6. Add § 64.1195 to Subpart K to read as follows:

§ 64.1195 Registration requirement.

(a) *Applicability.* A telecommunications carrier that will provide interstate telecommunications service shall file the registration information described in paragraph (b) of this section in accordance with the procedures described in paragraphs (c) and (g) of this section. Any telecommunications carrier already providing interstate telecommunications service on the effective date of these rules shall submit the relevant portion of its FCC Form 499–A in accordance with paragraphs (b) and (c) of this section.

(b) *Information required for purposes of part 64.* A telecommunications carrier that is subject to the registration requirement pursuant to paragraph (a) of this section shall provide the following information:

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

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

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

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

(5) The state(s) in which the carrier provides telecommunications service.

(c) *Submission of registration.* A carrier that is subject to the registration requirement pursuant to paragraph (a) of this section shall submit the information described in paragraph (b) of this section in accordance with the Instructions to FCC Form 499–A. FCC Form 499–A must be submitted under oath and penalty of perjury.

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

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

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

(g) *Changes in information.* A carrier must notify the Commission of any changes to the information provided pursuant to paragraph (b) of this section within no more than one week of the change. Carriers may satisfy this requirement by filing the relevant portion of FCC Form 499–A in accordance with the Instructions to such form.

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

[FR Doc. 01–4794 Filed 2–28–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–487, MM Docket No. 00–235, RM–9992]

Digital Television Broadcast Service; Lead, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Duhamel Broadcasting Enterprises, licensee of station KHSDTV, substitutes DTV 10 for DTV 30 at Lead, South Dakota. *See* 65 FR 71079, November 29, 2000. DTV channel 10 can be allotted to Lead in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates (44–19–36 N. and 103–50–12 W.) with a power of 34.8, HAAT of 576 meters and with a DTV service population of 146 thousand.

DATES: Effective April 12, 2001.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–235, adopted February 23, 2001, and released February 26, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under South Dakota, is amended by removing DTV channel 30 and adding DTV channel 10 at Lead.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–4915 Filed 2–28–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–488, MM Docket No. 00–236, RM–10000]

Digital Television Broadcast Service; La Crosse, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of QueenB Television, LLC,