

Dated: April 10, 2003.

F.M. Rosa,

Captain, U.S. Coast Guard, Acting,  
Commander, Seventh Coast Guard District.

[FR Doc. 03-9647 Filed 4-17-03; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF EDUCATION

### 34 CFR Part 200

RIN 1810-AA91

#### Title I—Improving the Academic Achievement of the Disadvantaged; Correction

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Final regulations; correction.

**SUMMARY:** The Department published, in the *Federal Register* of December 2, 2002, regulations governing the programs administered under Title I, parts A, C and D of the Elementary and Secondary Education Act (ESEA), as amended. The December 2, 2002 document contained minor errors regarding the Title I, part C, Migrant Education Program. This document corrects the errors.

**DATES:** January 2, 2003.

**FOR FURTHER INFORMATION CONTACT:**

James English, Office of Migrant Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, Room 3E315, FOB-6, SW., Washington, DC 20202-6135. Telephone: (202) 260-1394 or via the Internet: [james.english@ed.gov](mailto:james.english@ed.gov).

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**SUPPLEMENTARY INFORMATION:** In the final regulations published on December 2, 2002 (67 FR 71710), make the following corrections:

#### PART 200—[CORRECTED]

##### § 200.82 [Corrected]

■ 1. On page 71737, in the first column, the introductory text of § 200.82 is corrected by revising the cross-reference from “§ 200.101” to “§ 200.100(b)(4).”

##### §§ 200.83, 200.84 [Corrected]

■ 2. On page 71737, in the third column, the Office of Management and Budget

control number is corrected to be 1810-0662 for §§ 200.83 and 200.84.

##### § 200.86 [Corrected]

■ 3. On page 71737, in the third column, the text of § 200.86 is corrected by revising the cross-reference from “§ 200.28(c)(3)(i)” to “§ 200.29(c)(1).”

##### § 200.88 [Corrected]

■ 4. On page 71738, in the first column, the Office of Management and Budget control number is corrected to be 1810-0662 for § 200.88.

#### Electronic Access to This Document

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**Note:** The official version of this document is the document published in the *Federal Register*. Free Internet access to the official edition of the *Federal Register* and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

(Catalog of Federal Domestic Assistance Number 84.011: Title I, Education of Migrant Children)

Dated: April 15, 2003.

Eugene W. Hickok,

Under Secretary of Education.

[FR Doc. 03-9654 Filed 4-17-03; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF EDUCATION

### Office of Postsecondary Education

#### 34 CFR Part 668

#### Student Assistance General Provisions

##### CFR Correction

In Title 34 of the Code of Federal Regulations, parts 400 to end, revised as of July 1, 2002, on page 418, § 668.8 is corrected by reinstating paragraph (i) to read as follows:

##### § 668.8 Eligible program.

\* \* \* \* \*

(i) *Flight training.* In addition to satisfying other relevant provisions of this section, for a program of flight training to be an eligible program, it must have a current valid certification

from the Federal Aviation Administration.

\* \* \* \* \*

[FR Doc. 03-55512 Filed 4-17-03; 8:45 am]

BILLING CODE 1505-01-D

## POSTAL SERVICE

### 39 CFR Part 964

#### Rules of Practice Governing Disposition of Mail Withheld from Delivery Pursuant to 39 U.S.C. 3003, 3004

##### CFR Correction

In Title 39 of the Code of Federal Regulations, revised as of July 1, 2002, on page 326, § 964.6 is corrected by removing the second sentence.

[FR Doc. 03-55511 Filed 4-17-03; 8:45 am]

BILLING CODE 1505-01-D

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CC Docket No. 94-129, FCC 03-42]

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

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission addresses issues raised in petitions for reconsideration implementing section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Section 258 prohibits the practice of “slamming,” the unauthorized change in a subscriber’s selection of a provider of telephone exchange or toll service. Slamming distorts the telecommunications market by enabling companies that engage in fraudulent activity to increase their customer and revenue bases at the expense of consumers and law-abiding companies. We believe that the slamming rules instituted by the Commission will further the Commission’s goal of preventing anti-competitive behavior while protecting consumer choice.

**DATES:** Effective June 2, 2003, except for sections 64.1120, 64.1160, 64.1170 and 64.1180, which contain information

collection 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. Written comments by the public on the new and/or modified information collection requirements are due June 2, 2003. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection on or before June 17, 2003.

**ADDRESSES:** Parties who choose to file comment by paper must file an original and four copies to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. Comments may also be filed using the Commission's Electronic Filing System, which can be accessed via the Internet at [www.fcc.gov/e-file/ecfs.html](http://www.fcc.gov/e-file/ecfs.html). In addition to filing comments with Office of the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** Nancy Stevenson at 202-418-2512, Consumer & Governmental Affairs Bureau. For additional information concerning the information collection(s) contained in this document, contact Les Smith at 202-418-0217 or via the Internet at [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order on Reconsideration in CC Docket No. 94-129, FCC 03-42, released March 17, 2003. The full text of this document is available on the Commission's Web site Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554.

*Paperwork Reduction Act:* This Reconsideration Order contains modified or revised information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this Reconsideration Order, as required by the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104-13.

#### Synopsis of Order on Reconsideration

1. In this document, the Commission addresses a petition seeking

reconsideration of Commission rules prohibiting carriers that effect requests for subscriber carrier changes submitted by other carriers from re-verifying such requests before executing the requested changes. We continue to believe that the Commission's prohibition on executing carrier verification advances and is proportionate to the goal of preventing anti-competitive behavior by executing carriers and protecting consumer choice. The Commission found that executing carrier re-verification could diminish consumer choice and impede competition, and would be expensive, unnecessary and duplicative of the submitting carriers verification.

2. *Use of Carrier Change Information for Marketing Purposes.* The Commission clarifies that, to the extent that the retail arm of an executing carrier obtains carrier change information for marketing purposes through its normal channels in a form available throughout the retail industry, and after the carrier change has been completed, we do not prohibit the use of that information in executing carriers' efforts to gain back that customer. In addition, we note that our decision here is not intended to preclude individual state actions in this area that are consistent with our rules.

#### I. Verification of Carrier Changes

##### A. Independent Third Party Verification

3. The Commission recognizes that dropping off a three-way call could potentially be infeasible for carriers in certain specific situations; for example, a carrier may not be able to comply with the drop-off rule because its sales force is located in an area with an exchange that does not employ the technology necessary to support a drop-off. Accordingly, we will exempt from the rule those carriers that certify to the Commission that their sales agents are unable to drop off the sales call after initiating a third party verification. Such carriers will be exempt from the drop-off requirement for a period of two years from the date the certification is received by the Commission. Carriers that wish to extend their exemption from the rule must, at the end of the two year period (and every two years thereafter) re-certify to the Commission as to their continued inability to comply. For any carrier that certifies that it is unable to comply with the drop-off requirement, we emphasize that, in any case, the third party verification must be terminated if the sales agent of an exempted carrier responds to a consumer's inquiries after a verification attempt has begun. A new verification may be initiated only after

the sales agent has finished responding to the customer. Consistent with our rules, any neutral, factual information that is provided by a third party verifier should not mirror the carrier's particular marketing pitch, nor should it market the carrier's services or be an extension of the sales call. Instead, it should clearly verify the subscriber's decision to change carriers. Commission rules also require the verification process (*i.e.*, everything the subscriber says and hears during the verification call) to be taped and preserved for a period of two years in order to ensure the availability of a complete and accurate record for investigation of any slamming complaint. If a carrier does not comply with the rule the verification is invalid. We will continue to review third party verification recordings when evaluating slamming complaints and will aggressively enforce our liability rules.

##### B. 60-Day Limit on the Effectiveness of an LOA

4. In the *Third Report and Order*, the Commission found that a reasonable limitation on the amount of time an LOA should be considered valid is 60 days. The Commission concluded that the 60-day limit applies to submitting carriers rather than executing carriers, because a submitting carrier is an actual party to the contractual agreement with the customer and, as such, is more capable of conforming its behavior to the obligation. AT&T asks that the Commission modify its rule to exempt multi-line and/or multi-location business customers from the 60-day limit. We agree with AT&T that such a limitation would needlessly invalidate these negotiated LOAs and would not confer additional consumer protection benefits upon the parties. Accordingly, upon reconsideration, we will no longer limit the effectiveness of such customers' LOAs to 60 days.

##### C. Identification of the Subscriber's Current Telecommunications Provider

5. In the *Third Report and Order*, the Commission concluded that a script for third party verification should elicit, at a minimum, the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the change; the names of the carriers affected by the change; the telephone numbers to be switched; and the types of service involved (*i.e.*, local, in-state toll, out-of-state toll, or international service). AT&T asks the Commission to eliminate the requirement that independent third party verifications elicit from the customer the identity of

the customer's current telecommunications provider. AT&T states that the sole relevant consideration in executing a change order is identification of the carrier to whose service the change is being authorized, not the identity of the carrier being displaced. AT&T asserts that requiring carriers to compile and provide the identity of the customer's current carrier is disruptive, superfluous and burdensome. On reconsideration, we agree that it is unnecessary for a subscriber to identify in an independent third party verification the identity of the displaced carrier. Accordingly, we find that such identification need not be provided by the subscriber, either in LOAs or independent third party verifications.

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

6. AT&T asks the Commission to require executing carriers to lift freezes and to process carrier change requests in the same three-way call. We agree that AT&T fails to raise any arguments that were not thoroughly considered in previous orders in this proceeding. In the *Second Report and Order*, the Commission declined to enumerate all acceptable procedures for lifting preferred carrier freezes. Rather, parties were encouraged to develop other methods of accurately confirming a subscriber's identity and intent to lift preferred carrier freezes, in addition to offering written and oral authorization.

#### E. Registration Requirement

7. In the *Third Report and Order*, the Commission adopted a requirement that all new and existing common carriers providing interexchange telecommunications service must register with the Commission. The Commission further concluded that facilities-based carriers shall have an affirmative duty to ascertain whether a potential carrier-customer (*i.e.*, a reseller) has filed a registration with the Commission prior to providing that carrier-customer with service." WorldCom asks that Commission to clarify that underlying carriers are not under a duty to take any action with regard to carrier-resellers if: (1) the underlying carrier "does not receive a notification of registration from an existing carrier-customer," and/or (2) the underlying carrier's "existing carrier-customer does not appear on the list maintained by the Commission. As noted in the *Third Report and Order*, a facilities-based carrier will not be responsible for the accuracy of the registration information, nor will such a carrier, relying in good faith on the

absence of such registration, be liable under section 251 of the Act for withholding service from the unregistered entity. The Commission may, however, after giving appropriate notice and opportunity to respond, impose a fine on carriers that fail to determine the registration status of carrier customers.

#### II. Liability for Unauthorized Carrier Changes

8. *Customer referral to unauthorized carrier.* In its petition, WorldCom asserts that the Commission should require carriers contacted by a subscriber alleging slamming to inform the subscriber that he or she should contact and seek resolution from the alleged unauthorized carrier, in addition to informing the subscriber of their right to file a complaint if necessary and of their right to absolution. We currently require carriers contacted by a subscriber alleging slamming to inform the subscriber of their right to file a complaint with the appropriate governmental agency. On reconsideration, we will also require carriers to inform the subscriber that he or she may contact and seek resolution from the alleged unauthorized carrier and, in addition, may contact the authorized carrier.

9. *Removal of charges from subscriber bills when a subscriber has not yet paid the charges.* WorldCom also asks the Commission to reconsider its rule requiring alleged unauthorized carriers to 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. We decline to modify our rule requiring removal by the unauthorized carrier of all charges assessed for the first 30 days of service upon a subscriber's allegation that he or she was slammed.

10. *Amounts owed by unauthorized carriers when the subscriber has paid the unauthorized carrier.* Section 258 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." The Commission stated that, once a carrier has been found guilty of slamming, the unauthorized carrier shall be required to disgorge to the authorized carrier an amount adequate to satisfy both of these obligations. The Commission found that an approximate proxy for this amount is 150% of the amounts collected by the unauthorized carrier from the subscriber following a slam. Upon receipt of the money, the authorized carrier is required to remit one third (*i.e.*, 50% of what the subscriber paid to the

unauthorized carrier) to the injured subscriber. WorldCom asks that the Commission reconsider its requirement that unauthorized carriers pay the subscriber's authorized carrier 150% of all charges paid by such subscriber. We decline to modify our finding that unauthorized carriers must pay the subscriber's authorized carrier 150% of all charges paid by such subscriber and, upon receipt of the money, that the authorized carrier is required to remit one third (*i.e.*, 50% of what the subscriber paid to the unauthorized carrier) to the injured subscriber.

11. *Unauthorized carrier changes resulting from LEC actions.* In their Petitions, Sprint and WorldCom note that subscribers sometimes request carrier changes by communicating directly with LECs. Sprint and WorldCom ask that the Commission reconsider its "apparent decision" to classify as an IXC slam any unauthorized carrier change that occurred as a result of a LEC mistakenly executing a carrier change and informing an IXC that it had gained a customer. We agree with Sprint that it would be unfair to hold IXCs liable for slamming pursuant to section 258 when the unauthorized carrier change was the result of a LEC's action.

#### III. Other Issues

12. *Toll-Free Service Accounts.* SBC also seeks clarification that the carrier change verification requirements set forth in the *Second Report and Order* do not apply to verifications of Responsible Organization ("RespOrg") changes for toll-free service accounts. A RespOrg is the entity that a consumer seeking to acquire a toll-free number must contact. In a subsequent *Clarification Order*, the Common Carrier Bureau stated that, by requiring "proper written authorization," it did not intend to preclude the current SMS/800 administrator practice of accepting LOAs for RespOrg change requests that contain a subscriber's personal identification number in lieu of the subscriber's signature. Inasmuch as SBC is seeking a requirement that all RespOrg change requests include LOAs with customer signatures, we note that the *Clarification Order* disallows such a result.

13. *New Lines and New Installations.* AT&T asks the Commission to clarify, or in the alternative reconsider and hold, that the slamming rules apply to customers' initial carrier selections for newly installed lines. We decline AT&T's request to clarify, or in the alternative reconsider and hold, that our slamming rules apply to new installations. As noted previously,

section 258 of the Act provides that “[n]o telecommunications carrier shall submit or execute a change in subscriber’s selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.” We emphasize, however, that the statute does encompass all changes in a subscriber’s selection of a provider of telecommunications service, regardless of whether such change occurs at the same time a subscriber changes residences or when a business relocates or expands. It is no less important for carrier change verification to be obtained when a consumer is receiving the service on new lines than when the carrier change occurs without new line installations.

14. *Carrier Reporting of Slamming Allegations (Form 478)*. Sprint and WorldCom ask the Commission to reconsider its carrier reporting requirement. According to our rules, carriers providing telephone exchange service and/or telephone toll service must periodically submit to the Commission reports regarding complaints they receive concerning unauthorized carrier changes. In the *Third Report and Order*, the Commission directed each carrier to submit a reporting form (Form 478) identifying the number of slamming complaints received and the number of such complaints that the carrier has investigated and found to be valid. The Commission also required carriers to identify the number of slamming complaints involving local, intrastate, and interstate exchange service, investigated or not, that the carrier has resolved directly with subscribers. Upon reconsideration, we find that the carrier reporting requirement should be eliminated. We therefore remove § 64.1180 of our rules. Our experience since the adoption of the requirement has shown that the information contained in such reports is of limited utility in investigating allegations of slamming; at the same time, it appears that the burdens associated with filing the reports are significant.

15. *More Stringent Verification Requirements*. In its Petition for Reconsideration of the *First Reconsideration Order*, WorldCom asks the Commission to clarify that, when determining whether a change was authorized, the states must use the Commission’s definition of subscriber as set forth in the *Third Report and Order*. We confirm that, in the areas in which the states have jurisdiction, federal verification procedures constitute a “floor,” and the states may choose to

impose more stringent requirements, so long as they are consistent with the federal requirements. WorldCom does not identify a specific state law or laws that it would seek to have preempted, nor does it describe how the particular law(s) conflicts federal law or obstructs federal objectives. In the absence of such evidence, we decline to preempt state laws regarding the definition of “subscriber” in the context of carrier change verification.

16. *Underlying Facilities-Based Carrier Changes*. In the *Second Report and Order*, the Commission adopted rules to clarify the appropriate use of preferred carrier freezes. Since the implementation of the *Second Report and Order*, we have received inquiries from LEC representatives who expressed concern about the risks of “lifting” a customer’s preferred carrier freeze in order to permit the customer’s preferred carrier, a switchless reseller, to begin using the network of a different facilities-based carrier. Based on our experiences, we clarify here that we do not consider it a lifting of a preferred carrier freeze when a LEC implements the request of a switchless reseller to change its underlying carrier, and makes the technical changes necessary to permit the reseller’s customer to retain his or her chosen carrier. Under these circumstances, the subscriber’s preferred carrier is the switchless reseller, and the subscriber does not experience a carrier change when the reseller merely makes a change to the underlying facilities it utilizes.

17. *Resolution of Informal Complaints*. In the *First Order on Reconsideration*, we modified our informal complaint rules to better address the adjudication of unauthorized carrier change complaints. The rule modifications were intended to give consumers a wider array of remedies than was available under the former informal complaint rules, which did not provide for the Commission to order monetary payments by carriers to consumers in situations involving unauthorized carrier changes. Our current rules regarding informal complaints filed pursuant to section 258 state that “[t]he 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.” Given our experience with the resolution of unauthorized carrier change complaints since the promulgation of these rules, we believe that permitting flexibility as to the form of complaint determinations allows for more efficient use of

Commission resources and would speed the resolution of complaints. Accordingly, we clarify that, under the appropriate circumstances, the Commission may issue an order addressing an informal slamming complaint in the form of a letter, written or electronic, containing the information required by our rules.

#### F. Accessible Formats

18. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or at [bmillin@fcc.gov](mailto:bmillin@fcc.gov).

#### IV. Procedural Matters

##### G. Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the proposals set forth in the Second FNPRM.

##### H. Paperwork Reduction Act Analysis

20. This *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking* contains either a new or modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking* as required by the Paperwork Reduction Act of 1995, Public law 104–13. Public and agency comments are due June 17, 2003.

##### I. Ex Parte Presentations

21. This is a permit-but disclose notice and comment rulemaking proceeding. Members of the public are advised that ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed under the Commission’s rules.

#### Supplemental Final Regulatory Flexibility Analysis

22. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Third Report and Order and Second Order on Reconsideration*. The Commission sought written public comment on the proposals in the *Third Report and Order*, including comment on the IRFA. A Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *Third Report and Order*. The Commission

received a number of petitions for reconsideration in response to the *Third Report and Order*. Certain comments received are discussed below, including two received in response to the IRFA. The instant *Order* addresses issues raised in those reconsideration petitions and other petitions. This associated Supplemental Final Regulatory Flexibility Analysis (SFRFA) reflects revised or additional information to that contained in the FRFA. This SFRFA is thus limited to matters raised in response to the *Third Report and Order* and addressed in the instant *Order*. This SFRFA conforms to the RFA.

#### A. Need for and Objectives of This Order and the Rules Adopted Herein

23. Section 258 prohibits any telecommunications carrier from submitting or executing an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service. This practice, known as "slamming," distorts the telecommunications market by enabling companies that engage in fraudulent activity to increase their customer and revenue bases at the expense of consumers and law-abiding companies. In this *Order*, we address certain issues raised in petitions for reconsideration of the *Second Report and Order* and *Further Notice of Proposed Rulemaking*, the *First Order on Reconsideration*, and the *Third Report and Order*. Specifically, in this *Order* we modify the drop-off rule to allow the sales agents of certain carriers to remain on the line during the Third Party Verification (TPV). We also discuss small business concerns with respect to this rule. We exempt "multi-line and/or multi-location business customers" from our rule imposing a 60-day limit on the amount of time an Letter of Agency (LOA) may be considered valid. We decline to hold Interexchange Carriers (IXCs) liable for slamming pursuant to section 258 when the unauthorized carrier change was the result of an LEC mistake, and LECs must verify carrier change requests made by a customer directly to the LEC according to our verification rules. We no longer require carriers that provide telephone exchange service and/or telephone toll service to periodically submit to the Commission allegations of slamming. We do not require a subscriber to identify, either in LOAs or third party verifications, the identity of the displaced carrier. This *Order* also contains a Further Notice of Proposed Rulemaking, in which we propose several additional modifications to our carrier change rules. Specifically, we

seek comment on rule modifications with respect to third party verifications.

#### B. Summary of Significant Issues Concerning Small Entities

24. Two commenters responded directly to the IRFA: Voicelog and SBA. VoiceLog filed a Petition for Partial Stay and Reconsideration of the *Third Report and Order*. VoiceLog argues that that drop-off rule is overbroad, impractical, and unenforceable and is not competitively neutral with respect to other third party verification methods. The SBA argues that the Commission adopted the drop-off rule without raising the issue in an IRFA and that the Commission did not solicit comment on compliance costs and alternatives in either the *Second Report and Order* or the *Third Report and Order*. In response to VoiceLog's arguments, the Commission modified the drop-off requirement to balance the independence of the third party verification with the concerns of those smaller carriers. The Regulatory Flexibility concerns of VoiceLog and SBA are discussed in paragraphs 44–45 of the *Third Report and Order*.

#### C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

25. 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," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act. Under the Small Business Act, a "small business concern" is one that: (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.

26. The definition of "small governmental jurisdiction" is one with populations of fewer than 50,000. There are approximately 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures

available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six 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 ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

27. We have included small incumbent LECs in this RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., wireline telecommunications 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 the Commission's analyses and determinations in other, non-RFA contexts.

28. *Incumbent Local Exchange Carriers*. Neither the Commission nor the SBA has developed a specific small business size standard for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 1,329 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services. Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, we estimate that the majority of providers of local exchange services are small entities that may be affected by the rules and policies adopted herein.

29. *Competitive Local Exchange Carriers*. Neither the Commission nor the SBA has developed a specific small business size standard for providers of competitive local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 532 companies reported that they were engaged in the provision of either competitive access

provider services or competitive local exchange carrier services. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. Consequently, the Commission estimates that the majority of providers of competitive local exchange services are small entities that may be affected by the rules.

30. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a specific size standard for competitive access providers (CAPS). The closest applicable standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 532 CAPs or competitive local exchange carriers and 55 other local exchange carriers reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 532 competitive access providers and competitive local exchange carriers, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. Of the 55 other local exchange carriers, an estimated 53 have 1,500 or fewer employees and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of small entity CAPS and the majority of other local exchange carriers may be affected by the rules.

31. *Local Resellers.* The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 134 companies reported that they were engaged in the provision of local resale services. Of these 134 companies, an estimated 131 have 1,500 or fewer employees and 3 have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers may be affected by the rules.

32. *Toll Resellers.* The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 576 companies reported that they were engaged in the provision of toll resale services. Of these 576 companies, an estimated 538 have 1,500 or fewer employees and 38 have more than 1,500 employees.

Consequently, the Commission estimates that a majority of toll resellers may be affected by the rules.

33. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 229 carriers reported that their primary telecommunications service activity was the provision of interexchange services. Of these 229 carriers, an estimated 181 have 1,500 or fewer employees and 48 have more than 1,500 employees. Consequently, we estimate that a majority of IXCs may be affected by the rules.

34. *Operator Service Providers.* Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 22 companies reported that they were engaged in the provision of operator services. Of these 22 companies, an estimated 20 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that a majority of local resellers may be affected by the rules.

35. *Prepaid Calling Card Providers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 32 companies reported that they were engaged in the provision of prepaid calling cards. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that a majority of prepaid calling providers may be affected by the rules.

36. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid

calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 42 carriers reported that they were engaged in the provision of "Other Toll Services." Of these 42 carriers, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that a majority of "Other Toll Carriers" may be affected by the rules.

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

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

38. *Verification of Carrier Changes—Independent Third Party Verification.* We modify our rule on third party verification to exempt carriers that certify to the Commission that they are unable to comply with the rule. We are persuaded that compliance with the current drop-off rule may be infeasible for carriers, including smaller carriers, that lack the technical means to comply or for which enabling equipment upgrades are economically infeasible. However, if a sales agent of an exempted carrier responds to a request by the customer for additional information, the third party verification must be terminated. A new third party verification may commence only after the sales agent has finished responding to the customer inquiry. Any third party verification obtained before a carrier's sales representative has finished providing information regarding the carrier change will not be considered valid. The modification, as created here, will therefore likely reduce the costs for upgrading the network and revising internal processes for signing up new customers, and retraining employees on how to use the new network upgrades and internal processes. We were not able to identify alternatives that would have lessened the economic impact on small entities while remaining consistent with the Commission's objectives.

39. *60-Day Limit on the Effectiveness of an LOA.* We exempt multi-line and/or multi-location business customers from the 60-day limit. The Commission concludes that this requirement would not impose significant additional costs or administrative burdens on small carriers.

40. *Unauthorized Carrier Changes Resulting From LEC Actions.* We decline to hold the IXC liable for slamming when the unauthorized carrier change was the result of a LEC mistake. LECs will be liable for unauthorized carrier changes that are the result of the LEC's mistake. LECs will also be required to follow the Commission's series of verification rules when a customer contacts the LEC directly to request a carrier change.

41. *Carrier Reporting of Slamming Allegations (Form 478).* The Commission will no longer require carriers that provide telephone exchange service and/or telephone toll service to periodically submit to the Commission reports regarding complaints they receive alleging unauthorized carrier changes—form 478. The change in the rule will alleviate the administrative burdens associated with filing the reports.

#### E. Steps Taken To Minimize the Significant Economic Impact of This Order on Small Entities, Including the Significant Alternatives Considered

42. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): “(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

43. *Verification of Carrier Changes—Independent Third Party Verification.* The Commission was persuaded by VoiceLog that compliance with the rule as created in the *Third Report and Order* may have been infeasible for some carriers, including smaller carriers, and therefore in order to minimize any adverse impact of the TPV rule on small entities, the Commission modified the TPV rule to allow for an exception for those carriers that certify that they are unable to comply with the drop-off rule. Other alternatives where suggested by VoiceLog and AT&T, including allowing the sales agent to remain on the line and answer questions during verification were rejected because they either compromised the independent nature of the third party verification or were not likely to have an effect on our goals of reducing slams. Self-certification will likely be less costly to a small business

than the costs in upgrading the network and revising internal processes for signing up new customers, and retraining employees on how to use the new network upgrades.

44. *60-Day Limit on the Effectiveness of an LOA.* We expect that exemption we create will have no significant economic impact on carriers.

45. *Unauthorized Carrier Changes Resulting from LEC Actions.* The Commission is persuaded that when a LEC has assigned a subscriber to a non-affiliated carrier without authorization, and where the subscriber has paid the non-affiliated carrier the charges for the billed service, the LEC shall reimburse the subscriber for all charges paid by the subscriber to the unauthorized carrier and shall switch the subscriber to the desired carrier at no cost to the subscriber. When the subscriber has not paid the unauthorized carrier, the LEC shall switch the subscriber to the desired carrier at no cost to the subscriber, and shall also secure the removal of the unauthorized charges from the subscriber's bill. In order to deter such actions, we believe that a LEC should be held responsible for unauthorized carrier changes that favor its long distance affiliate, in the same manner that an IXC would be held responsible if it submitted an unauthorized change itself. The alternatives, *i.e.*, holding the customer or the carrier liable for mistakes made by the LEC were rejected as contrary to the slamming portions of the Act and fundamentally unfair. Because LECs will be held responsible for their own mistakes, LECs must also follow our verification rules when contacted directly by a subscriber that requests a carrier change, such that a record of the carrier change request is created and maintained.

46. *Carrier Reporting of Slamming Allegations (Form 478).* In eliminating our rule requiring carriers to submit Form 478, the Commission removed the burdens placed on carriers to provide information that could be misleading and damaging to a carrier; LECs in particular may have great difficulty complying with the requirements in an accurate manner. This change in our rule will likely reduce significantly the administrative burdens on carriers, including those smaller carriers.

47. *Report to Congress:* The Commission will send a copy of the *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking (Second Further Notice)*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a

copy of the *Third Order on Reconsideration*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Third Order on Reconsideration* and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

#### V. Ordering Clauses

48. Pursuant to sections 1, 4(i), 4(j), 201, 206–208 and 258 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201, 206–208 and 258 and §§ 1.421 and 1.429 of the Commission's rules, 47 CFR 1.421 and 1.429, that the *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking* in CC Docket No. 94–129 IS ADOPTED, and that part 64 of the Commission's rules, 47 CFR part 64, is amended as set forth in the Rule Changes. The requirements of this *Third Order on Reconsideration* shall become effective June 2, 2003. Sections 64.1120, 64.1150, 64.1160, 64.1170 and 64.1180 contain new or modified information collections that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date of these rules.

49. The collection of information contained herein is contingent upon approval by the Office of Management and Budget.

50. Pursuant to sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and section 1.429 of the Commission's rules, 47 CFR 1.429, that the petition for partial stay, filed by VoiceLog, LLC, is *denied* AS MOOT.

51. Pursuant to sections 1, 4(i), 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and §§ 1.429 of the Commission's rules, 47 CFR 1.429, that the petition for reconsideration, filed by VoiceLog, LLC, is *granted in part and denied in part*, to the extent indicated herein.

52. Pursuant to sections 1, 4(i), 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and §§ 1.429 of the Commission's rules, 47 CFR 1.429, that the petition for reconsideration, filed by the Rural LECs is *denied*.

53. Pursuant to sections 1, 4(i), 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and §§ 1.429 of the Commission's rules 47 CFR 1.429, that the petition for reconsideration, filed by NTCA, is *denied*.

54. Pursuant to sections 1, 4(i), 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and §§ 1.429 of the Commission's rules,

47 CFR 1.429, that the petition for reconsideration, filed by SBC, *is granted in part and denied in part*, to the extent indicated herein.

55. Pursuant to sections 1, 4(i), 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and §§ 1.429 of the Commission's rules, 47 CFR 1.429, that the petition for reconsideration, filed by AT&T on April 2, 2001, *is granted in part and denied in part*, to the extent indicated herein, and that the petition for reconsideration, filed by AT&T on March 18, 1999, *is denied*.

56. Pursuant to sections 1, 4(i), 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and §§ 1.429 of the Commission's rules, 47 CFR 1.429, that the petitions for reconsideration, filed by WorldCom on April 2, 2001 and September 5, 2000, *are granted in part and denied in part*, to the extent indicated herein.

57. Pursuant to sections 1, 4(i), 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and §§ 1.429 of the Commission's rules, 47 CFR 1.429, that the petitions for reconsideration, filed by Sprint on April 2, 2001, and September 5, 2000, *are granted in part and denied in part*, to the extent indicated herein, and the petition for reconsideration, filed by Sprint on March 18, 1999, *is denied*.

58. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Shall Send a copy of this *Third Report and Order and Second Further Notice of Proposed Rulemaking* in CC Docket No. 94-129, including the Initial Regulatory Flexibility Analysis and the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 64**

Telephone.

Federal Communications Commission.

**William F. Caton,**  
*Deputy Secretary.*

**Rule Changes**

■ For the reasons discussed in the preamble, part 64 of the Commission's Rules and Regulations, Chapter 1 of Title 47 of the Code of Federal Regulations, is amended as follows:

**PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

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

**Authority:** 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

■ 2. The heading of Subpart K is revised to read as follows:

**Subpart K—Changes in Preferred Telecommunications Service Providers**

\* \* \* \* \*

■ 3. Section 64.1120 is amended by revising the paragraph (c)(3)(iii) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

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

\* \* \* \* \*

■ 4. Section 64.1130 is amended by revising paragraph (j) to read as follows:

**§ 64.1130 Letter of agency form and content.**

\* \* \* \* \*

(j) A telecommunications carrier shall submit a preferred carrier change order on behalf of a subscriber within no more than 60 days of obtaining a written or electronically signed letter of agency. However, letters of agency for multi-line and/or multi-location business customers that have entered into negotiated agreements with carriers to add presubscribed lines to their business locations during the course of a term agreement shall be valid for the period specified in the term agreement.

■ 5. Section 64.1150 is amended by revising paragraph (b) to read as follows:

**§ 64.1150 Procedures for the resolution of unauthorized changes in preferred 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 & Governmental Affairs Bureau, for resolution of the complaint. Carriers shall also inform the subscriber that he or she may contact and seek resolution from the alleged unauthorized carrier and, in addition, may contact the authorized carrier.

\* \* \* \* \*

■ 6. Section 64.1160 is amended by adding paragraph (g) to read as follows:

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

\* \* \* \* \*

(g) When a LEC has assigned a subscriber to a carrier without authorization, and where the subscriber has not paid the unauthorized charges, the LEC shall switch the subscriber to the desired carrier at no cost to the subscriber, and shall also secure the removal of the unauthorized charges from the subscriber's bill in accordance with the procedures specified in paragraphs (a) through (f) of this section.

■ 7. Section 64.1170 is amended by adding paragraph (g) to read as follows:

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

\* \* \* \* \*

(g) When a LEC has assigned a subscriber to a non-affiliated carrier without authorization, and when a subscriber has paid the non-affiliated carrier the charges for the billed service, the LEC shall reimburse the subscriber for all charges paid by the subscriber to the unauthorized carrier and shall switch the subscriber to the desired carrier at no cost to the subscriber. When a LEC makes an unauthorized carrier change to an affiliated carrier, and when the customer has paid the charges, the LEC must pay to the authorized carrier 150% of the amounts collected from the subscriber in accordance with paragraphs (a) through (f) of this section.

**§ 64.1180 [Removed]**

■ 8. Section 64.1180 is removed.

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