

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 94-129; FCC 98-334]

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

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In the Further Notice of Proposed Rulemaking (*FNPRM*) portion of the Second Report and Order (*Order*), we seek comment on several proposals to further strengthen our slamming rules, including a proposal to require unauthorized carriers to remit to authorized carriers certain amounts in addition to the amount paid by slammed subscribers, as well as proposals for preventing the confusion and slamming that results from resellers using the same carrier identification codes (CICs) as their facilities-based carriers.

DATES: Comments on proposed rules 47 CFR 64.1100, 64.1170 and 64.1195, which are contained in the *FNPRM*, and proposed information collections are due on or before March 18, 1999. Reply comments are due on or before April 2, 1999. Written comments by OMB on the proposed information collections are due on or before April 19, 1999. Comments may be filed using the Commission's Electronic Comment

Filing System (ECFS) or by filing paper copies.

ADDRESSES: Comments and reply comments must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th St., S.W., TWA-325, Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

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

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

Services, 1231 20th Street, N.W., Washington, D.C.

Paperwork Reduction Act: This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due April 19, 1999. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060-0787.

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

Form No.: N/A.

Type of Review: Revised collections.

Respondents: Business or other for-profit.

Annual proposed collections	Respondents	Estimated time per response (hours)	Total burden
1. Carrier Liability	1,800	2	3,600
2. Registration	1,800	2	3,600
3. Reporting	1,800	2	3,600

Total Annual Burden: 10,800 hours.

Estimated costs per respondent: N/A.

Needs and Uses: The information will enable the Commission to further deter slamming and track carriers.

Summary of Further Notice of Proposed Rulemaking

I. Background

1. The rules proposed in the *FNPRM* are aimed at eliminating slamming by attacking the problem on several fronts, including keeping profits out of the pockets of slamming carriers, imposing more rigorous verification procedures,

and broadening the scope of our rules to encompass all carriers. We seek additional comment on several issues that either were not raised sufficiently in the *Order* or that require additional comment for resolution.

II. Discussion

A. Recovery of Additional Amounts From Unauthorized Carriers

2. We seek comment on whether the following proposals discussed below are within our jurisdiction and consistent with Congress' intent embodied in section 258 of the Act. Where a

subscriber has paid charges to the unauthorized carrier, we propose that the authorized carrier collect from the unauthorized carrier double the amount of charges paid by the subscriber during the first 30 days after the unauthorized change. Where the subscriber has not paid charges to the unauthorized carrier, we propose to permit the authorized carrier to collect from the unauthorized carrier the amount that would have been billed to the subscriber during the first 30 days after the unauthorized change. Alternatively, we seek comment on whether the authorized carrier's recovery under this proposal should

equal the amount that the authorized carrier would have billed the subscriber during that 30-day time period absent the unauthorized change. We note that the rules adopted in the *Order* require that any charges imposed by the unauthorized carrier after the 30-day absolution period be paid by the subscriber to the authorized carrier at the authorized carrier's rates.

3. We tentatively conclude that the Commission has the authority to permit these additional payments by slamming carriers, based on the language of section 258, which provides that "the remedies provided by this section are in addition to any other remedies available by law." The Commission has additional authority under section 201(b) to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of [the] Act," as well as under section 4(i) to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the] Act, as may be necessary in the execution of its functions." We tentatively conclude that permitting an authorized carrier to collect the above-described amounts from the unauthorized carrier would help to deter slamming by making slamming so unprofitable that carriers will cease practicing it. We seek comment on these tentative conclusions.

B. Resellers and CICs

4. Misunderstandings may arise due to the use of CICs, which are used by LECs to identify different IXCs. Because CICs are issued by the North American Numbering Plan Administrator (NANPA) to facilities-based IXCs only, switchless resellers do not have their own CICs, but rather use the CICs of their underlying facilities-based carriers. The fact that resellers do not have their own CICs results in two slamming-related problems: (1) the "soft slam;" and (2) the misidentification of a reseller as the underlying carrier.

5. A "soft slam" occurs when a subscriber is changed, without authorization, to a carrier that uses the same CIC as his or her authorized carrier. When a subscriber changes from a facilities-based IXC to a reseller of that facilities-based IXC's services, or in any situation in which a subscriber changes to another carrier that has the same CIC as the previous carrier, the execution of the change is performed by the facilities-based IXC, not the LEC. The soft slam is therefore particularly problematic because it bypasses the LEC and enables a slamming reseller to bypass a subscriber's preferred carrier

freeze protection. Preferred carrier freeze protection, where the LEC will change a subscriber's carrier only after it receives express written or oral consent from that subscriber to lift the freeze, will not be triggered by a soft slam. Further complications arise because the name of the facilities-based carrier may continue to appear on the subscriber's bill, giving the subscriber no indication that his or her preferred carrier has been changed.

6. We seek comment on the issue of whether switchless resellers should be required to have their own CICs or some other identifier that would distinguish them from the underlying facilities-based carriers and allow the consumer to ensure that slamming has not occurred. We seek comment on three options: (1) require each reseller to obtain a CIC; (2) require the creation for each reseller of a "pseudo-CIC," that is, digits that would be appended to the underlying carrier's own CIC for identification of the reseller; or (3) require underlying facilities-based carriers to modify their systems to prevent unauthorized changes from occurring if a subscriber has a freeze on the account and to allow identification of resellers on the consumer's bill. We also seek comment on other benefits, unrelated to slamming, that may result from adoption of any of these options. See the full text of the *FNPRM* for a more detailed discussion on CICs.

i. Jurisdiction

7. We tentatively conclude that Commission regulations requiring resellers to be identified on their subscribers' monthly bills would be consistent with our authority under sections 201(b) and 4(i). The Commission has authority under section 201(b) to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of [the] Act," as well as under section 4(i) to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the] Act, as may be necessary in the execution of its functions." Moreover, we tentatively conclude that the plain language of section 251(e)(1) gives the Commission authority to promulgate regulations of the type proposed below for changing the North American Numbering Plan (NANP). We also tentatively conclude that the Commission's authority to change the NANP includes changes to such documents as the CIC Assignment Guidelines as might be required by the Commission in this proceeding. We request comments on these tentative conclusions.

ii. Option 1: Require Resellers to Obtain Individual CICs

8. As our first option, we seek comment on requiring each reseller to obtain an individual CIC and on any changes to the NANP that would be required to make such a requirement effective. First, we request comment on whether we should make the purchase of translations access by resellers mandatory in order to deter slamming. We also ask commenting parties to address how effective this option would be in allowing consumers and carriers to detect slamming. Further, we seek comment on whether this option has advantages because it does not require facilities-based carriers to modify their existing billing and collection systems and will not cause a CIC shortage now that the Commission has ended the transition period to four-digit CICs. We request comment on the CIC Ad Hoc Working Group's recommendation to allow resellers to purchase translations access instead of Feature Group D trunk access.

9. We request further comment on this option's impact on the "competitively neutral" requirements of section 251(e)(2), in lieu of the fact that translations access is currently bundled together with Feature Group D trunk access. Specifically, should resellers pay the full Feature Group D trunk access rates for translations access in order to "level the playing field" with facilities-based carriers? How long of a transition period should we require? Should resellers be required to adhere to the same CIC Assignment Guidelines as facilities-based carriers? What will be the effect on CIC conservation if the Commission requires all resellers to obtain CICs? Commenting parties are encouraged to include empirical information with their comments.

iii. Option 2: Require the Use of "Pseudo-CICs" for Resellers

10. We seek comment on use of the pseudo-CIC to prevent switchless resellers from circumventing a subscriber's preferred carrier freeze protection through soft slams. We also request comment on the liability of the pseudo-CIC option as a method to identify particular resellers of a facilities-based carrier's services so that consumers can detect slamming if it occurs. We request comment on recovering the cost of implementing the pseudo-CIC option, which would be borne primarily by ILECs and other carriers or entities that provide billing and collection services to resellers. We request further comment on the need to standardize pseudo-CIC assignments,

particularly in cases where a reseller resells services from multiple facilities-based carriers. Should a single pseudo-CIC suffix be used by all facilities-based carriers to identify the same reseller, so that the 0001 suffix applies to reseller "A" regardless of the facilities-based carrier's CIC? Should the NANPA be required to administrate pseudo-CICs, to ensure uniformity? Finally, we request comment on the impact of pseudo-CIC implementation on section 251(e)(2)'s requirement for competitive neutrality, when determining the cost of its administration.

iv. Option 3: Require Facilities-Based Carriers To Modify Their Systems

11. We seek comment on requiring a facilities-based carrier to modify its system to enable it to execute preferred carrier freeze protection only for subscribers who are presubscribed to the services of either the facilities-based carrier or one of its switchless resellers. We propose that LECs be required to provide to each facilities-based IXC certain freeze information about subscribers of the facilities-based carrier or subscribers of any of the facilities-based carriers' resellers. We seek comment on this proposal. We also seek comment on how frequently the facilities-based IXC would need to receive information from the LEC in order to prevent soft slams, as well as undue delays in legitimate carrier changes. We seek comment on the burden this proposal would impose on both facilities-based IXCs and LECs.

12. We also seek comment on whether facilities-based carriers should be required to modify their billing records to allow identification of resellers on the consumer's bill, whether such bill is issued from the reseller, the LEC, or a billing agent. We also seek comment on whether, if the subscriber's carrier has been changed but the CIC remains the same, such subscriber's bill should include information on how to contact the underlying facilities-based carrier if the subscriber believes that an unauthorized change has occurred. We seek comment on whether facilities-based carriers possess the information needed to distinguish resellers of their services on subscribers' monthly telephone bills. We ask for comment on the cost and effort associated with placing on consumers' bills information based on the reseller usage information already maintained by facilities-based carriers. Specifically, how expensive and difficult would it be for facilities-based carriers to modify their existing billing records to provide the means to identify on the subscribers' monthly bills the specific resellers responsible

for the service? Finally, we request comment on the impact of this proposed option on section 251(e)(2)'s requirement for competitive neutrality, when determining the cost of its administration.

13. We also seek comment on any other proposals that would help to distinguish the identities of resellers from their facilities-based carriers, both for purposes of identification on subscriber bills and to prevent soft slams. We seek comment on additional CIC proposals, as well as on methods that would not involve CICs, if such proposals would attain both goals of properly identifying resellers and preventing switchless resellers from slamming subscribers.

14. We also seek comment on other benefits unrelated to slamming remedies that may result from the adoption of any of these options. For example, we ask commenters to describe how the enhanced identification of resellers may allow more efficient billing or routing of calls. In addition, we seek comment on whether such identification would promote competition by giving greater emphasis to the identity of resellers that provide service.

C. Independent Third Party Verification

15. We tentatively conclude that we should revise our rules for independent third party verification. NAAG suggests in its comments that independent third party verification should be separated completely from the sales transaction, so that a carrier would not be permitted to conduct a three-way call to connect the subscriber to the third party verifier. NAAG argues that a verification call initiated by the carrier is not truly independent because the subscriber would remain under the influence of the carrier's telemarketer during the verification. We seek comment on whether, if a telemarketing carrier is present during the third party verification, such verification can be considered "independent."

16. We seek comment on the use of automated third party verification systems, as opposed to "live" operator verifiers. We seek comment on whether automated third party verification systems would comply with our rules concerning independent third party verification, as well as with the intent behind our rules to produce evidence independent of the telemarketing carrier that a subscriber wishes to change his or her carrier. We also note that one commenter, VoiceLog, offers an additional system called a "live-scripted" version. We seek comment on whether such a "live-scripted" automated verification system would be

at odds with our rules because it permits the carrier itself, who is not an independent party located in a separate physical location, to solicit the subscriber's confirmation. We also seek comment on the advantages and disadvantages of using automated third party verification and live operator third party verification.

17. We seek comment on the content of the third party verification itself. For example, should the independent third party verifier be required or permitted to provide certain information in addition to confirming a subscriber's carrier change request? We also seek comment on whether independent third party verifiers should be permitted to dispense information on preferred carrier freeze procedures. We seek comment on any benefits that might be gained from permitting or requiring third party verifiers to provide additional information. We also seek comment on whether such a requirement would compromise the independent nature of the verification, or on whether such a requirement is necessary. Finally, we seek comment on any other proposals that would improve the quality of the third party verification.

D. Carrier Changes Using the Internet

18. As stated in the *Order*, all carrier changes must be confirmed in accordance with one of the three verification methods in our rules: written LOA, electronic authorization, or independent third party verification. We seek comment on whether a carrier change submitted over the Internet could be considered a valid LOA under our verification rules. We seek comment on the extent to which current carrier change requests submitted over the Internet contain all the required elements of a valid LOA in accordance with our rules. We have particular concerns about how an Internet sign-up system satisfies the signature requirement, which is one of the most important identification requirements of the written LOA. The electronic forms that we have seen generally contain a section called the "electronic signature" that serves as a substitute for the consumer's written signature. Some electronic signatures consist of the consumer typing his or her name into the box. Other electronic signatures consist of the consumer submitting the form electronically to the carrier. We tentatively conclude that electronic signatures used in Internet submissions of carrier changes would not comply with the signature requirement for LOAs. We believe that the electronic signature fails to identify the "signer" as

the actual individual whose name has been "signed" to the Internet form. We also believe that the electronic signature fails to identify the "signer" as an individual who is actually authorized to make telecommunications decisions. For example, there appear to be few safeguards to prevent someone from simply typing another person's name into the field for the electronic signature. There would be no telltale variations in handwriting to distinguish one electronic signature from another. We seek comment on these tentative conclusions, and seek comment generally on how carriers are dealing with the above-identified problems or how our rules should be modified to account for these differences.

19. We also seek comment on what additional information would provide sufficient consumer protection from an unscrupulous carrier. For example, some carriers will accept carrier changes using the Internet if subscribers submit their credit card numbers for billing purposes. We seek comment on whether obtaining a subscriber's credit card number would provide sufficient proof that a subscriber authorized a carrier change and that the submitting person is actually the subscriber. We seek comment on the extent to which a subscriber would be protected by the consumer protection aspects that accompany the use of credit cards. We also seek comment on whether carrier changes submitted over the Internet should require a subscriber to include certain personal information, such as social security number or mother's maiden name, to ensure that only the subscriber may change his or her own carrier. We seek comment on whether requiring the submission of these types of information would be sufficient to prevent slamming using the Internet, without jeopardizing the subscriber's privacy and other interests.

20. To the extent that a carrier change using the Internet is *not* a valid LOA, then at a minimum, a carrier using such a method of solicitation must verify in accordance with our rules. That is, the carrier must either obtain a valid written LOA, or confirm the sale with electronic authorization or independent third party verification. We seek comment on whether additional methods of verification might be particularly appropriate for use by carriers who solicit subscribers over the Internet.

21. We also have general concerns about the content of the solicitation using the Internet. For example, some IXC webpages state that in changing to that IXC's long distance service, the consumer also agrees to change to the IXC's intraLATA toll service where

applicable. These carriers do not give consumers the option of choosing only interLATA service by that carrier, but instead require the consumer to accept both interLATA and intraLATA toll service from that IXC. We tentatively conclude that such statements would be in violation of our rule that requires LOAs to contain separate statements regarding choices of interLATA and intraLATA toll service. We seek comment on this tentative conclusion and on any other problems that may result from carrier use of the Internet to change subscribers' carriers.

22. Finally, we seek comment on the extent to which subscribers may use the Internet to request or lift preferred carrier freezes. We have the same general above-mentioned concerns about whether this method would identify the submitting party as the actual subscriber whose service would be affected by the imposition or lifting of the preferred carrier freeze. We also seek comment on the verification procedures that should apply. Should subscribers requesting preferred carrier freezes over the Internet verify their requests in the same manner as requests given directly by telephone to a LEC? LECs should, at a minimum, provide subscribers with the option to lift freezes using either a written LOA or a three-way call, but that they may offer additional options. Could LECs provide a simple and secure method for subscribers to impose and lift their freezes using the Internet? We seek comment on any other uses of the Internet that would promote efficiency and convenience for both carriers and consumers in changing telecommunications carriers and other related activities.

E. Definition of "Subscriber"

23. Section 258 of the Act and our implementing rules require that the carrier obtain authorization from a subscriber before making a switch. Neither the Act nor our rules define the term "subscriber" for this purpose. We seek comment on how a subscriber should be defined, in light of our goals of consumer protection and promotion of competition. SBC suggests that the term "subscriber" should include "any person, firm, partnership, corporation, or lawful entity that is authorized to order telecommunications services supplied by a telecommunications services provider," so that carriers could obtain authorization from whomever at the business or residence is authorized to make the purchasing decision. In the *1995 Report and Order*, we determined that the only individual qualified to authorize a change in carrier selection is

the "telephone line subscriber," although we did not specifically define the term. We believe that allowing the named party on the bill to designate additional persons in the household to make telecommunications decisions could promote competition because carriers would be able to solicit more than one person in a household. We also believe that consumers would find such an arrangement convenient because it would allow more than one person to make telecommunications decisions, while still giving the named party control over which members of the household may make changes to telecommunications service. A spouse named on the bill could therefore designate the other spouse as being authorized to make decisions regarding telecommunications service, although their minor children would not be authorized to make such decisions.

24. On the other hand, we are concerned that adoption of such a proposal could lead to an increase in slamming. It is unclear, for example, how a marketing carrier would know if the person who has authorized a carrier change is in fact authorized to order telecommunications services. We are concerned that a slamming carrier could simply submit changes requested by unauthorized persons and claim that it thought that those persons were authorized. Furthermore, such a proposal presumably would require executing carriers to not only maintain lists of persons other than the named party who are authorized to make telecommunications decisions, but also to check each carrier change request against these lists to determine if the person who authorized the carrier change is also authorized to make decisions. We believe that this could be an unreasonable burden on the executing carrier.

25. We also seek comment on the current practices of carriers with regard to which members of a household are permitted to make changes to telecommunications service. Carriers who submit proposals should include an explanation of how their present systems operate and the advantages and disadvantages of their proposals, as opposed to their current procedures. We seek comment on this and other proposals to define the term "subscriber" in order to maximize consumer protection, provide consumer convenience, and promote competition in telecommunications services.

F. Submission of Reports by Carriers

26. We seek comment on whether we should require each carrier to submit to the Commission a report on the number

of complaints of unauthorized changes in telecommunications providers that are submitted to the carrier by its subscribers. This concept is based on a provision in the Senate's anti-slamming bill. Early warning about slamming carriers will enable the Commission to take investigative action, where warranted, to stop slamming as soon as possible. We seek comment on the potential benefits of this reporting requirement and on whether such benefits outweigh the burdens on carriers. If the Commission were to adopt a reporting requirement, we seek comment on the frequency of filing such a report.

G. Registration Requirement

27. We seek comment on whether the Commission should impose a registration requirement on carriers who wish to provide interstate telecommunications service. Such a registration requirement could help to prevent entry into the telecommunications marketplace by entities that are either unqualified or that have the intent to commit fraud. We propose that any telecommunications carrier that provides or seeks to provide interstate telecommunications service should register with the Commission. We seek comment on the information that the registration should contain. We propose that the registration should contain, at a minimum, the carrier's business name(s); the names and addresses of all officers and principals; verification that such officers and principals have no prior history of committing fraud; and verification of the financial viability of the carrier. To the extent that the Commission already possesses some of this information, we seek comment on whether the Commission should consolidate the collection of the above-described information with other existing collection mechanisms, in order to lessen the burden on carriers. We tentatively propose that this registration requirement apply not just to new entrants but to all entities that offer telecommunications services. We also seek comment on the Commission's jurisdiction to require carriers to file a registration in order to provide interstate telecommunications service.

28. We tentatively conclude that the Commission should revoke or suspend, after appropriate notice and opportunity to respond, the operating authority of those carriers that fail to file a registration or that provide false or misleading information in their registration. Many states have authority to revoke carriers' operating licenses with regard to the provision of intrastate

services. These states' revocation powers are limited to prohibiting carriers from operating within one state, which permits unscrupulous carriers to move to a different state to offer service. The revocation power proposed herein would enable the Commission to prevent an unscrupulous interstate interexchange carrier from operating nationwide. We seek comment on whether such penalty is appropriate in these situations, as well as in situations where the Commission finds that the provision of telecommunications service by a particular carrier would be contrary to the public interest. We also tentatively conclude that a carrier has an affirmative duty to ascertain whether another carrier has filed a registration with the Commission prior to offering service to that carrier. This would further check the ability of unscrupulous carriers to enter the marketplace. If we were to adopt this requirement, we would certainly facilitate the ability of a carrier to check the registration status of another carrier. We seek comment on what penalty the Commission should impose on carriers that fail to determine the registration status of other carriers before providing them with service. We believe that the penalty should not be as severe as the penalty to be imposed on carriers that fail to file valid registrations. We tentatively conclude that these penalties will protect consumers by ensuring that unqualified and unscrupulous carriers do not profit from the provision of telecommunications services. We seek comment on whether the consumer benefits of these proposals would outweigh the burden on carriers of filing registrations. We seek comment on these proposals and on other proposals that would prevent carriers that have a history of fraud or are otherwise unqualified from providing telecommunications services.

H. Third Party Administrator for Preferred Carrier Changes and Preferred Carrier Freezes

29. We seek further comment on the implementation by the industry of a comprehensive system in which an independent third party would administer carrier changes, verification, and preferred carrier freezes, as well as the dispute resolution functions mentioned above. In the *Further Notice and Order*, the Commission sought comment on the use of an independent third party to execute carrier changes neutrally in order to reduce carrier change disputes that might arise if ILECs continue to execute changes. Many commenters responded in support of an independent third party

administrator for carrier changes and even verification because such a party would have incentive to administer carrier changes in a neutral and accurate manner. Although we agree that many of the commenters' contentions have merit, we conclude that the record before us is not fully developed to support the creation of a new and independent agent to handle execution functions at this time. Therefore we seek further comment on the development and implementation of a third party administrator for these functions. We note that any industry-supported neutral party must administer carrier change functions in accordance with the Commission's rules and seek comment on how to ensure that the industry's implementation of such a neutral third party for these functions would be consistent with the Commission's rules, policies, and practices.

30. An independent third party with broader responsibilities, such as administration of carrier changes, verification, and preferred carrier freezes, may be useful in addressing concerns raised by the commenters about potential anticompetitive practices in this area. Although we have concluded that the ability of the LECs to act anticompetitively while executing carrier changes is limited, we find that the concept of an independent third party for administration of carrier changes and preferred carrier freezes is potentially viable. Most of the commenters who support such a system, however, are not specific about how such a system might work, nor do they offer concrete proposals for funding such an administrative scheme. These comments fail to provide sufficient detail about the actual implementation and funding for a third party administrator system necessary for the Commission to mandate at this time. Furthermore, the commenters were unable to come to a consensus as to the actual duties of the independent third party administrator. Several carriers state that the third party administrator would need electronic interconnections with every carrier to be able to receive and process carrier changes and preferred carrier freezes. On the other hand, TRA suggests that the third party administrator should only monitor compliance and document execution of carrier changes and preferred carrier freezes, but that it should not actually execute carrier changes and preferred carrier freezes. We seek comment on concrete suggestions for the implementation of a third party administrator that are workable and cost-effective. Proposals for such third

party administration should include specific and detailed information regarding the cost of setting up such a system.

III. Conclusion

31. In the Further Notice of Proposed Rulemaking, we seek comment on several proposals to further strengthen our slamming rules, including a proposal to require unauthorized carriers to remit to authorized carriers certain amounts in addition to the amount paid by slammed subscribers, as well as proposals for preventing the confusion and slamming that results from resellers using the same CICs as their facilities-based carriers.

IV. Procedural Matters

I. Initial Regulatory Flexibility Analysis

32. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *Order and FNPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided below in the Comment Filing Procedures section. The Commission will send a copy of the *Order and FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Order and FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

i. Need for, and Objectives, of Proposed Rules.

33. The Commission, in its efforts to protect consumers from unauthorized switching of preferred carriers, and to implement provisions of the Telecommunications Act of 1996 pertaining to illegal changes in subscriber carrier selections, is issuing this Further Notice of Proposed Rulemaking. Under the Act and the proposed rules, a small entity that violates the Commission's carrier change verification rules may be liable to an authorized carrier for double the amount of charges paid to the slamming entity by a slammed subscriber or for the amount for which the slammed subscriber was absolved. Small entities may be affected by the proposals for modifying the independent third party verification process; verifying carrier changes made on the Internet; adopting a definition of "subscriber;" requiring carriers to submit to the Commission a

report on the number of slamming complaints received by them; imposing a registration requirement; and modifications of the CIC process.

ii. Legal Basis

34. The *Order and FNPRM* are adopted pursuant to sections 1, 4(i), 4(j), 201-205, 258, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201-205, 258, 303(r).

iii. Description and Estimates of the Number of Small Entities to Which Rules Will Apply

35. In the FRFA, associated with the *Order*, we have provided a detailed description of small entities (*See Federal Register Summary of Order*).¹ Those entities include wireline carriers, local exchange carriers, small incumbent local exchange carriers, interexchange carriers, competitive access providers, resellers, and wireless carriers. We hereby incorporate those detailed descriptions by reference.

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

36. *Liability*. The proposed rules would permit authorized carriers to recover from unauthorized carriers double the amount of charges paid by slammed subscribers, or the amount for which the subscriber was absolved. This would enable authorized carriers to provide a refund or credit to slammed subscribers while keeping the amount they would have received in the absence of an unauthorized change. This could affect small entities that engage in slamming.

37. *Resellers and CICs*. The Commission proposes to require switchless resellers to obtain their own CICs, to obtain pseudo-CICs, or to have the facilities-based reseller modify its billing systems. These proposals are intended to address the confusion that occurs because switchless resellers have the same CIC as their underlying facilities-based carriers. These proposals would probably impose additional costs on switchless resellers, most of whom are small entities.

38. *Independent Third Party Verification*. Although specific rules are not proposed to modify the independent third party verification process, which could be used by small carriers, the Commission seeks comment on the definition of an independent third party verifier and on the content of the independent third party verification.

¹ Published in the Rules section of this issue.

39. *Internet Carrier Changes*. Although specific rules are not proposed, the Commission seeks comment on the extent to which the electronically-submitted Internet form could be considered a valid LOA in accordance with the verification procedures. The Commission also seeks comment on other procedures that might be appropriate to verify Internet carrier changes. This is in response to the need for standards among the widely varying Internet solicitation and verification practices being utilized by carriers, including small entities.

40. *Definition of "Subscriber."* Although no specific proposals were made, the Commission seeks comment on how the term "subscriber" should be defined, which may affect the marketing practices of small entities.

41. *Carrier Reports*. The proposed rules would also require each carrier to submit to the Commission a report on the number of slamming complaints that are submitted to that carrier by subscribers. Small carriers would not be exempt from filing this report. This would enable the Commission to learn about slamming entities as quickly as possible.

42. *Registration Requirement*. This rule proposes to require all interstate carriers to register with the Commission. The Commission seeks comment on requiring the registration to contain the carrier's business name(s); the names and addresses of all officers and principals; verification that such officers and principals have no prior history of committing fraud; and verification of the financial viability of the carrier. The Commission also proposes to revoke or suspend the operating authority of any carriers who fail to register or who provide false or misleading information in their registration. This would apply to all carriers, including small entities. The proposals are designed to prevent entry into the telecommunications marketplace by entities that are either unqualified or have the intent to commit fraud.

43. *Third Party Administrator for Preferred Carrier Changes and Preferred Carrier Freezes*. Although specific rules are not proposed, the Commission seeks comment on the implementation of a comprehensive system in which an independent third party would administer carrier changes, preferred carrier freezes, and verification. Several commenters support the use of an independent administrator, but failed to provide sufficient detail on the scope of its functions, how such a system would work, and how it would be funded.

v. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

44. *Liability Proposal.* Permitting authorized carriers to recover the additional amounts proposed from slamming carriers will make slamming unprofitable for carriers. If the carrier provides proof that it did not violate the Commission's rules, then it is not required to pay any penalty. All carriers, including small carriers, will benefit by the reduction in slamming that will result from the implementation of our proposals.

45. *Carrier Reports.* In order to reduce the burden on carriers, we seek comment on requiring the report to be filed only when complaints reach a threshold level, rather than requiring the report to be filed on a regular basis. We believe that the resulting investigations into slamming will reduce slamming and be beneficial to all carriers, including those carriers that are small entities.

46. *Registration Requirement.* The registration requirement proposal is not overly burdensome. This requirement should only burden carriers who have a history of fraud, in order to keep them from offering telecommunications services. As such, the proposal is narrowly tailored to impose only minimal burdens on other carriers.

47. *Resellers and CICs.* The Commission offers several options to resolve the problems with identification between switchless resellers and their facilities-based carriers. They range in expense and burden on carriers, so small carriers will have the opportunity to endorse the option that best suits their needs.

48. We invite parties commenting on this regulatory analysis to provide information as to the number of small businesses that would be affected by our proposed regulations and identify alternatives that would reduce the burden on these entities while still ensuring that consumers' telecommunications carrier selections are not changed without their authorization. Furthermore, in the event of a dispute between carriers under our liability provisions, the carriers involved in such disputes must pursue private settlement negotiations prior to filing a formal complaint with the Commission. As we stated in the IRFA of the *FNPRM*, we believe that the adoption of such a dispute mechanism will lessen the economic impact of a dispute on small entities.

vi. Federal Rules That May Overlap, Duplicate, or Conflict With the Proposed Rules

49. None.

J. Initial Paperwork Reduction Act of 1995 Analysis.

50. The Further Notice of Proposed Rulemaking portion of the *Order* contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in the Further Notice of Proposed Rulemaking portion of the *Order*, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on the Further Notice of Proposed Rulemaking; OMB comments are due April 19, 1999. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

K. Ex Parte Presentations

51. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.

L. Comment Filing Procedures

52. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before March 18, 1999, and reply comments on or before April 2, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

53. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of

an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply.

54. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th St., S.W., TWA-325, Washington, D.C. 20554.

55. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Kimberly Parker, Federal Communications Commission, Common Carrier Bureau, 2025 M Street, N.W., Sixth Floor, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 94-129); type of pleading (comment or reply comment); date of submission; and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

56. Written comments by the public on the proposed and/or modified information collections are due March 18, 1999. Written comments must be

submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before April 19, 1999. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 12th St., S.W., Room A1836, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

V. Conclusion.

57. In the *FNPRM*, we seek comment on several proposals to further strengthen our slamming rules, including a proposal to require unauthorized carriers to remit to authorized carriers certain amounts in addition to the amount paid by slammed subscribers, as well as proposals for preventing the confusion and slamming that results from resellers using the same CICs as their facilities-based carriers.

VI. Ordering Clauses

58. *It is ordered that a further notice of proposed rulemaking is issued.*

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

List of Subjects in 47 CFR Part 64

Communications common carriers,
Consumer protection,
Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

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