

(3) The anticipated participating area size and well locations (see § 3137.80(b) of this subpart);

\* \* \* \* \*

(5) A provision that acknowledges the BLM consulted with and provided opportunities for participation in the creation of the unit and a provision that acknowledges that the BLM will consult with and provide opportunities for participation in the expansion of the unit by —

(A) The regional corporation, if the unit acreage contains the regional corporation's mineral estate; or

(B) The State of Alaska, if the unit acreage contains the state's mineral estate.

(6) Any optional terms which are authorized in § 3137.50 of this subpart that you choose to include in the unit agreement.

\* \* \* \* \*

■ 15. Amend § 3137.23 by revising paragraph (d) introductory text, removing "and" from the end of the paragraph (f), redesignating paragraph (g) as paragraph (h), and adding a new paragraph (g) to read as follows:

**§ 3137.23 What must I include in my NPR-A unitization application?**

\* \* \* \* \*

(d) A statement certifying—

\* \* \* \* \*

(g) A discussion of the proposed methodology for allocating production among the committed tracts. If the unit includes non-Federal oil and gas mineral estate, you must explain how the methodology takes into account reservoir heterogeneity and area variation in reservoir producibility; and

\* \* \* \* \*

■ 16. Amend § 3137.41 by revising the introductory paragraph of the section to read as follows:

**§ 3137.41 What continuing development obligations must I define in a unit agreement?**

A unit agreement must provide for submission of supplemental or additional plans of development which obligate the operator to a program of exploration and development (see § 3137.71 of this subpart) that, after completion of the initial obligations —

\* \* \* \* \*

■ 17. Amend § 3137.80 by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

**§ 3137.80 What are participating areas and how do they relate to the unit agreement?**

(a) Participating areas are those committed tracts or portions of those committed tracts within the unit area

that are proven to be productive by a well meeting the productivity criteria specified in the unit agreement.

(b) You must include a description of the anticipated participating area(s) size in the unit agreement for planning purposes to aid in the mitigation of reasonably foreseeable and significantly adverse effects on NPR-A surface resources. \* \* \*

\* \* \* \* \*

■ 18. Amend § 3137.81 by revising paragraph (a) to read as follows:

**§ 3137.81 What is the function of a participating area?**

(a) The function of a participating area is to allocate production to each committed tract within a participating area. The BLM will allocate production for royalty purposes to each committed tract within the participating area using the allocation methodology agreed to in the unit agreement (see § 3137.23(g) of this subpart).

\* \* \* \* \*

■ 19. Amend § 3137.85 by revising paragraph (b) to read as follows:

**§ 3137.85 What is the effective date of a participating area or modified allocation schedule?**

\* \* \* \* \*

(b) The effective date of a modified participating area or modified allocation schedule is the earlier of the first day of the month in which you file the proposal for a modification or such other effective date as may be provided for in the unit agreement and approved by the BLM, but no earlier than the effective date of the unit.

■ 20. Revise § 3137.111 to read as follows:

**§ 3137.111 When will BLM extend the primary term of all leases committed to a unit agreement or renew all leases committed to a unit agreement?**

If the unit operator requests it, the BLM will extend the primary term of all NPR-A leases committed to a unit agreement or renew the leases committed to a unit agreement if any committed lease within the unit is extended or renewed under §§ 3135.1-5 or 3135.1-6. If the BLM approves a lease renewal under § 3135.1-6(b), the BLM will require a renewal fee of \$100 per acre for each lease in the unit that is renewed.

■ 21. Amend § 3137.131 by revising the second and third sentences of the section to read as follows:

**§ 3137.131 What happens if the unit terminated before the unit operator met the initial development obligations?**

\* \* \* You, as lessee, forfeit all further benefits, including extensions and suspensions, granted any NPR-A lease because of having been committed to the unit. Any lease that the BLM extended because of being committed to the unit would expire unless it had been granted an extension or renewal under §§ 3135.1-5 or 3135.1-6.

■ 22. Amend § 3137.134 by revising paragraph (b) to read as follows:

**§ 3137.134 What happens to committed leases if the unit terminates?**

\* \* \* \* \*

(b) An NPR-A lease that has completed its primary term on or before the date the unit terminates will expire unless it is granted an extension or renewal under §§ 3135.1-5 or 3135.1-6.

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 64**

[CC Docket No. 94-129; FCC 07-222]

**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; LEC Coalition Application for Review Regarding Carrier Change Rules**

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission denies an Application for Review filed by a coalition of local exchange carriers ("LEC Petitioners") regarding the Commission's carrier change verification rules. Specifically, the Commission affirms that it is not permissible for an executing carrier to block a carrier change submission by a submitting carrier, based on the executing carrier's own finding that the customer's information does not match exactly the information in the executing carrier's records.

DATES: Effective February 4, 2008.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Stevenson, Consumer & Governmental Affairs Bureau at (202)

418-7039 (voice), or e-mail  
[Nancy.Stevenson@fcc.gov](mailto:Nancy.Stevenson@fcc.gov).

**SUPPLEMENTARY INFORMATION:** On July 8, 2005, an application for review was filed by a coalition of local exchange carriers against the Commission's *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, declaratory ruling, DA 05-1618, published at 71 FR 2895 (January 18, 2006). This is a summary of the Commission's *document* FCC 07-222, adopted December 18, 2007, released January 4, 2008, denying the application for review. Copies of document FCC 07-222 and any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. Document FCC 07-222 and any subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at their Web site: <http://www.bcpweb.com> or call 1-800-378-3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). Document FCC 07-222 can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/policy>.

#### **Paperwork Reduction Act of 1995 Analysis**

The document does not contain new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198. See 47 U.S.C. 3506(c)(4).

#### **Synopsis**

Section 64.1120(a)(2) of the Commission's rules provides that "[a]n executing carrier shall not verify the submission of a change in the subscriber's selection of a telecommunications service received from a submitting carrier." The Commission affirms that it is not permissible for an executing carrier to

block a carrier change submission by a submitting carrier, based on the executing carrier's own finding that the customer's information does not match exactly the information in the executing carrier's records. The Commission expressed concern that executing carriers could use the verification process as a means to delay or deny carrier change requests in order to benefit themselves or their affiliates. While the Commission agreed that allowing executing carriers to re-verify carrier change requests could, under certain circumstances, help deter slamming, it ultimately concluded that the anti-competitive effects of re-verification outweighed the potential benefits.

The LEC Petitioners contend that the Bureau mischaracterized their argument. Rather, according to the LEC Petitioners, under general principles of agency law, an executing carrier simply has a much more limited obligation to its subscribers not to make changes to subscriber accounts without prior indication from the subscriber that the submitting carrier request was so authorized. The LEC Petitioners liken their actions to that of a clerk at a liquor store that asks a customer for identification as a condition of purchase.

The Commission disagrees with LEC Petitioners and finds there is no material distinction between rejecting a carrier change request because of a determination that the customer is not authorized, and rejecting a change request because the LEC has determined that customer information does not match the LEC's records. As the Bureau emphasized in its declaratory ruling, and as commenters reiterate here, the Commission has already clearly defined the roles of the submitting and executing carrier in a carrier change request. Specifically, in the course of verifying the subscriber's intention to change long distance service, a submitting carrier's independent, third-party verifier is required to elicit confirmation that the person contacted is authorized to make the change (that is, either the party or an agent of the party identified on the account). As to executing carriers, the Commission's rules simply require "prompt execution of changes verified by a submitting carrier." As stated in the declaratory ruling, the mere fact that the name(s) contained in the executing carrier's LEC account information may differ from that of the contact person listed on the submitting carrier's change request does not necessarily indicate a lack of authority or agency on the part of the person requesting the IXC change. The

Commission finds credible, and LEC Petitioners do not dispute, that "customers often authorize a spouse, a roommate, or other associate to act on their behalf," or may use a different name for billing purposes, and this information may not reside in the LEC's files. The Commission does not believe the LEC Petitioners' liquor store analogy is applicable to the actions at issue here. In the LEC Petitioners' purported analogy, the customer is directly requesting a product sold by that store. Here, an executing carrier seeks to block a transaction that has already occurred between a customer and another carrier.

The LEC Petitioners also argue that the Bureau erred when it failed to consider their arguments in light of *AT&T v. FCC*. In that decision, the court found that the Commission could not require submitting carriers to obtain actual authorization from a subscriber for a carrier change. Instead, the court found that Section 258 of the Act provides that carriers must comply only with "such verification procedures as the Commission shall prescribe (emphasis added)." The court added that requiring actual authorization was tantamount to holding submitting carriers to a strict liability standard, but that no such standard was contained in section 258 of the Act. The LEC Petitioners point to the court's statement that the customer's local exchange carrier "might be able to verify the subscriber's identity by consulting its own customer records," to support their proposition that they should not have to presume that any name submitted in connection with a carrier change order is authorized by the subscriber. The Commission disagrees. In *AT&T v. FCC*, the court reviewed the Commission's enforcement action imposing forfeiture against AT&T for slamming. That decision concerned only the obligations of a submitting carrier; it did not address the rights or obligations of LECs. The specific language cited by the LEC Petitioners occurs in the context of the court's explanation of why the Commission exceeded its statutory authority in creating an "actual authorization from the subscriber" requirement and enforcing it against AT&T.

The Bureau cited several examples (provided by the LEC Petitioners) of situations in which a LEC could, under the Commission's rules, legitimately reject a submitting carrier's change request, such as when a customer is already subscribed to the submitting carrier, when a customer has a PIC freeze in place, or when PIC changes are not permitted (e.g., certain college dormitory rooms). The LEC Petitioners

argue that rejection of a carrier change for the reasons at issue here cannot be disallowed if it is in fact permissible for a LEC to utilize its records when processing a carrier change request, as in the examples described above. The Commission disagrees. The Commission reiterates that carriers may access account information in the course of effectuating carrier changes, and we do not believe that, under the limited circumstances described above, an executing carrier's return of a carrier change to the submitting carrier constitutes re-verification in violation of the Commission's rules. The Commission's objection to the LEC actions at issue here is not related to their consulting account information *per se* during the course of executing a carrier change. Rather, it violates Commission rules for executing carriers to make an independent determination with respect to the ability of a person to authorize a carrier change based on such information.

Executing carriers have means (other than re-verification) of protecting their customers that do not interfere with competition or undermine consumer choice. Executing carriers can, for example, alert customers to preferred carrier changes, such as by highlighting changes to customers' accounts in customer billings, and can offer a preferred carrier freeze option to customers who are concerned about slamming. However, as the Commission expressed in the past, re-verification by executing carriers could function as a *de facto* preferred carrier freeze in situations where a subscriber has not requested such a freeze. The Commission emphasized that the imposition of a preferred carrier freeze

must be authorized by the consumer to minimize any anticompetitive effects and to maintain flexibility for consumers. While preferred carrier freezes can provide consumers with extra protection from slamming, freezes by their very nature impose additional burdens on subscribers, and as such should only be enacted as a result of consumer choice. In the declaratory ruling, the Bureau reiterated this concern with respect to the LEC Petitioners' actions. The LEC actions at issue here serve to restrict consumer control by eliminating the consumer's ability to designate someone (such as a spouse) as authorized to change telecommunications service without first contacting the local carrier, thereby increasing the ability of the executing carrier to act in an anti-competitive manner. Endorsement of the LEC Petitioners' policies would result in inconvenience and delays for customers. The Commission continues to believe that the actions of the LEC Petitioners can, and do, result in *de facto* preferred carrier freezes where the customer has not requested such a freeze.

Finally, the Commission notes that IUB and NASUCA commented in support of the LEC Petitioners. While the Commission declines to grant the LEC Petitioners' request to reverse the Bureau's finding in the declaratory ruling, the Commission recognizes that state authorities may have verification requirements for matters within their jurisdiction that are stricter than those of the Commission. As the Commission recognized in the *Third Report and Order*, FCC 00-255, published at 66 FR 12877 (March 1, 2001), states have valuable insight into the slamming

problems experienced by consumers in their respective locales. Accordingly, the Commission declined to require that "states \* \* \* limit their verification requirements so that they are no more stringent than those promulgated by this Commission." As was noted in the declaratory ruling, the Commission's decision here concerns the question of permissible actions by private companies, not actions by a state regulatory agency.

#### Congressional Review Act

The Commission will not send a copy of document FCC 07-222 pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because no new rules were adopted in the document.

#### Ordering Clauses

Pursuant to the authority contained in sections 1, 2, 4(i), and 258 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), and 258, and sections 1.115 and 64.1120(a)(2) of the Commission's rules, 47 CFR 1.115 and 64.1120(a)(2), document FCC 07-222 is adopted.

Pursuant to the authority contained in sections 1, 2, 4(i), and 258 of the Communications Act, of 1934, as amended, 47 U.S.C. 151, 152, 154(i), and 258, and sections 1.115 and 64.1120(a)(2) of the Commission's rules, 47 CFR 1.115 and 64.1120(a)(2), the LEC Petitioners' Application for Review is denied.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E8-1980 Filed 2-1-08; 8:45 am]

**BILLING CODE 6712-01-P**