## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### 46 CFR Part 307

**[Docket No. MARAD–2000–7706]**

### AMVER Bulletin Availability; Technical Amendment

**AGENCY:** Maritime Administration, Transportation.

**ACTION:** Technical amendment.

**SUMMARY:** The Maritime Administration (MARAD) is updating information regarding an address change for the availability of the ''AMVER Bulletin''. The intended effect of this technical amendment is to provide accurate information for the availability of the ''AMVER Bulletin''. This technical amendment updates an address and is effective without delay because it is nonsubstantive.

**DATES:** Effective on August 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** Walter Lockland, Chief, Division of Operations Support, (202) 366–2629, Maritime Administration MAR–613, Room 2123, 400 7th St., SW., Washington, DC, 20590–0001, or you may send e-mail to: *walter.lockland@marad.dot.gov*.

**ADDRESSES:** This technical amendment is available for inspection with the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001, between 10 a.m. and 5 p.m. E.T. Monday through Friday, except federal holidays. You may also view this document via the Internet at http://dms.dot.gov by using the search function and entering the docket number [MARAD–2000–7706].

**SUPPLEMENTARY INFORMATION:**

#### Background

Operators of U.S.-flag oceangoing vessels in U.S. foreign trade and certain foreign-flag vessels must report on their locations pursuant to 46 CFR part 307 to enhance the safety of vessel operations at sea and provide a contingency for events of national emergency. AMVER means Automated Mutual-Assistance Vessel Rescue System operated by the U.S. Coast Guard. The ''AMVER Bulletin'' is available from the U.S. Coast Guard, AMVER Maritime Relations Office, Battery Park Building, New York, NY 10004.

Previously, the ''AMVER Bulletin'' was available from the U.S. Coast Guard at AMVER Center, Governors Island, New York, NY 10004. However, the U.S. Coast Guard base on Governors Island is closed. Therefore, we are updating the address to reflect the Coast Guard's change of location.

#### List of Subjects in 46 CFR Part 307

Marine safety, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

Accordingly, 46 CFR part 307 is amended as follows:

### PART 307—ESTABLISHMENT OF MANDATORY POSITION REPORTING SYSTEM FOR VESSELS

1. The authority citation for part 307 continues to read as follows:

**Authority:** Secs. 204(b), 212(A), 1203(a), Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b), 1122(a), 1283); Pub. L. 97–31; 46 CFR 1.66.

2. In § 307.13, revise the third sentence to read as follows:

**§ 307.13 Where to report.**

* * * The ''AMVER Bulletin'' is available from AMVER Maritime Relations Office, U.S. Coast Guard, Battery Park Building, New York, NY 10004. * * *

Dated: July 27, 2000.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 00–19368 Filed 8–2–00; 8:45 am]

**BILLING CODE 4910–81–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 0, 1, and 64

**[CC Docket No. 94–129; FCC 00–135]**

### 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:** This document amends certain liability rules, grants in part petitions for reconsideration of our Slamming proceeding. We believe these modifications will strengthen the ability to deter slamming, while addressing concerns raised with respect to our previous administrative procedures.

**DATES:** Effective September 5, 2000, except for §§ 1.719(a) through (d), 64.1110(a) and (b), 64.1140(a) and (b), §§ 64.1150(a) through (d), 64.1160(b) through (f), and 64.1170(b) through (f), which contain information collection requirements that have not 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.

**FOR FURTHER INFORMATION CONTACT:** Michele Walters, Associate Division Chief, Accounting Policy Division, Common Carrier Bureau, (202) 418–7400.

**SUPPLEMENTARY INFORMATION:** This is a summary of a Commission's Order in CC Docket No. 94–129 released on May 3, 2000. 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

1. In our Second Report and Order and Further Notice of Proposed Rulemaking (Section 258 Order), 64 FR 7763 (February 16, 1999) we adopted rules to implement section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act). The goal of section 258 is to eliminate the practice of ''slamming,'' which is the unauthorized change of a subscriber's preferred carrier. In the Section 258 Order, we adopted various rules addressing verification of preferred carrier changes and preferred carrier freezes. We also adopted liability rules designed to take the profit out of slamming. In this First Order on Reconsideration (Order), we amend certain of our liability rules, granting in part petitions for reconsideration of our Section 258 Order. Specifically, the revised rules provide for slamming disputes between consumers and carriers to be brought before appropriate state commissions, or this Commission in cases where the state has not opted to administer our rules, rather than to authorized carriers. In light of this decision, we deny a petition filed by several long distance carriers seeking waiver of the slamming liability rules and proposing an industry-sponsored slamming liability administrator. In this order, we also modify the liability rules that apply when a consumer has paid charges to a slamming carrier. In such instances, our new rules require slamming carriers to pay out 150% of the collected charges to the authorized carrier, which, in turn, will pay to the consumer 50% of his or her original payment. Finally, the order sets forth certain notification requirements to

facilitate carriers' compliance with the liability rules. We believe these modifications will strengthen the ability of our rules to deter slamming, while addressing concerns raised with respect to our previous administrative procedures.

**II. Discussion**

*A. Absolution*

1. Retaining Limited Absolution

2. We restate our conviction that the limited absolution of consumer charges ordered by our slamming rules is essential to deterring slamming. By depriving unauthorized carriers of slamming revenues in the first instance, absolution takes the profit out of this illegal practice. Several petitioners and commenters, including all of the groups representing consumer and state interests, agree that absolution is ''a reasonable and practical extension of the statutory intent reflected in section 258 that the slamming carrier not be allowed to keep any of its ill-gotten gains.'' The only commenters who oppose absolution are carriers that would be subject to the more stringent liability created by these rules.

3. As detailed in the Section 258 Order, we concluded that more aggressive slamming liability rules are essential because our previous rules had failed to stem the growth of slamming. As we summarized in that order:

> * * * our experience in this area leads us to the inescapable conclusion that slamming has become a profitable business for many carriers. For this reason, the rules we adopt in this *Order* not only seek to strengthen the existing verification rules, but are more broadly designed to prevent carriers from making any profits when they slam consumers * * * the strongest incentive for such carriers to implement strictly our verification rules is to know that failure to comply may mean that they will not get paid or any services rendered after such an unauthorized switch.

4. Accordingly, we reject the arguments of those long distance carriers that assert we failed to explain our departure from the slamming liability policies adopted in the 1995 Order, 60 FR 35846 (July 12, 1995). Under those previous rules, consumers remained obligated to pay charges to their slamming carriers in the amount they would have paid their authorized carriers absent the unauthorized change. Several commenters quote piecemeal from the 1995 Order to support their argument that our current approach to slamming liability is inexplicably inconsistent. We note, however, that those commenters fail to include in their filings the cautionary language in that order. In particular, the Commission there specifically warned that absolution might be an appropriate rule if the prior rules failed to abate the growth of slamming:

> Despite the compelling arguments of those favoring total absolution of all toll charges from unauthorized IXCs, we are not convinced that we should, as a policy matter, adopt that option at this time * * * We recognize, however, that [liability limited to re-rating] may not be the best deterrent against slamming. Some IXCs engaging in slamming may not be deterred unless all revenue gained through slamming is denied them. At this time, we believe that the equities tend to favor the ''make whole'' remedy and therefore support the policy of allowing unauthorized IXCs to collect from the consumer the amount of toll charges the consumer would have paid if the PIC had never been changed * * * However, we recognize that if ''slamming'' continues unabated—perhaps through abuses in areas other than the use of the LOA—we may have to revisit this question at a later date.

5. As noted, the number of slamming complaints processed by this Commission have more than doubled since adoption of the 1995 Order. The state commissions, which cumulatively receive a larger share of slamming complaints than this Commission, have seen a similar growth. Thus, consistent with our previous warning, and in light of the need for stronger and more effective deterrents to slamming, we are convinced that absolving consumers of liability for charges incurred over a limited time-period is now the appropriate policy. We point out that consumer groups and states support absolution from slamming charges as an effective method of deterring slamming. Indeed, many states have adopted absolution as a remedy for their own consumers.

6. As we stated in the Section 258 Order, absolution minimizes slamming carriers' physical control over slamming revenues, and thereby minimizes the incentive to slam consumers. The Commission has seen several cases in which slamming carriers went out of business or declared bankruptcy after the Commission or state enforcement agencies detected their illegal activities. Such evasion has made it difficult to provide restitution to injured consumers. Accordingly, it is important to deprive a slamming carrier of slamming revenues in the first instance.

7. Our absolution rules also place appropriate incentives on both consumers and carriers. They encourage consumers to scrutinize their telephone bills immediately and carefully. In doing so, absolution engages the general public in detecting slamming. Absolution also provides carriers with the incentive to verify all carrier changes properly, in order to protect themselves against any possible inappropriate consumer claims of slamming. The rules will motivate carriers not only to comply strictly with our verification procedures, but also to use methods that provide convincing proof of a subscriber's authorization.

8. Finally, limited absolution compensates a slammed subscriber, at least in part, for the inconvenience and frustration that results from an unauthorized change. In our extensive experience handling slamming complaints since the 1995 Order, it has become evident that consumers often experience a high level of confusion upon being slammed. After discovering the unauthorized change, consumers frequently have great difficulty in returning to their authorized carriers and in getting their telephone bills adjusted correctly. Indeed, as long as slamming carriers continue to receive payment, they have little incentive to be responsive to consumer complaints. Therefore, absolution also furthers Congress' desire to ''provide that consumers are made whole.''

9. As stated previously, the only parties that oppose the concept of absolution are the carriers themselves. States and consumer groups overwhelmingly support absolution as the best method to deter slamming. We are unpersuaded by the arguments of TRA and others that our absolution rule is inconsistent with the provisions of section 258 requiring slamming carriers to reimburse authorized carriers for forgone revenue. As we explained in the Section 258 Order, we believe that our absolution remedies are complementary to the congressional scheme and not inconsistent. The language of section 258 does not mandate that slammed consumers pay either the authorized or the unauthorized carrier. Rather, by its terms, section 258(b) applies only when a consumer in fact has made a payment. Furthermore, section 258 specifically states that its remedies are ''in addition to any other remedies available by law.'' We emphasized in the Section 258 Order that the authorized carrier is free to seek compensation for lost profits or other damages in proceedings against the slamming carrier before the Commission or in a state or federal court. Furthermore, our rules do not deprive the authorized carrier of all charges incurred by the subscriber. The subscriber only receives absolution for service provided during the first 30 days after being slammed. The authorized carrier is entitled to collect charges for service provided after the first 30 days,

even though that service was provided by the slamming carrier.

2. Time Period for Absolution

10. We decline to extend the absolution period beyond the 30-day limit, as suggested by several petitioners, because we find that the 30-day limit strikes a reasonable balance between the interests of consumers and carriers. We find that the period of absolution should be limited in order to give consumers the incentive to look at their bills promptly and not to delay reporting slams. We also find that the time limitation should be tied to an event that is verifiable and easily tracked, such as the date a slam occurs, rather than an event that is not verifiable, such as the date the consumer notices an unauthorized change. Accordingly, we retain the limitation that absolution is only available for charges incurred within the first 30 days after the unauthorized change.

11. Furthermore, as explained in the Section 258 Order, we will grant waivers where special circumstances warrant a longer period of absolution, such as where the subscriber's telephone bill does not provide reasonable notice of a carrier change. We disagree with NTCA's contention that we should extend the time period for absolution because the waiver process is not a practical solution for consumers. NTCA's viewpoint appears to be based on the assumption that large numbers of consumers will be unable to detect carrier changes on their telephone bills. We acknowledged in the Truth-In-Billing proceeding that unclear telephone bills can prevent customers from recognizing that their carrier of choice has been switched. The principles adopted in that order address these concerns by requiring telephone bills to highlight when a consumer's preferred interLATA or intraLATA carrier has been changed. Our Truth-In-Billing Order also requires that telephone bills contain clear and conspicuous disclosure of consumer inquiry information, enabling consumers to report slamming and begin the process of returning to their authorized carrier. Accordingly, in the future, consumers should be better-equipped to detect and respond to unauthorized carrier changes. We also note that deliberate efforts by a carrier to conceal an unauthorized carrier switch may be the basis for extending the 30-day limit, and may also warrant additional enforcement action by the Commission.

*B. Liability Where Consumer Has Paid Unauthorized Carrier*

12. Frontier has requested reconsideration of the requirement in the Section 258 Order that an authorized carrier that collects slamming proceeds from an unauthorized carrier remit to the subscriber the difference between what the subscriber paid the unauthorized carrier and what he would have paid the authorized carrier absent a slam. Frontier asserts that this ''re-rating'' requirement is inconsistent with the specific statutory language of section 258, which mandates that the unauthorized carrier ''shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation.''

13. In the Section 258 Order, we concluded that requiring authorized carriers to remit to the subscriber amounts in excess of what they would have received but for the slam was consistent with the statute and the Congressional intent underlying section 258. Pointing to the language of the legislative history specifically directing that the Commission's rules implementing section 258 ''should also provide that consumers be made whole,'' we concluded that Congress intended that subscribers who pay for slamming charges should pay no more than they would have paid their authorized carrier for the same service had they not been slammed. We also noted in the Section 258 Order that such a rule was consistent with existing Commission policy requiring slamming carriers to refund to subscribers amounts in excess of what the subscriber would have paid its preferred carrier; while the interpretation proffered by Frontier on reconsideration would leave consumers worse off than before passage of the legislation.

14. On reconsideration of this issue, we have considered comments filed in response to the Further Notice of Proposed Rulemaking (FNPRM) in this proceeding. Among the issues raised in the FNPRM, we asked whether we had authority under section 258 or other provisions of the Act to require the unauthorized carrier to pay to the authorized carrier double the amount of charges paid by the subscriber during the first 30 days after a slam, with the authorized carrier then remitting one-half that amount back to the subscriber. The modified liability approach we adopt here is a variation on that proposal in that it requires unauthorized carriers to disgorge more than the amount collected from the subscriber in order to compensate both the subscriber and the authorized carrier. In light of the comments received on the FNPRM and petitions for reconsideration, we now adopt a different liability scheme, for cases where the subscriber has paid charges to the unauthorized carrier, that we conclude more fully implements the congressional intent underlying section 258. Specifically, we now establish a remedy that both allows the authorized carrier to retain an amount of money equal to ''all charges paid by the subscriber'' to the unauthorized carrier, and also ensures that subscribers are ''made whole'' by reimbursing them the amount they paid in excess of what they would have paid their preferred carrier absent the slam (or a proxy for such amount). Thus, once a state commission or the FCC has made a finding that a slam has occurred, the unauthorized carrier will be required to disgorge to the authorized carrier an amount adequate to satisfy both of these obligations. As discussed, we find that an appropriate proxy for this harm is 150% of the amounts collected by the unauthorized carrier from the subscriber following a slam. Upon receipt of this money, the authorized carrier will then be required to remit one-third of this amount (*i.e.,* 50% of what the subscriber paid to the unauthorized carrier) to the injured subscriber.

15. We specifically reject Frontier's petition to the extent it asserts that any re-rating of the consumers' bill would be inconsistent with the statute. To the contrary, Frontier's interpretation would completely ignore the congressional intent that consumers be ''made whole,'' by leaving consumers that pay money to an unauthorized carrier having paid more than they would have paid absent the slam. Even setting aside any time and expense incurred by the consumer in remedying the slam, such an approach cannot be considered making the subscriber ''whole'' in any meaningful sense. We note, in particular, that many of the long distance carriers favoring reconsideration of the absolution requirement apparently agree that the dual Congressional intent of section 258 mandates that slammed consumers should pay no more than they would have paid absent the slam.

16. We conclude that the approach we adopt here is both authorized by section 258, and is the most appropriate method for satisfying the dual congressional purposes reflected in the legislative history. The specific language of section 258 provides that the unauthorized carrier shall be liable to the authorized carrier for all amounts collected from the subscriber. As Frontier asserts, a

reasonable interpretation of this language is that Congress intended for the authorized carrier to retain all such amounts, even though they likely will be more than the authorized carrier would have received from the subscriber absent a slam. Such a bonus may serve as additional incentive for the authorized carrier to go after the unauthorized carrier to collect these amounts, thereby acting as an additional disincentive to slamming. Section 258 also specifically provides that this remedy is ''in addition to any other remedies available at law.'' One such remedy that assuredly is available is the ability of consumers to bring a claim to the Commission or in federal court, or where allowed under state law to the state commissions, for damages due to slamming. For example, pursuant to sections 206–208 of the Act, a consumer bringing a complaint is entitled to actual and consequential damages following a finding of a slam. Indeed, prior to the Section 258 Order, Commission orders compensated slammed consumers by requiring slamming carriers, pursuant to sections 201(b) and 208 of the Act, to refund to the subscriber any amounts paid to the slamming carrier in excess of what he would have paid his preferred carrier absent the slam. Our modified liability requirements thus satisfy the congressional mandate of making consumers ''whole,'' by retaining the availability of other existing remedies to ensure that subscribers pay no more for service than they would have but for being slammed. Accordingly, we find that the modifications to our liability rules adopted here most fully satisfy the dual congressional mandate of section 258. Thus, our decision to require the slamming carrier to disgorge 150% of the amount paid to it by the subscriber relies on our section 258 authority only with respect to that provision's express permission for the Commission to use ''any other remedies available by law.''

17. We note that, in response to the FNPRM, some carriers assert that we do not have jurisdiction to require the unauthorized carrier to disgorge more than it collected from the subscriber because this would result in punitive damages not authorized by the Act. We disagree. Even if such damages can be considered punitive, rather than purely compensatory, any punitive aspect arises from the specific statutory provision providing that the authorized carrier is entitled to amounts over and above what it would have collected if the slam had not occurred. The amount going to the subscriber, on the other hand, is no more than compensatory, and well within the range of relief authorized in other statutory provisions. As the statute specifically authorizes this additional liability to the authorized carrier, we find that it is clearly within our jurisdiction.

18. Finally, as noted, we find that 50% of the amount collected from the subscriber by the unauthorized carrier is an appropriate proxy for re-rating that also responds to concerns raised by the carriers that actual re-rating is administratively difficult and expensive. Frontier, for example, argues that obtaining the necessary call detail from the offending carrier, collecting the revenues from the offending carrier, re-rating calls, and remitting the difference to affected customers is a time-consuming, manual and expensive process. Other long-distance carriers similarly argue that administrative systems (such as electronic interfaces between carriers) would have to be developed to allow for accurate re-rating, imposing costs on the authorized carrier that has not been accused of slamming. In response to this perceived difficulty, the long-distance carriers themselves (including Frontier and MCI) have argued in conjunction with the Joint Waiver Petition that the Commission should provide carriers the option of refunding 50% to the subscriber, rather than requiring them to engage in an actual calculation of the amount paid by the subscriber in excess what he would have paid his preferred carrier. These carriers assert that such a proxy fully compensates the subscriber while not requiring the carriers to engage in a difficult and expensive comparison of rates of other carriers. As discussed more thoroughly, we agree that this is an appropriate remedy for these purposes and will significantly simplify the flow of money from the unauthorized carrier to the authorized carrier and subscriber.

*C. Administration of the Slamming Liability Rules*

1. Forum for Administration of Slamming Liability Rules

19. In the Section 258 Order, we set forth rules that imposed on authorized carriers certain responsibilities for resolving disputes between subscribers and allegedly unauthorized carriers. Recognizing that other alternatives might better serve consumer interests under our slamming liability scheme, however, we agreed to entertain requests for waiver of our rules if carriers implemented an independent third party administrator to discharge carrier obligations for resolving slamming disputes. We specified that such a proposal should give consumers a single point of contact to resolve slamming problems and provide consumers with a neutral forum for resolving disputes regarding slamming liability. On March 30, 1999, a coalition of interexchange carriers filed a Waiver Petition proposing a plan for an industry-funded third party to administer our slamming liability rules. On April 20, 1999, state commissions, through the National Association of Regulatory Utilities Commissions (NARUC), filed a letter asserting that they are well-equipped to handle slamming complaints and requesting that the Commission consider allowing them to be the primary adjudicators of slamming disputes. NARUC argues that the state commissions are more appropriate than the industry's proposed third-party administrator to execute our slamming liability provisions because the states have existing, neutral, and comprehensive mechanisms to handle slamming disputes.

20. We conclude that it is in the public interest to have state commissions, rather than a third party designated by carriers, perform the primary administrative functions of our slamming liability rules. In fact, it appears to be both appropriate and effective to establish this type of alliance with the states. The language of Section 258 itself contemplates a state and federal partnership to deter slamming. In addition, the states and the Commission have been working together for some time to share information and develop new and creative solutions to combat slamming. For example, the State and National Action Plan (SNAP), comprising staff from NARUC, the FCC, and the National Regulatory Research Institute, regularly meet to develop joint public information strategies to increase awareness of telecommunications issues affecting consumers, coordinate enforcement actions to protect consumers against abuses in the telecommunications marketplace, and coordinate regulatory initiatives. Joint state-federal activities have been very effective in protecting consumers against various types of telecommunications fraud. It is imperative that the states and the FCC continue to cooperate, and expand their interaction, in order to eradicate slamming.

21. We also find that the state commissions are, for several reasons, more appropriate for resolving slamming disputes than the administrator proposed by the long distance carriers. We agree with NARUC that the states are particularly well-

equipped to handle complaints because they are close to the consumers and familiar with carrier trends in their region. As NARUC describes, establishing the state commissions as the primary administrators of slamming liability issues will ensure that ''consumers have realistic access to the full panoply of relief options available under both state and federal law. . . .'' Moreover, state commissions have extensive experience in handling and resolving consumer complaints against carriers, particularly those involving slamming. In fact, the General Accounting Office (GAO) has reported that all state commissions have procedures in place for handling slamming complaints, and that those procedures have been effective in resolving such complaints. We specifically note that at present more than 35 states have committed to provide the resources necessary to resolve slamming disputes in a timely and fair manner.

22. Based upon these representations and the proven track record of customer satisfaction, we conclude that state commissions have the ability and desire to provide prompt and appropriate resolution of slamming disputes between consumers and carriers in a manner consistent with the rules adopted by this Commission. In most situations, state commissions will be able to provide consumers with a single point of contact for each state, thereby enabling slammed consumers to rectify their situations, receive refunds, and get appropriate relief with one phone call. State commissions also will be able to provide consumers and carriers with timely processing of slamming disputes. Finally, but of critical importance, states will provide a neutral forum for the resolution of slamming disputes. As noted, this was one of the essential criteria we set forth for the approval of a slamming liability administrator. We do not conclude here that an industry-sponsored administrator could not act as a ''neutral'' adjudicator of disputes between carriers and consumers. Nonetheless, we are troubled by the concerns raised by several consumer groups that such an entity would be perceived by consumers as biased in favor of carriers. The slamming liability rules are intended to protect consumers, and the effectiveness of any administrative mechanism we select will be dependent upon consumers having confidence in the fairness and impartiality of the process. We agree with the arguments of NARUC that state commissions will be perceived by consumers as more ''neutral'' adjudicators of disputes than the third-party administrator proposed by the interexchange carriers.

23. We recognize, however, that not all states have the resources to resolve these slamming complaints, or may choose not to take on this primary responsibility. Consumers in these states accordingly may seek resolution of their slamming disputes by filing a complaint with this Commission. To provide consumers who opt to file complaints with this Commission the full complement of rights and remedies contemplated by this order, we are amending our own rules for the adjudication of slamming complaints.

24. Our conclusion that states should have primary responsibility for administering our slamming liability rules shall not preclude a consumer from electing to file a slamming complaint with this Commission. In cases where the state has indicated it will administer our rules, however, this Commission will refer informal complaints to the appropriate state commission for resolution, unless the complainant expressly indicates it wishes to have the matter resolved by this Commission. This Commission will not adjudicate a complaint based on an allegation of slamming while the complainant has a complaint arising from the same set of facts pending before a state commission that has opted to administer our slamming rules. Additionally, these rules do not preclude the filing of a petition for declaratory ruling alleging that a state has improperly implemented our verification or liability rules. Finally, nothing in these procedures is intended to abrogate any party's right to pursue relief for a slamming violation in state or federal court.

3. Administrative Procedures

*a. State Notification of Participation in Adjudication of Complaints.*

25. To ensure full and seamless administration of complaints among this Commission and the states, each state commission that chooses to take on the primary responsibility for resolving consumer slamming complaints must notify this Commission of the procedures it will use to adjudicate individual slamming complaints on the effective date of these revised rules. Each state commission's notification should explain how consumers may file complaints (including where the complaint is to be filed, what if any filing fees a consumer must pay, and what documentation a consumer must provide in its complaint), any and all deadlines parties must adhere to that are shorter than those explicitly stated in these rules, what safeguards exist to ensure procedural fairness to consumers and carriers, and what rights parties have to appeal an initial decision.

26. If, after the effective date of these rules, additional states opt to administer complaints under the rules, they may do so by filing such notification in the captioned docket and sending a copy to the Chief of the FCC Consumer Information Bureau. In addition, state notification of an intention to discontinue administering complaints under the rules shall be filed in the captioned docket, with a copy of such notification provided to the Chief of the FCC Consumer Information Bureau.

*b. Preliminary Consumer Relief is Granted upon Slamming Allegation.*

27. We retain the requirement that an alleged unauthorized carrier must remove all charges assessed for the first 30 days of services from a subscriber's bill upon the subscriber's allegation that he or she was slammed. Several carriers state that the allegation of a slam should not trigger preliminary relief because many slamming complaints will turn out to be invalid or fraudulent. As we explained in the Section 258 Order, the fact that a subscriber can only be absolved of liability if he or she has in fact been slammed minimizes our concerns about fraud by consumers. In accordance with the revised rules described, if a carrier is able to produce proof of verification, it is entitled to receive full payment from the subscriber for all services provided. Our rules will motivate carriers to comply strictly with our verification procedures to protect themselves from inappropriate claims of slamming. We also explained in the Section 258 Order that the absolution remedy we adopted provides an easily administered remedy for consumers who have been slammed. The absolution remedy would not be as effective if the consumer had to pay for slamming charges in the first instance; we have emphasized repeatedly how essential it is to minimize the opportunity for unauthorized carriers to physically take control of slamming profits for any period of time. Accordingly, our rules will continue to require that, upon an allegation of a slam, the alleged unauthorized carrier must remove all charges assessed for the first 30 days of service immediately from the subscriber's bill.

28. Our retention of the requirement that an alleged unauthorized carrier must remove all charges assessed for the first 30 days of service from a subscriber's bill upon the subscriber's allegation that he or she was slammed, along with our modification of the administration procedures, creates the

need for an additional administrative rule. Specifically, because the subscriber receives preliminary relief pending a final determination of whether or not a slam occurred, our rules need to ensure that the subscriber benefiting from the relief promptly files a complaint with the state commission (or the FCC), thus giving the alleged unauthorized carrier an opportunity to provide proof of verification. Therefore, we modify our rules to require that the allegedly unauthorized carrier notify the subscriber that it must file a complaint with the appropriate state commission (or the FCC) within 30 days of the date it notifies the allegedly unauthorized carrier that a slam occurred, or be subject to re-billing for charges incurred. The allowance of such re-billing does not, however, prohibit the subscriber from subsequently filing a complaint alleging that a slam occurred with the state commission (or the FCC) and proceeding in accordance with the Commission's rules.

*c. General procedures.*

29. As discussed, when an allegedly unauthorized carrier is informed by a subscriber of an alleged slam, that carrier is required to remove charges for the first 30 days of service from the subscriber's bill. The subscriber must then file a complaint with a state commission (or the FCC) seeking a factual determination that a slam occurred. We recognize that some carriers may choose to make it their practice not to challenge allegations of slamming and to provide subscribers who allege a slam has occurred with all the relief to which they would be entitled under our rules. We do not intend for these rules to discourage carriers from providing subscribers with the most expedient relief possible. Accordingly, where an allegedly unauthorized carrier chooses to not challenge the allegation of a slam and provides the subscriber alleging that a slam occurred with all the relief to which the subscriber would be entitled pursuant to our rules, had the subscriber prevailed on a slamming complaint, the allegedly unauthorized carrier shall inform the subscriber of the remedies our rules provide and that the subscriber has the option of filing a complaint with the appropriate state commission (or the FCC) if the subscriber is not satisfied with the resolution of its dispute with the carrier.

30. We require any carrier that is informed by a subscriber of a slam to direct each unsatisfied subscriber to the proper state commission (or the FCC) for resolution of the slamming problem and inform such unsatisfied subscriber of all the relevant filing requirements. We conclude that this will achieve one of our objectives for a slamming liability administrator set forth in the Section 258 Order—minimizing the effort consumers must expend to resolve slamming disputes. We also expect that the states that have sufficient resources will launch public information campaigns to inform consumers of their rights and responsibilities with regard to slamming liability. We anticipate a productive state and federal partnership in this effort. Additionally, in order to fulfill our responsibilities under section 258 of the Act and to assist our enforcement efforts, we will require states that choose to administer the Commission's rules to regularly file information with the Commission that details slamming activity in their regions. Such filings should identify the number of slamming complaints handled, including data on the number of valid complaints per carrier; the identity of top slamming carriers; slamming trends; and other relevant information. Such reports will help the Commission to identify appropriate targets for slamming enforcement actions, such as forfeiture or section 214 revocation proceedings.

31. We also revise our rules to add a notification requirement to facilitate the administration of long distance slamming complaints. SBC, AT&T, and Sprint state that, because our rules lack a notification requirement that would enable carriers to learn each others' identity, the carriers involved in a slamming incident might not be able to take appropriate action against each other. Furthermore, this notification issue was also raised in the MCI WorldCom Motion for Stay filed with the D.C. Circuit. We will require an executing carrier who is informed of a slam by the subscriber to immediately notify both the authorized and alleged unauthorized carriers of the incident, including the identity of each carrier involved. We note that the industry has already taken steps to facilitate the transfer of this information between carriers. We agree that a notification requirement is important to the correct functioning of the liability mechanism. Requiring the LEC to notify both the authorized and the alleged unauthorized carriers of the other's identity in a slamming incident will enable the unauthorized carrier to forward appropriate amounts collected from the subscriber if it is determined that a slam occurred. This will also enable the authorized carrier to bring appropriate actions, such as a complaint before a state commission (or the FCC), against the unauthorized carrier should the unauthorized carrier fail to fulfill its responsibilities to the authorized carrier.

32. Upon receipt of a slamming complaint, the state commission (or this Commission if the complainant is from a non-participating state or has expressly indicated that it wants this Commission to resolve its complaint) will notify the allegedly unauthorized carrier of the slamming complaint and ensure that the carrier removes immediately all unpaid charges from the subscriber's bill, if it has not done so already. Within 30 days after notification of the slamming complaint, or such lesser time as required by the state commission, the alleged unauthorized carrier shall provide to the state commission (or the FCC) a copy of the valid proof of verification of the carrier change. This proof of verification should contain clear and convincing evidence that the subscriber knowingly authorized the carrier change, such as a written Letter of Agency (LOA) or an audiotape of an independent third party verification. The state commission (or the FCC) will make a determination on whether a slam occurred using proof supplied by the allegedly unauthorized carrier and any evidence supplied by the subscriber.

33. The following review procedures apply when a state commission has resolved a slamming complaint. Challenges to the factual determinations made by a state commission applying our rules shall be made in accordance with the relevant review provisions that are applicable to each state commission. Challenges to whether a state commission's process for resolving slamming complaints are consistent with this order must be brought to the FCC in the form of a petition for declaratory ruling. The following review procedures apply when the staff of this Commission has resolved a slamming complaint. A subscriber seeking to challenge the FCC staff's determination of whether a slam occurred may file a formal complaint against the allegedly unauthorized carrier in accordance with our formal complaint rules. An allegedly unauthorized carrier seeking to challenge the FCC staff's determination of whether a slam occurred may file a petition for declaratory ruling with this Commission.

*d. Where the subscriber has not paid charges.*

34. The following procedures shall apply when the subscriber has not paid charges to the allegedly unauthorized carrier. If the state commission (or the FCC) determines that the carrier change was authorized, the carrier may re-bill the subscriber for

charges incurred. If the state commission (or the FCC) determines that the subscriber was slammed, then the subscriber is entitled to absolution from the charges incurred during the first 30 days after the slam occurred, and the carrier may not pursue any collection actions against the subscriber to recover these charges.

35. If the subscriber has incurred charges for more than 30 days after the slam occurred, then the unauthorized carrier shall forward to the authorized carrier the billing information for service provided from the 31st day after the slam occurred through the date the unauthorized carrier stopped providing service. The authorized carrier has the option of billing the subscriber for calls made after the first 30 days after the slam at the rates the subscriber would have paid the authorized carrier absent the slam. After receiving billing information from the unauthorized carrier, the authorized carrier may re-rate such service according to its own rates and then bill the subscriber for such service. If the authorized carrier so chooses, rather than actually re-rating the service provided by the unauthorized carrier, it may bill the subscriber in accordance with a 50% proxy rate. In other words, it may bill the subscriber for 50% of the rate the unauthorized carrier would have charged. If the subscriber believes, however, that paying 50% results in a greater charge than re-rating to the authorized carrier's rates, at the request of the subscriber, the authorized carrier shall perform actual re-rating.

36. We note that we do not necessarily agree with the carriers' assessment of the administrative difficulty of re-rating. Although the carriers admit that the only information needed for re-rating is the length and time of the call, they fail to explain why the re-rating process, as described in the Section 258 Order, would require ''electronic systems that interconnect with other carrier's billing and usage systems, so that they can exchange relevant price and call data electronically.'' Indeed, the carriers admit that manual re-rating can be easily accomplished for any particular complainant. Nevertheless, we permit authorized carriers to have the option of using a 50% proxy because the carriers assert that re-rating is an administrative burden, and because we are persuaded that a 50% proxy will generally yield a reasonable and fair result for the subscriber. Giving carriers this option will ensure that, in most cases, the authorized carrier is able to collect charges without having to perform re-rating and that the subscriber will receive adequate compensation.

*e. Where the subscriber has paid charges.*

37. The following procedures shall apply when the subscriber does not discover a slam until after he or she has already paid charges to the alleged unauthorized carrier. As explained in the Section 258 Order, section 258 requires the unauthorized carrier to pay the authorized carrier any charges collected following an unauthorized switch. We concluded in that order that this provision of the statute prevents us from providing absolution to slammed subscribers who have already paid charges to their unauthorized carriers.

38. As explained, however, we have herein modified the liability rules applicable in cases where the consumer has paid charges to the unauthorized carrier in order to more fully implement the dual goals of section 258 of compensating both the subscriber and the authorized carrier. Pursuant to this modified liability scheme, a carrier found to have slammed will be required to disgorge to the authorized carrier 150% of the amounts collected by that slamming carrier from the subscriber. Accordingly, when the state commission (or the FCC) determines that the alleged unauthorized carrier did slam the consumer, then it shall direct such carrier to forward to the authorized carrier 150% of (or one and one-half times) all amounts collected from the subscriber, as well as a copy of the customer's bill for the amounts paid. Upon receipt of these charges from the unauthorized carrier, the authorized carrier shall remit (either directly or through bill credits) one-third of this amount to the subscriber. As explained, this amount, which equals 50% of the charges paid by the subscriber to the unauthorized carrier, constitutes a reasonable proxy for the damages sustained by the subscriber, while not requiring the authorized carrier to engage in the arguably difficult and expensive task of actually re-rating the subscriber's bill. The authorized carrier shall also notify the state commission (or the FCC) that it has paid this amount to the subscriber. If the subscriber is failed to be made whole by the 50% proxy, the subscriber may ask the authorized carrier to re-rate the unauthorized carrier's charges based on the rates of the authorized carrier and, on behalf of the subscriber, seek an additional refund from the unauthorized carrier, to the extent that the re-rated amount exceeds the 50% of all charges paid by the subscriber to the unauthorized carrier.

39. Finally, we note that if the authorized carrier does not collect any amounts from the unauthorized carrier, the authorized carrier is not responsible for providing refunds or credits to the subscriber. As explained in the Section 258 Order, the authorized carrier should not be, in effect, penalized for the wrongdoing of another carrier by having to pay a refund out of its own pocket. In such cases, of course, both the subscriber and the authorized carrier retain any other existing avenues to obtain relief from the unauthorized carrier.

*D. Waiver Petition*

40. As explained, petitioners filed a Waiver Petition setting forth a proposal for a third-party administrator to administer the liability aspects of the slamming rules. Petitioners seek a waiver of the following liability rules for those carriers electing to participate in the proposed third-party administrator plan: §§ 64.1100(c); 64.1100(d); 64.1170; and 64.1180. On April 8, 1999, the Commission issued a public notice seeking comment on the third-party administrator proposal. Because we believe that it is in the public interest for state commissions to undertake the responsibilities envisioned for the third-party administrator, we deny the waiver request.

41. Waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest. A waiver of the Commission's general rules may only be granted if such waiver would not undermine the policy underlying that general rule. Petitioners have failed to demonstrate that the third party administrator proposal is in the public interest. In evaluating whether a waiver of these rules is in the public interest, our overriding criterion is whether a waiver would further the policy goals of section 258 and our implementing rules: to protect the rights of consumers who are slammed and, ultimately, to eliminate this type of fraud.

42. We find that adopting the third-party administrator proposal would not be in the public interest because, as described, we have revised our rules to address many of the concerns that prompted the filing of the waiver petition. The Waiver Petition sets forth an alternative administration scheme that would place a neutral, industry-endorsed entity in the role of resolving disputes between alleged slamming carriers and subscribers.

43. In addition to the fact that the state commissions (or the FCC) will better serve the public interest in administering the slamming liability rules, the record demonstrates that

segments of the industry have failed to reach consensus on the operation and administration of a third-party administrator. The local exchange and long distance carriers disagree strongly on many important aspects of the third-party administrator proposal. In inviting the industry to submit proposals for a third-party administrator, the Commission did not anticipate that the third-party administrator would be a mandatory requirement for all carriers. We did contemplate, however, that a workable third-party slamming liability administrator would have broad acceptance among different segments of the industry as well as the states and consumer interest groups. As reflected in the comments, the proposal put forth by the petitioning long distance carriers has not engendered such broad support, particularly among state and consumer interest representatives. We find this discord troubling. Despite many months of discussion between the local exchange and long distance carriers, and despite input from consumer groups and the states, the Commission has seen these various groups settle more firmly into their disparate positions rather than moving closer to resolution.

44. This lack of comprehensive industry participation and consumer group support undermines several important potential benefits of the third-party administrator proposal. We find that the lack of consensus will prevent the third-party administrator from being the single point of contact for the consumer. Without local exchange carrier participation and support of the third-party administrator mechanism, we are concerned that local exchange carriers will have no incentive to refer consumers to the third-party administrator. Accordingly, consumers may continue to call several entities in order to resolve their slamming disputes, undermining one of the primary benefits of a third-party administrator identified in the Section 258 Order—providing a single point of contact for slammed subscribers. We have additional concerns that, if a substantial portion of the industry does not participate in the third party administrator process, the non-participants may be able to derail the time limits and other procedures set by the third-party administrator, resulting in the delayed resolution of slamming complaints.

45. We believe that our revised rules address the concerns raised in the Waiver Petition in a manner that more fully satisfies the criteria set forth in the Section 258 Order. Our revised rules provide for state commissions (or the FCC) to handle administration of our slamming liability rules, rather than imposing burdens on authorized carriers, as originally provided in the Section 258 Order. Furthermore, authorized carriers now have the option of using a 50 % proxy to calculate refunds and subscriber charges, rather than performing actual re-rating, as was prescribed in the Section 258 Order.

46. In sum, we conclude that our revised rules will protect consumers more effectively than the third-party administrator proposed by the long distance industry. Consumer interest groups disagree with many aspects of the third-party administrator proposal, contending that the administrator will not be neutral towards consumers. Accordingly, the revised rules provide that state commissions (or the FCC) will resolve slamming disputes, thereby alleviating any neutrality concerns. Based on the states' representations discussed, we find that the majority of states have the resources and knowledge to provide prompt and effective resolution of slamming disputes. For these reasons, the public interest favors adoption of the revised rules, which utilize appropriate state commissions as reliable, timely, and neutral dispute-resolution forums, rather than the proposed industry-sponsored third-party administrator.

## III. Procedural Issues

### *A. Supplemental Regulatory Flexibility Analysis*

47. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the First Further Notice of Proposed Rulemaking and Memorandum Opinion and Order and Order on Reconsideration. The Commission sought written public comment on the proposals in the Further Notice and Order, including comment on the IRFA. Based on comments received in the Further Notice and Order, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the Second Report and Order and Further Notice of Proposed Rulemaking. Petitions for Reconsideration and a Joint Petition for waiver of certain rules were filed in response to the rules adopted in the Section 258 Order. This present Supplemental Final Regulatory Flexibility Analysis (SFRFA) conforms to the RFA.

#### 1. Need for and Objectives of this Order and the Rules Adopted Herein

48. The goal of Section 258 of the Act is to eliminate the illegal practice of slamming—the unauthorized change of a subscriber's preferred carrier. Faced with over 20,000 slamming complaints a year from individuals and small businesses, the Commission created a comprehensive framework for combating slamming in the Section 258 Order by adopting rules to implement section 258 and strengthening existing anti-slamming rules. The cornerstone of that framework was a set of aggressive liability rules designed to take the profit out of slamming. In this Order, we make certain modifications to our liability rules, granting in part petitions for reconsideration of the Section 258 Order. The modifications are intended to resolve concerns raised in this proceeding and in the petitions for stay filed both with this Commission and with the D.C. Circuit.

#### 2. Summary of Significant Issues Raised by Public Comments

49. We received no petitions for reconsideration directly addressing issues in the previous FRFA.

50. *Re-Rating Rules.* Commenters contend that requiring each authorized carrier to perform a re-rating to determine the size of the refund to each slammed subscriber would place a complex and costly administrative burden on them. Although we do not necessarily agree with carriers about the dimensions of this burden, we believe that the 50% proxy that authorized carriers propose to give to their slammed subscribers will benefit consumers in most cases. In those instances where a subscriber does not believe that it will benefit from the 50% proxy, the subscriber may request an actual re-rating. In most circumstances, however, authorized carriers will be able to avoid the alleged burden.

51. *Creation of an industry-sponsored third-party administrator.* As discussed in this *Order,* some commenters proposed that slamming complaints be adjudicated by an industry-funded third-party administrator. These commenters aver that the third-party administrator would benefit consumers and industry alike by creating a single point of contact to resolve slamming complaints and simplifying the complaint process. We reject this proposal, and instead conclude that state commissions should perform the primary function in administering our slamming liability rules.

52. The benefit claimed by proponents of the third-party administrator was belied by the fact that no workable proposal was offered. Various industry segments disagreed on the form and workings of the proposed third-party administrator, and states and consumer groups expressed their

disapproval of, and lack of confidence in, the idea. The absence of consensus, and the accompanying possibility that a substantial portion of the industry would not participate in the third-party administrator, could result in greater confusion for consumers and authorized carriers. The system we adopt, which requires all carriers to forward complaints they receive to the appropriate governmental agency (in most cases, the state commission) will provide a more efficient and comprehensive mechanism for all parties, including small entities. Moreover, the experience, neutrality, and resources of state commissions make them well-equipped forums for resolving slamming complaints.

3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

53. 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. We further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

54. 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.

55. 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. 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.

56. We have included small incumbent LECs in this present RFA analysis. As noted, 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.

57. 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 or small ILECs 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 fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the new rules.

58. *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 or small ILECs. 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 fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the new rules.

59. *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 fewer than 1,348 providers of local exchange service are small entities or small ILECs that may be affected by the new rules.

60. *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 fewer than 171 small entity IXCs that may be affected by the new rules.

61. *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 fewer than 212 small entity CAPs and 10 other LECs that may be affected by the new rules.

62. *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 fewer than 24 small entity operator service providers that may be affected by the new rules.

63. *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 fewer than 615 small entity pay telephone operators that may be affected by the new rules.

64. *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 fewer than 388 small toll entity resellers and 54 small local entity resellers that may be affected by the new rules.

65. *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 fewer than 7,692,955 small entity 800 subscribers, fewer than 7,706,393 small entity 888 subscribers, and fewer than 1,946,538 small entity 877 subscribers may be affected by the new rules.

66. *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 fewer than 808 small cellular service carriers that may be affected by the new rules.

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

67. We analyze the projected reporting, recordkeeping, and other compliance requirements that may affect small entities.

68. *Liability Rules That Apply When a Subscriber Has Not Paid Charges.* Our liability rules retain the requirement that, upon allegation of a slam, the unauthorized carrier must absolve the subscriber of charges for up to thirty days following the slam, where the subscriber has not paid the unauthorized carrier. If the relevant governmental agency ultimately determines that the carrier change was authorized, and the limited absolution granted to the subscriber was therefore unwarranted, the carrier may re-bill the subscriber for charges incurred. The carrier has the option of re-rating the subscriber's calls from the unauthorized carrier's rates to the authorized carrier's rates using a 50% proxy, that is, reducing what the subscriber would have been billed by the unauthorized carrier by 50%. If, however, the subscriber would prefer an actual re-rating of the calls to the authorized carrier's rates, it can require that of the authorized carrier.

69. *Liability Rules That Apply When a Subscriber Has Paid Charges.* The revised liability rules require that, where the subscriber has paid the unauthorized carrier, the unauthorized carrier must forward 150% of the charges it collected from the subscriber to the authorized carrier. The authorized carrier will pay the subscriber one-third of that amount (50% of the original payment) and retain the remainder of the money received from the unauthorized carrier. Use of this proxy will reduce administrative burdens on carriers and, we believe, will adequately compensate most subscribers. When a subscriber believes that the 50% proxy refund or credit of the charges it paid is too low, it may request an actual re-rating from the authorized carrier and the authorized carrier may seek any additional money owed as a result of this actual re-rating from the unauthorized carrier.

70. *State Resolution of Most Slamming Complaints.* Designating appropriate state commissions, or this Commission, as the primary administrators of the slamming liability rules, rather than authorized carriers, is likely to reduce significantly the administrative burdens on carriers associated with these rules. Under this scheme, carriers must comply with certain notification requirements, listed. In addition, a carrier that is the subject of a slamming complaint must respond to the complaints filed with the relevant governmental agency, either the appropriate state commission or this Commission. If the carrier denies the alleged slam, it must provide the relevant governmental agency with evidence to refute the allegation, such as a valid carrier change authorization from the subscriber.

71. *Notification Requirements.* We revise our rules in this Order to add certain notification requirements to facilitate the resolution of slamming complaints. These include a requirement that, when an executing carrier (typically, the LEC that effects a carrier change) learns about an alleged slam, it must immediately notify both the authorized and alleged unauthorized carriers of the slamming allegation and the identities of the carriers involved. Requiring the LECS to notify the authorized and alleged unauthorized carriers of each others' identities will enable the unauthorized carrier to forward to the authorized carrier all amounts needed to satisfy the remedies this Order requires.

72. The revised rules also add a requirement that an allegedly unauthorized carrier that chooses not to challenge the allegation of a slam and provides the subscriber with all the relief to which the subscriber would be entitled pursuant to our rules, had the subscriber prevailed on a slamming complaint, must inform the subscriber of the remedies our rules provide. In addition, that carrier must inform the subscriber that it has the option to file a complaint with the appropriate state commission, or this Commission, if the subscriber is not satisfied with the resolution of its dispute with the carrier.

73. Under the revised rules, any carrier that is informed by a subscriber of a slam must direct each unsatisfied subscriber to the proper state commission, or this Commission, for resolution of the slamming problem and inform such unsatisfied subscriber of all the relevant filing requirements. To execute this notification requirement, carriers will be obligated to periodically request from this Commission a list of states that have opted to administer federal slamming rules. This modest notification requirement will help achieve an important objective: minimizing the effort consumers must expend to resolve slamming disputes.

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

74. *Liability Rules That Apply When a Subscriber Has Not Paid Charges.* Our liability rules retain the requirement that, upon allegation of a slam, the unauthorized carrier must absolve the subscriber of charges for up to thirty days following the slam, where the subscriber has not paid the unauthorized carrier. If the relevant governmental agency ultimately determines that the carrier change was authorized, and the limited absolution granted to the subscriber was therefore unwarranted, the carrier may re-bill the subscriber for charges incurred. The carrier has the option of re-rating the subscriber's calls from the unauthorized carrier's rates to the authorized carrier's rates using a 50% proxy, that is, reducing what the subscriber would have been billed by the unauthorized carrier by 50%. If, however, the subscriber would prefer an actual re-rating of the calls to the authorized carrier's rates, it can require that of the authorized carrier.

75. *Liability Rules that Apply When a Subscriber Has Paid Charges.* The new requirement, under the revised liability rules, that an unauthorized carrier forward 150% of the charges collected from the subscriber to the authorized carrier is more advantageous to authorized carriers than the remedy provided under the old rules. The authorized carrier generally will pay the subscriber one-third of that amount (50% of the original payment) and retain the remainder of the money received from the unauthorized carrier. When a subscriber believes that the 50% proxy refund or credit of the charges it paid is too low, it may request an actual re-rating from the authorized carrier and the authorized carrier may seek any additional money owed as a result of this actual re-rating from the unauthorized carrier. This modification of the Commission's liability scheme will alleviate some problems of lost revenues that authorized carriers, including small carriers, face when slammed and will make slamming even more unprofitable for unauthorized carriers.

76. *Re-rating.* Several authorized carriers raised concerns about the administrative burden that re-rating may place on them. Although we do not necessarily agree with carriers about the dimensions of this burden, we revise our rules to address these concerns. The revision allows the authorized carrier to provide a refund or credit to the

subscriber of one-third of the payment the unauthorized carrier must make to the authorized carrier, which is prescribed to be 150% of the charges collected from the subscriber. Only when a subscriber believes that the 50% proxy refund or credit of the charges it paid is too low, and requests an actual re-rating, must the authorized carrier provide such re-rating.

77. *State Resolution of Most Slamming Complaints.* The modifications we adopt in this Order provide that disputes between alleged slamming 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 provided in the Section 258 Order. Although we considered the third-party administrator alternative proposed by certain carriers, the lack of a consensus among industry, state regulators, and consumer groups left the Commission with concerns about the efficacy of such a plan. Designating states as the primary adjudicators of slamming complaints, rather than authorized carriers, lessens the administrative burden on authorized carriers, including small carriers. By placing these disputes before a neutral arbiter with experience in resolving slamming complaints and resources to do so expeditiously, the new administrative scheme will benefit carriers and subscribers, both groups that include small businesses.

78. *Notification Requirements.* We believe that the modest notification requirements we have adopted in this Order are necessary to ensure the seamless administration of slamming complaints under this scheme and will not impose an undue burden on carriers who are small businesses. These include a requirement that, when an executing carrier (typically, the LEC that effects a carrier change) learns about an alleged slam, it must immediately notify both the authorized and alleged unauthorized carriers of the slamming allegation and the identities of the carriers involved. This requirement, as pointed out in comments and in the petition for stay filed in the D.C. Circuit, is important to the functioning of the liability mechanism. With this information, the unauthorized carrier will be able to forward to the authorized carrier all amounts needed to satisfy the remedies this Order requires, and the authorized carrier will be able to bring appropriate action against the unauthorized carrier, if necessary. The industry has already taken steps to facilitate the transfer of this information between carriers.

79. The revised rules also add a requirement that an allegedly unauthorized carrier that chooses not to challenge the allegation of a slam and provides the subscriber with all the relief to which the subscriber would be entitled pursuant to our rules, had the subscriber prevailed on a slamming complaint, must inform the subscriber of the remedies our rules provide. This requirement will ensure that the rules do not discourage carriers from providing subscribers with the most expedient relief possible. In addition, the unauthorized carrier in this situation must inform the subscriber of the subscriber's ability to file a complaint with the appropriate state commission, or this Commission, if it is unsatisfied with the resolution of its dispute with the carrier.

80. Under the revised rules, any carrier that is informed by a subscriber of a slam must direct each unsatisfied subscriber to the proper state commission, or this Commission, for resolution of the slamming problem and inform such unsatisfied subscriber of all the relevant filing requirements. To execute this modest notification requirement, carriers will be obligated to periodically request from this Commission a list of states that have opted to administer federal slamming rules. This notification requirement will achieve an important objective: minimizing the effort consumers must expend to resolve slamming disputes.

6. Report to Congress

81. The Commission will send a copy of the Order, 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 Order, including the SFRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and SFRFA (or summaries thereof) will also be published in the **Federal Register**.

*B. Final Paperwork Reduction Act Analysis*

82. 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.

**IV. Ordering Clauses**

83. Accordingly, it is ordered, pursuant to sections 1, 4(i), 4(j), 206, 207, 208, and 258 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 206, 207, 208, 258 and § 1.429 of the Commission's rules, that the petitions for reconsideration or clarification filed by AT&T Corp., Excel Telecommunications, Inc., Frontier Corp., GTE Service Corp., MediaOne Group, National Association of State Utility Consumer Advocates, National Telephone Cooperative Association, New York State Consumer Protection Board Petition for Reconsideration, RCN Telecom Services, Inc., Rural LECs, SBC Communications, Inc., and Sprint Corp. are granted in part and denied in part to the extent discussed.

84. The provisions of § 0.141, 64.1100, 64.1150, 64.1160, 64.1170, and 64.1180 are amended in accordance with our discussion and as described, and that such rules shall be effective September 5, 2000. The collections of information contained in §§ 64.1150 (a) through (d), 64.1160 (b) through (g), and 64.1170 (b) through (f) are contingent upon approval by the Office of Management and Budget. The procedures and relief described in these sections shall only be available to complainants who allege that the unauthorized carrier change occurred on or after the effective date of these sections.

85. Sections 1.719, 64.1110, 64.1120, 64.1140, and 64.1160 are enacted in accordance with our discussion, and that these rules are effective September 5, 2000. The collections of information contained in §§ 1.719 (a) through (d), 64.1110 (a) and (b), 64.1140 (a) and (b), are contingent upon approval by the Office of Management and Budget. The procedures and relief described in § 1.719 shall only be available to complainants who allege that the unauthorized carrier change occurred on or after the effective date of this section.

86. Pursuant to authority contained in sections 1, 4, and 258, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 258, that the waiver request filed by AT&T Corp., MCI WorldCom, Inc., Sprint Corp., Competitive Telecommunications Assn., Telecommunications Resellers Assn., Excel Telecommunications, Inc., Qwest Communications Corp., and Frontier Corp. on March 30, 1999 is denied.

87. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Order, including the Supplemental Final Regulatory Flexibility Analysis, to

the Chief Counsel for Advocacy of the Small Business Administration.

88. The Joint Parties' Motion for Extension of the Effective Date of the Rules or, In the Alternative, For a Stay, is denied.

**List of Subjects**

*47 CFR Part 0*

Classified information, Freedom of information, Reporting and recordkeeping.

*47 CFR Part 1*

Administrative practice and procedure, Communications common carriers, Telecommunications.

*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 Parts 0, 1, 64 as follows:

## PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

**Authority:** 47 U.S.C. 5, 48 Stat. 1068, as amended; 47 U.C.S. 155, 225, unless otherwise noted.

2. In § 0.141 add paragraph (b)(1)(iii) to read as follows:

**§ 0.141 Functions of the bureau.**

* * * * *

(b) * * *

(1) * * *

(iii) Resolve certain classes of informal complaints, as specified by the Commission, through findings of fact and issuance of orders.

* * * * *

## PART 1—PRACTICE AND PROCEDURE

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

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 unless otherwise noted.

4. Add § 1.719 to subpart E to read as follows:

**§ 1.719 Informal complaints filed pursuant to section 258.**

(a) Notwithstanding the requirements of §§ 1.716 through 1.718, the following procedures shall apply to complaints alleging that a carrier has violated section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, by making an unauthorized change of a subscriber's preferred carrier, as defined by § 64.1100(e) of this chapter.

(b) *Form.* The complaint shall be in writing, and should contain: The complainant's name, address, telephone number and e-mail address (if the complainant has one); the name of both the allegedly unauthorized carrier, as defined by § 64.1100(d) of this chapter, and authorized carrier, as defined by § 64.1100(c) of this chapter; a complete statement of the facts (including any documentation) tending to show that such carrier engaged in an unauthorized change of the subscriber's preferred carrier; a statement of whether the complainant has paid any disputed charges to the allegedly unauthorized carrier; and the specific relief sought.

(c) *Procedure.* The Commission will resolve slamming complaints under the definitions and procedures established in §§ 64.1100 through 64.1190 of this chapter. The Commission will issue a written (or electronic) order informing the complainant, the unauthorized carrier, and the authorized carrier of its finding, and ordering the appropriate remedy, if any, as defined by §§ 64.1160 through 64.1170 of this chapter.

(d) Unsatisfied Informal Complaints Involving Unauthorized Changes of a Subscriber's Preferred Carrier; Formal Complaints Relating Back to the Filing Dates of Informal Complaints. If the complainant is unsatisfied with the resolution of a complaint under this section, the complainant may file a formal complaint with the Commission in the form specified in § 1.721. Such filing will be deemed to relate back to the filing date of the informal complaint filed under this section, so long as the informal complaint complied with the requirements of paragraph (b) of this section and provided that: The formal complaint is filed within 45 days from the date an order resolving the informal complaint filed under this section is mailed or delivered electronically to the complainant; makes reference to both the informal complaint number assigned to and the initial date of filing the informal complaint filed under this section; and is based on the same cause of action as the informal complaint filed under this section. If no formal complaint is filed within the 45–day period, the complainant will be deemed to have abandoned its right to bring a formal complaint regarding the cause of action at issue.

## PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

**Authority:** 47 U.S.C. 151, 154, 201, 202, 205, 218–220, and 332 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.

6. Revise § 64.1100 to read as follows:

**§ 64.1100 Definitions.**

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

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

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

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

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

(f) The term *state commission* shall include any state entity with the state-designated authority to resolve the complaints of such state's residents

arising out of an allegation that an unauthorized change of a telecommunication service provider has occurred that has elected, in accordance with the requirements of § 64.1110(a), to administer the Federal Communications Commission's slamming rules and remedies, as enumerated in §§ 64.1100 through 64.1190.

(g) The term *relevant governmental agency* shall be the state commission if the complainant files a complaint with the state commission or if the complaint is forwarded to the state commission by the Federal Communications Commission, and the Federal Communications Commission if the complainant files a complaint with the Federal Communications Commission, and the complaint is not forwarded to a state commission.

7. Add § 64.1110 to subpart K to read as follows:

**§ 64.1110 State notification of election to administer FCC rules.**

(a) *Initial Notification.* State notification of an intention to administer the Federal Communication Commission's unauthorized carrier change rules and remedies, as enumerated in §§ 64.1100 through 64.1190, shall be filed with the Commission Secretary in CC Docket No. 94–129 with a copy of such notification provided to the Consumer Information Bureau Chief. Such notification shall contain, at a minimum, information on where consumers should file complaints, the type of documentation, if any, that must accompany a complaint, and the procedures the state will use to adjudicate complaints.

(b) *Withdrawal of Notification.* State notification of an intention to discontinue administering the Federal Communication Commission's unauthorized carrier change rules and remedies, as enumerated in §§ 64.1100 through 64.1190, shall be filed with the Commission Secretary in CC Docket No. 94–129 with a copy of such amended notification provided to the Consumer Information Bureau Chief. Such discontinuance shall become effective 60 days after the Commission's receipt of the state's letter.

8. Add § 64.1120 to subpart K to read as follows:

**§ 64.1120 Verification of orders for telecommunications service.**

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

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

(i) Authorization from the subscriber, and

(ii) Verification of that authorization in accordance with the procedures prescribed in this section. The submitting carrier shall maintain and preserve records of verification of subscriber authorization for a minimum period of two years after obtaining such verification.

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

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

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

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

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

(2) The telecommunications carrier has obtained the subscriber's electronic authorization to submit the preferred carrier change order. Such authorization must be placed from the telephone number(s) on which the preferred carrier is to be changed and must confirm the information in paragraph (a)(1) of this section. Telecommunications carriers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism, that records the required information regarding the preferred carrier change, including automatically recording the originating automatic number identification; or

(3) An appropriately qualified independent third party has obtained the subscriber's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification data (*e.g.* the subscriber's date of birth or social security number). The independent third party must not be owned, managed, controlled, or directed by the carrier or the carrier's marketing agent; must not have any financial incentive to confirm preferred carrier change orders for the carrier or the carrier's marketing agent; and must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier change; or

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

9. Add § 64.1140 to subpart K to read as follows:

**§ 64.1140 Carrier liability for slamming.**

(a) *Carrier Liability for Charges.* Any submitting telecommunications carrier that fails to comply with the procedures prescribed in this part shall be liable to the subscriber's properly authorized carrier in an amount equal to 150% of all charges paid to the submitting telecommunications carrier by such subscriber after such violation, as well as for additional amounts as prescribed in § 64.1170. The remedies provided in this part are in addition to any other remedies available by law.

(b) *Subscriber Liability for Charges.* Any subscriber whose selection of telecommunications services provider is changed without authorization verified in accordance with the procedures set for in this part is liable for charges as follows:

(1) If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. Upon being informed by a

subscriber that an unauthorized change has occurred, the authorized carrier, the unauthorized carrier, or the executing carrier shall inform the subscriber of this 30-day absolution period. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30–day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change in accordance with the provisions of § 64.1160(e).

(2) If the subscriber has already paid charges to the unauthorized carrier, and the authorized carrier receives payment from the unauthorized carrier as provided for in paragraph (a) of this section, the authorized carrier shall refund or credit to the subscriber any amounts determined in accordance with the provisions of § 64.1170(c).

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

10. Revise § 64.1150 to read as follows:

**§ 64.1150 Procedures for resolution of unauthorized changes in preferred carrier.**

(a) *Notification of Alleged Unauthorized Carrier Change.* Executing carriers who are informed of an unauthorized carrier change by a subscriber must immediately notify both the authorized and allegedly unauthorized carrier of the incident. This notification must include the identity of both carriers.

(b) *Referral of Complaint.* Any carrier, executing, authorized, or allegedly unauthorized, that is informed by a subscriber or an executing carrier of an unauthorized carrier change shall direct that subscriber either to the state commission or, where the state commission has not opted to administer these rules, to the Federal Communications Commission's Consumer Information Bureau, for resolution of the complaint.

(c) *Notification of Receipt of Complaint.* Upon receipt of an unauthorized carrier change complaint, the relevant governmental agency will notify the allegedly unauthorized carrier of the complaint and order that the carrier remove all unpaid charges for the first 30 days after the slam from the subscriber's bill pending a determination of whether an unauthorized change, as defined by § 64.1100(e), has occurred, if it has not already done so.

(d) *Proof of Verification.* Not more than 30 days after notification of the complaint, or such lesser time as is required by the state commission if a matter is brought before a state commission, the alleged unauthorized carrier shall provide to the relevant government agency a copy of any valid proof of verification of the carrier change. This proof of verification must contain clear and convincing evidence of a valid authorized carrier change, as that term is defined in §§ 64.1150 through 64.1160. The relevant governmental agency will determine whether an unauthorized change, as defined by § 64.1100(e), has occurred using such proof and any evidence supplied by the subscriber. Failure by the carrier to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation.

(e) *Election of Forum.* The Federal Communications Commission will not adjudicate a complaint filed pursuant to § 1.719 or §§ 1.720 through 1.736 of this chapter, involving an alleged unauthorized change, as defined by § 64.1100(e), while a complaint based on the same set of facts is pending with a state commission.

11. Redesignate § 64.1160 as § 64.1130 and add a new § 64.1160 to read as follows.

**§ 64.1160 Absolution procedures where the subscriber has not paid charges.**

(a) This section shall only apply after a subscriber has determined that an unauthorized change, as defined by § 64.1100(e), has occurred and the subscriber has not paid charges to the allegedly unauthorized carrier for service provided for 30 days, or a portion thereof, after the unauthorized change occurred.

(b) An allegedly unauthorized carrier shall remove all charges incurred for service provided during the first 30 days after the alleged unauthorized change occurred, as defined by § 64.1100(e), from a subscriber's bill upon notification that such unauthorized change is alleged to have occurred.

(c) An allegedly unauthorized carrier may challenge a subscriber's allegation that an unauthorized change, as defined by § 64.1100(e), occurred. An allegedly unauthorized carrier choosing to challenge such allegation shall immediately notify the complaining subscriber that: the complaining subscriber must file a complaint with a state commission that has opted to administer the FCC's rules, pursuant to § 64.1110, or the FCC within 30 days of either; the date of removal of charges from the complaining subscriber's bill in accordance with paragraph (b) of this section or; the date the allegedly unauthorized carrier notifies the complaining subscriber of the requirements of this paragraph, whichever is later; and a failure to file such a complaint within this 30-day time period will result in the charges removed pursuant to paragraph (b) of this section being reinstated on the subscriber's bill and, consequently, the complaining subscriber's will only be entitled to remedies for the alleged unauthorized change other than those provided for in § 64.1140(b)(1). No allegedly unauthorized carrier shall reinstate charges to a subscriber's bill pursuant to the provisions of this paragraph without first providing such subscriber with a reasonable opportunity to demonstrate that the requisite complaint was timely filed within the 30-day period described in this paragraph.

(d) If the relevant governmental agency determines after reasonable investigation that an unauthorized change, as defined by § 64.1100(e), has occurred, an order shall be issued providing that the subscriber is entitled to absolution from the charges incurred during the first 30 days after the unauthorized carrier change occurred, and neither the authorized or unauthorized carrier may pursue any collection against the subscriber for those charges.

(e) If the subscriber has incurred charges for more than 30 days after the unauthorized carrier change, the unauthorized carrier must forward the billing information for such services to the authorized carrier, which may bill the subscriber for such services using either of the following means:

(1) The amount of the charge may be determined by a re-rating of the services provided based on what the authorized carrier would have charged the subscriber for the same services had an unauthorized change, as described in § 64.1100(e), not occurred; or

(2) The amount of the charge may be determined using a 50% Proxy Rate as follows: Upon receipt of billing information from the unauthorized carrier, the authorized carrier may bill the subscriber for 50% of the rate the unauthorized carrier would have charged the subscriber for the services provided. However, the subscriber shall have the right to reject use of this 50% proxy method and require that the authorized carrier perform a re-rating of the services provided, as described in paragraph (e)(1) of this section.

(f) If the unauthorized carrier received payment from the subscriber for services provided after the first 30 days after the

unauthorized change occurred, the obligations for payments and refunds provided for in § 64.1170 shall apply to those payments. If the relevant governmental agency determines after reasonable investigation that the carrier change was authorized, the carrier may re-bill the subscriber for charges incurred.

12. Revise § 64.1170 to read as follows:

**§ 64.1170 Reimbursement procedures where the subscriber has paid charges.**

(a) The procedures in this section shall only apply after a subscriber has determined that an unauthorized change, as defined by § 64.1100(e), has occurred and the subscriber has paid charges to an allegedly unauthorized carrier.

(b) If the relevant governmental agency determines after reasonable investigation that an unauthorized change, as defined by § 64.1100(e), has occurred, it shall issue an order directing the unauthorized carrier to forward to the authorized carrier the following, in addition to any appropriate state remedies:

(1) An amount equal to 150% of all charges paid by the subscriber to the unauthorized carrier; and

(2) Copies of any telephone bills issued from the unauthorized carrier to the subscriber. This order shall be sent to the subscriber, the unauthorized carrier, and the authorized carrier.

(c) Within ten days of receipt of the amount provided for in paragraph (b)(1) of this section, the authorized carrier shall provide a refund or credit to the subscriber in the amount of 50% of all charges paid by the subscriber to the unauthorized carrier. The subscriber has the option of asking the authorized carrier to re-rate the unauthorized carrier's charges based on the rates of the authorized carrier and, on behalf of the subscriber, seek an additional refund from the unauthorized carrier, to the extent that the re-rated amount exceeds the 50% of all charges paid by the subscriber to the unauthorized carrier. The authorized carrier shall also send notice to the relevant governmental agency that it has given a refund or credit to the subscriber.

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

(e) If the authorized carrier has not received payment from the unauthorized carrier as required by paragraph (c) of this section, the authorized carrier is not required to provide any refund or credit to the subscriber. The authorized carrier must, within 45 days of receiving an order as described in paragraph (b) of this section, inform the subscriber and the relevant governmental agency that issued the order if the unauthorized carrier has failed to forward to it the appropriate charges, and also inform the subscriber of his or her right to pursue a claim against the unauthorized carrier for a refund of all charges paid to the unauthorized carrier.

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

**§ 64.1180 [Removed and reserve].**

13. Remove and reserve § 64.1180.

[FR Doc. 00–17981 Filed 8–2–00; 8:45 am]

BILLING CODE 6712–01–U

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 000211040–0040–01; I.D. 072800A]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pollock for Processing by the Inshore Component in the Bering Sea Subarea

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock by ''open access'' vessels (*i.e.,* those vessels that are not fishing in cooperatives), which are catching pollock for processing by the inshore component in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the amount of the C/D season allocation of pollock total allowable catch (TAC) specified for ''open access'' vessels in the Bering Sea subarea of the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 29, 2000, until 2400 hrs, A.l.t., December 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(5)(i)(D)(*3*) and the revised interim 2000 TAC amounts for pollock in the Bering Sea subarea (65 FR 39107, June 23, 2000), the C/D season allocation of pollock TAC specified to the ''open access'' vessels in the Bering Sea subarea is 17,953 metric tons (mt).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the C/D season allocation of pollock TAC specified for the ''open access'' vessels, which are catching pollock for processing by the inshore component in the Bering Sea subarea will be reached. Therefore, the Regional Administrator is establishing the C/D season allocation of pollock TAC as the directed fishing allowance (§ 679.20(a)(5)(i)(D)(*2*)). In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for pollock by ''open access'' vessels, which are catching pollock for processing by the inshore component in the Bering Sea subarea.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

### Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent exceeding the C/D season allocation of pollock TAC specified for the vessels not participating in cooperatives catching pollock for processing by the inshore component in the Bering Sea subarea. A delay in the