

Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, FCC 03-42

SUPPORTING STATEMENT

A. Justification

1. Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996, makes it unlawful for any telecommunications carrier to “submit or execute a change in a subscribers selection of a provider of telecommunications exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.” The Section further provides that any telecommunications carrier that violates such verification procedures and that collects charges for telephone exchange service or telephone toll service from a subscriber shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by the subscriber after such violation.

In the *Second Report and Order and Further Notice of Proposed Rulemaking (Section 258 Order)* 64 FCC Rcd 7763 (1999), the Commission promulgated rules to implement Section 258 of the Act to combat the practice of slamming which is the unauthorized change of a subscriber's preferred carrier.¹ In the *Section 258 Order*, the Commission adopted various rules addressing verification of preferred carrier changes and preferred carrier freezes. The Commission also adopted liability rules designed to take out the profits associated with slamming by broadening the scope of its carrier change rules and adopting, among other things, more rigorous slamming liability and carrier change verification measures.

In the *First Order on Reconsideration*, FCC Rcd 66934 (2000), the Commission amended certain of its liability rules by requiring 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 FCC rules, rather than brought before authorized carriers.² When the Commission released the *Section 258 Order*, it recognized that additional revisions to the slamming rules could further improve the preferred carrier change process and prevent unauthorized changes. Thus, concurrent with the release of the *Section 258 Order*, the Commission issued a *Further Notice* seeking comment on a number of additional proposals

¹ 47 C.F.R. § 64.1100 *et seq.* Prior to the adoption of section 258 of the Act, the Commission had taken various steps to address the slamming problem; the adoption of section 258 expanded the Commission's authority in this area. See, e.g., Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, *Report and Order*, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); Policies and Rules Concerning Changing Long Distance Carriers, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

² Implementation of the Subscriber Carrier Change Selection Provisions of the Telecommunications act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, *First Order on Reconsideration*, 15 FCC Rcd 8158 (2000)(*First Order on Reconsideration*).

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to further improve the preferred carrier change process and to prevent unauthorized carrier changes.

In the *Third Report and Order*, 66 FCC Rcd 16151 (2000), the Commission adopted a number of rules proposed in the *Further Notice*. Specifically, the Commission: (1) amended the carrier change authorization and verification rules to expressly permit the use of Internet Letters of Agency (LOAs) in a manner consistent with the E-Sign Act; (2) directed the North American Numbering Plan Administration to eliminate the requirement that carriers purchase Feature Group D access in order to obtain a carrier identification code; (3) provided guidance on the independent third party verification process; (4) defined the term 'subscriber' for purposes of its slamming rules; (5) required a carrier providing telephone exchange and/or telephone toll service to submit a semiannual report on the number of slamming complaints it receives; and (6) expanded the existing registration requirement on carriers providing interstate telecommunications service to include additional facts that would assist the Commission's enforcement efforts.

In the *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, 68 FCC Rcd 40184 (2003) (*Third Order on Reconsideration*), the Commission revised and clarified certain rules to implement Section 258 of the Act. The rules and requirements implementing Section 258 can be found primarily at 47 CFR Part 64. The modified and revised rules strengthen the ability of our rules to deter slamming, while protecting consumers from carriers that may take advantage of consumer confusion over different types of telecommunications services. This *Third Order on Reconsideration* also contains a *Further Notice of Proposed Rulemaking*, in which the Commission sought comment on rule modifications with respect to third party verifications.

On July 16, 2004, the Commission released a *First Order on Reconsideration and Fourth Order on Reconsideration, (Reconsideration Order)*, CC Docket Nos. 00-257 and 94-129, FCC 04-153. In the *Reconsideration Order*, the Commission addressed issues raised in petitions for reconsideration of the *First Order on Reconsideration* and certain ancillary slamming issues relating to switchless resellers that were raised in the docket but had not yet been resolved.³ Also, the Commission modified rule 47 CFR Section 64.1120(e)(3)(iii). As noted, when subscribers are switched between carriers as a result of a negotiated sale or transfer⁴ or the exiting carrier's bankruptcy, the Commission believes the acquiring carrier should generally be responsible for carrier change charges associated with the negotiated sale or transfer. However, while the Commission maintains this general rule rather than adopting either SBC's or Verizon's proposed modifications,⁵ the Commission adopted one minor modification to the rule for particular, limited circumstances. Specifically, when an acquiring

³ See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996, 16007 (2000) (*Third Report and Order*).

⁴ Negotiated sale or transfers is when a carrier sells a customer base to another carrier.

⁵ SBC argues that acquiring carriers should not be required to pay for the cost associated with transferring customers in either negotiated deals or state impose transfers. Verizon seeks clarification that our rules do not prevent local exchange carriers (LEC's) from assessing a non-recurring charge on customers it acquires by default transfer.

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carrier acquires customers by default – other than through bankruptcy – and state law would require the exiting carrier to pay these costs, the Commission requires the exiting carrier to pay such costs to meet our streamlined slamming rules. The change in the rule does not impose any new or modified information collection requirements.

The modifications and additions adopted in the *Third Order on Reconsideration* improved the carrier change process for consumers and carriers, while making it more difficult for unscrupulous carriers to perpetrate slams. In order to implement Section 258 of the Act, the Commission modified 47 CFR Sections 64.1120(c)(3)(iii), 64.1130(j), 64.1150(b), 64.1160(g), 64.1170(g), and remove 64.1180⁶ pursuant to the *Third Order on Reconsideration*.

The following is a synopsis of the rules and requirements adopted in the *Third Order on Reconsideration*, as modified, as well as a summation of the requirements for which the Commission requested renewal of OMB approval.

(a) Section 64.1110. State Notification of Election to Administer FCC rules.

- i. Section 64.1110(a). Pursuant to Section 64.1110(a), state notification of an intention to administer the Federal Communication Commission's unauthorized carrier change rules and remedies, as enumerated in §§ 64.1100-1190, shall be filed with the Commission Secretary in CC Docket No. 94-129 with a copy of such notification provided to the Consumer & Governmental Affairs 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.
- ii. Section 64.1110(b). Pursuant to Section 64.1110(b), state notification of an intention to discontinue administering the Federal Communications Commission's unauthorized carrier change rules and remedies, as enumerated in §§ 64.1100-1190, shall be filed with the Commission Secretary in CC Docket No. 94-129 with a copy of such amended notification provided to the Consumer & Governmental Affairs Bureau Chief. Such discontinuance shall become effective 60 days after the Commission's receipt of the state's letter.

(b) Section 64.1120. Verification of Orders for Telecommunications Service

Section 64.1120. Pursuant to Section 64.1120:

⁶ In the Commission's previous submission, it eliminated the information collection requirement for section 64.1180 of the Commission rules pursuant to the *Third Order on Reconsideration*.

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(i) 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 47 CFR Part 64, Sections 64.1100-64.1190. 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 in Part 64.

(ii) The submitting carrier shall maintain and preserve records of verification of subscriber authorization for a minimum period of two years after obtaining such verification.

(iii) Where a telecommunications carrier is selling more than one type of telecommunications service 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 Part 64.

(iv) 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 Section 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 on which the preferred carrier is to be changed and must confirm the information in Section 64.1120(a)(1). Telecommunications carriers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose; 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 date. 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 application to intrastate preferred carrier change orders only. See 47 CFR Section 64.1120.

i. Section 64.1120(c)(3)(iii). 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.

(c) Section 64.1130. Letter of Agency Form and Content

i. Section 64.1130(a). Pursuant to Section 64.1130(a), a telecommunications

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

- ii. Section 64.1130(b). Pursuant to Section 64.1130(b), the letter of agency shall be a separate document (or easily separable document) or located on a separate screen or webpage containing only the authorizing language described in paragraph (e) of this section having the sole purpose of authorizing a telecommunications carrier to initiate a preferred carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the preferred carrier change.
 - iii. Section 64.1130(c). Pursuant to Section 64.1120(c), the letter of agency shall not be combined on the same document, screen, or webpage with inducements of any kind.
 - iv. Section 64.1130(d). Pursuant to Section 64.1120(e)(5), the letter of agency must contain language that confirms that the subscriber may consult with the carrier as to whether a fee will apply to the change in the subscriber's preferred carrier.
 - v. Section 64.1130(i). Pursuant to Section 64.1130(i), a letter of agency submitted with an electronically signed authorization must include the consumer disclosures required by Section 101(c) of *Electronic Signatures in Global and National Commerce Act*.
 - vi. Section 64.1130(j). Pursuant to Section 64.1130(j), a 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 existing business locations during the course of a term agreement shall be valid for the period specified in the term agreement.
- (d) Section 64.1140. Carrier Liability for Slamming
- i. Section 64.1140(b). Pursuant to Section 64.1140(b), any subscriber whose selection of telecommunications service provider is changed without authorization or verification 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

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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) of this part.

(e) Section 64.1150. Procedures For Resolution of Unauthorized Changes in Preferred Carrier

- i. Section 64.1150(a). Pursuant to Section 64.1150(a), 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.
- ii. Section 64.1150(b). Pursuant to Section 64.1150(b), 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.
- iii. Section 64.1150(c). Pursuant to Section 64.1150(c), 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 removes all unpaid charges from the subscriber's bill pending a determination of whether an unauthorized change, as defined by § 64.1100(e) of this part, has occurred, if it has not already done so.
- iv. Section 64.1150(d). Pursuant to Section 64.1150(d), 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 §§ 64.1150-1160 of this part. The relevant governmental agency will determine whether an unauthorized change, as defined by § 64.1100(e) of this part, 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.

(f) Section 64.1160 Absolution Procedures Where the Subscriber Has Not Paid Charges

- i. Section 64.1160(a). Pursuant to Section 64.1160(a), this section shall only apply after a subscriber has determined that an unauthorized change, as defined by § 64.1100(e) of this part, 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.

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- ii. Section 64.1160(b). Pursuant to Section 64.1160(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) of this part, from a subscriber's bill upon notification that such unauthorized change is alleged to have occurred.
- iii. Section 64.1160(c). Pursuant to Section 64.1160(c), an allegedly unauthorized carrier may challenge a subscriber's allegation that an unauthorized change, as defined by § 64.1100(e) of this part, occurred. An allegedly unauthorized carrier choosing to challenge such allegation shall immediately notify the complaining subscriber that: (1) the complaining subscriber must file a complaint with a state commission that has opted to administer the FCC's rules, pursuant to § 64.1110 of this part, or the FCC within 30 days of either (i) the date of removal of charges from the complaining subscriber's bill in accordance with paragraph (b) of this section or (ii) the date the allegedly unauthorized carrier notifies the complaining subscriber of the requirements of this paragraph, whichever is later; and (2) 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 subscribers will only be entitled to remedies for the alleged unauthorized change other than those provided for in § 64.1140(b)(1) of this part. 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.
- iv. Section 64.1160(d). Pursuant to Section 64.1160(d), if the governmental agency determines after reasonable investigation that an unauthorized change, as defined by § 64.1100(e) of this part, has occurred, and 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.
- v. Section 64.1160(e). Pursuant to Section 64.1160(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 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

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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.⁷

(g) Section 64.1170 Reimbursement Procedures Where the subscriber Has Paid Charges

- i. Section 64.1170(a). Pursuant to Section 64.1170(a), the procedures set forth in Section 64.1170 shall apply only after a subscriber has determined that an unauthorized change, as defined by Section 64.1100(e) of our rules, has occurred and the subscriber has paid charges to an allegedly unauthorized carrier.
- ii. Section 64.1170(b). Pursuant to Section 64.1170(b), if the relevant governmental agency determines after reasonable investigation that an unauthorized change, as defined by § 64.1100(e) of this part, 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.
- iii. Section 64.1170(c). Pursuant to Section 64.1170(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.
- iv. Section 64.1170(e). Pursuant to Section 64.1170(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.

⁷ The authorized carrier will have to retain the bill sent to them by the unauthorized carrier until the complainant is reimbursed.

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(h). Section 64.1190. Preferred Carrier Freezes

- i. Section 64.1190(d). Pursuant to Section 64.1190(d)(1)(ii), all carrier-provided solicitation and other materials regarding preferred carrier freezes must include: a description of the specific procedures necessary to lift a preferred carrier freeze; an explanation that these steps are in addition to the Commission's verification rules in Sections 64.1120 and 64.1130 for changing a subscriber's preferred carrier selections; and an explanation that the subscriber will be unable to make a change in carrier selection unless he or she lifts the freeze.
- ii. Section 64.1190(d)(2). Pursuant to Section 64.1190(d)(2)(i), no local exchange carrier shall implement a preferred carrier freeze unless the subscriber's request to impose a freeze has first been confirmed in accordance with one of the following procedures: the local exchange carrier has obtained the subscriber's written or electronically signed authorization in a form that meets the requirements of Section 64.1190(d)(3).
- iii. Section 64.1190(d)(3). Pursuant to Section 64.1190(d)(3)(i), the written authorization shall comply with Sections 64.1130(b), (c), and (h) of the Commission's rules concerning the form and content for letters of agency.
- iv. Section 64.1190(e). Pursuant to Section 64.1190(e), a local exchange carrier administering a preferred carrier freeze must accept a subscriber's written or electronically signed authorization stating his or her intent to lift a preferred carrier freeze.

(i) Section 1.719. Informal Complaints Filed Pursuant to Section 258

- i. Section 1.719(a). Pursuant to Section 1.719(a), notwithstanding the requirements of §§ 1.716-1.718, 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).
- ii. Section 1.719(b). Pursuant to Section 1.719(b), the complaint shall be in writing, and should contain: (1) the complainant's name, address, telephone number and e-mail address (if the complainant has one); (2) the name of both the allegedly unauthorized carrier, and authorized carrier; (3) 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; (4) a statement of whether the complainant has paid any disputed charges to the allegedly unauthorized carrier; and (5) the specific relief sought.
- iii. Section 1.719(c). Pursuant to Section 1.719(c), the Commission will resolve slamming complaints under the definitions and procedures established in §§ 64.1100-1190. The Commission will issue a written (ore electronic) order informing the

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complainant, the unauthorized carrier, and the authorized carrier of its finding, and ordering the appropriate remedy, if any, as defined by §§ 64.1160-70.

- iv. Section 1.719(d). Pursuant to Section 1.719(d), 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 of this part. 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 (1) 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; (2) makes reference to both the informal complaint number assigned to and the initial date of filing the informal complaint filed under this section; and (3) 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.
- (j). Voluntary Reporting Requirement. Paragraph 34 of the *First Order on Reconsideration* imposes a modest reporting requirement on those states that voluntarily opt to administer the Commission's rules by handling slamming complaints filed by their citizens. The Commission, in order to fulfill its responsibilities under Section 258 and to assist its anti-slamming enforcement efforts, requires states that choose to administer the Commission's slamming 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.
- (k) Drop-off Rule Exemption Reporting Requirement. Paragraph 35 of the *Third Order on Reconsideration and Second Notice of Proposed Rulemaking* imposes a modest reporting requirement on those carriers that voluntarily opt to apply for exemption of the Commission's drop-off rule. The Commission 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. Carriers will be exempt from the drop-off rule 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), certify to the Commission as to their continued inability to comply.

The Commission is requesting an extension of this information collection in order to receive the full three year OMB approval/clearance.

The statutory authority for the information collection requirements is found at Sec. 258 [47 U.S.C. 258] Illegal Changes In Subscriber Carrier Selections, Public Law 104-104, 110 Stat.56.

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2. The information is used to implement Section 258 of the Act. In addition, the information is necessary to the implementation of our rules to deter slamming, while protecting consumers from carriers that may take advantage of consumer confusion over different types of telecommunications services.

This information collection does contain personally identifiable information on individuals (PII).

- (a) The FCC maintains an information system, including both paper files and electronic data, which is covered by a system of records notice (SORN), FCC/CGB-1, "Informal Complaints and Inquiries."⁸ The SORN covers the collection, purposes(s), storage, safeguards, and disposal of the PII that individuals (respondents) may submit to the Commission as part of the data that they include on FCC Form 501 "Slamming Complaint". (b) The FCC has completed a Privacy Impact Assessment covering the information system covered by this SORN, which may be reviewed at: http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html. (c) The FCC last published this SORN on October 11, 2001 (66 FR 51955). (d) The FCC intends to update its inventory of SORNs, including FCC/CGB-1, "Informal Complaints and Inquiries," and to publish a Notice in the *Federal Register* as required by OMB regulations and the Privacy Act, 5 U.S.C. 552a(e).
3. The Commission contemplates whether records may be kept electronically. The rules do not specifically provide for technological collection techniques or other forms of electronic technology.
4. The information collection requirements are not duplicative of any currently existing federal regulatory obligation.
5. The collections of information may impact small business entities. The Commission is committed to reducing the regulatory burdens on small businesses whenever possible, consistent with the Commission's other public interest responsibilities. Therefore, pursuant to the *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, the Commission's modified reporting requirements represent a balance between reducing this burden and ensuring that consumer's telecommunications carrier selections are not changed without their authorization. In eliminating the rule requiring carriers to submit FCC Form 478, the Commission will likely reduce significantly the administrative burdens on carriers, including those smaller carriers.
6. Without these information collection requirements, consumers might not be aware of their rights and responsibilities with concern to carrier changes. In addition, further requirements for third party verification should maximize the accuracy and efficiency for consumers, carriers, and the Commission.
7. The collection is not conducted in any manner that is inconsistent with the guidelines in 5 CFR § 1320.6.

⁸ This SORN was formerly titled FCC/CIB-1, "Informal Complaints and Inquiries," SORN. .

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8. Pursuant to 5 CFR § 1320.8(d), the Commission published a notice in the *Federal Register* on July 5, 2007, (72 FR 36704). No comments were received.
9. The Commission does not anticipate providing any payment or gift to respondents.
10. No assurances of confidentiality are being provided to the respondents.

(a) The Commission is requesting that individuals (consumers/respondents) submit their names, addresses, and telephone numbers, which the Commission's staff need to process the complaints. A privacy statement is included on all FCC forms accessed through our Internet web site. (b) In addition, respondents are made aware of the fact that their complaint information may be released to law enforcement officials and other parties as mandated by law (*i.e.* court-ordered subpoenas). Such information is contained in the operations support for complaint analysis and resolution (OSCAR) and consumer information management system (CIMS) databases, which is covered under the Commission's system of records notice (SORN), FCC/CGB-1, "Consumer Inquiries and Complaints Division." The PII covered by this system of records notice is used by Commission personnel to handle and to process informal complaints from individuals and groups. The Commission will not share this information with other federal agencies except under the routine uses listed in the SORN. The PIA that the FCC completed on June 28, 2007 gives a full and complete explanation of how the FCC collects, stores, maintains, safeguards, and destroys the PII, as required by OMB regulations and the Privacy Act, 5 U.S.C. 552a. The PIA may be viewed at: http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.

11. This information collection does not raise any questions or issues of a sensitive nature.

(a) Additionally, consumers are cautioned not to provide personal information such as social security number, credit card numbers, *etc.* (b) As noted earlier, the Commission does require consumers (respondents) to provide their names, addresses, and telephone numbers so that Commission staff may process these complaints more expeditiously and contact the complainant for any additional information to resolve the complaint. (c) In instances where consumers provide PII, the FCC has a SORN, FCC/CGB-1, "Informal Complaints and Inquiries," to cover the collection, use, storage, and destruction of the PII. A full explanation of the privacy safeguards may be found in the Privacy Impact Assessment that the FCC completed on June 28, 2007 and that may be viewed at: http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.

12. Estimated of the hour burden for collection of information are as follows:

- (a) Section 64.1110 – State Notification of Election to Administer FCC Rules. The following represents the estimate of hour burden of the information collection under Section 64.1110:

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The Commission estimated that there will be approximately 52 state commissions would be subject to the requirement. This process will be done "on occasion" and will require approximately 2 hours to comply with the requirement.

52 state commissions x 1 notification/commission x 2 hours each = **104 hours**

The Commission assumed that respondents use "in house" personnel whose pay is comparable to senior level federal employee (GS-13/5, plus 30% overhead), it estimated respondent's cost to be about \$56.05 per hour to comply with the requirements:

52 state commissions x 1 notification/commission x 2 hrs each x \$56.05/hr = **\$5,829.20**

- (b) Section 64.1120 – Verification of Orders for Telecommunications Service. The following represents the estimate of hour burden of the information collection under Section 64.1120:

The Commission estimated that there will be approximately 3,202 carriers would be subject to the requirement. This process will be done "on occasion" and will require approximately 2 hours to comply with the requirements.

3,202 carriers x 1 verification document/carrier x 2 hours each = **6,404 hours**

The Commission assumed that respondents use "in house" personnel whose pay is comparable to mid-to-senior level federal employee (GS-13/5, plus 30% overhead), it estimated respondent's cost to be about \$56.05 per hour to comply with the requirements:

3,202 carriers x 1 verification document/carrier x 2 hours each x \$56.05/hr = **\$358,944.20**

- (c) 64.1130 – Letters of Agency. The following represents the estimate of hour burden of the information collection under Section 64.1130:

The Commission estimated that their will be approximately 3,202 carriers would be subject to the requirement. This process will be done "on occasion" and will require approximately 4 hours to comply with the requirement.

3,202 carriers x 1 letter of agency form & consent/carrier x 4 hours each = **12,808 hours**

The Commission assumed that respondents use "in house" personnel whose pay is comparable to mid-to-senior level federal employee (GS-13/5, plus 30% overhead), it estimated respondent's cost to be about \$56.05 per hour to comply with the requirement:

3,202 carriers x 1 letter of agency form & consent/carrier x 1 hr x \$56.05/hr = **179,472.10**

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Also, assuming the respondents use "in house" personnel whose pay is comparable to a mid level federal employee (GS-7/5, plus 30% overhead), the Commission estimated respondent's cost to be about \$26.57 per hour to comply with the requirement:

$$3,202 \text{ carriers} \times 1 \text{ letter of agency form \& consent/carrier} \times 3 \text{ hrs each} \times \$26.57/\text{hr} =$$

$$\mathbf{\$255,231.42}$$

- (d) Section 64.1140 – Carrier Liability for Slamming. The following represents the estimate of hour burden of the information collection under Section 64.1140:

The Commission estimated that there will be approximately 1,910 carriers would be subject to the requirement. This process will be done "on occasion" taking approximately 2 hours to comply with the requirement.

$$1,910 \text{ carriers} \times 1 \text{ notification/carrier} \times 2 \text{ hours each} = \mathbf{3,820 \text{ hours}}$$

The Commission assumed that the respondents use "in house" personnel whose pay is comparable to mid-to-senior level federal employee (GS-13/5, plus 30% overhead), it estimated respondent's cost to be about \$56.05 per hour to comply with the requirement:

$$1,910 \text{ carrier} \times 1 \text{ notification/carrier} \times 2 \text{ hours each} \times \$56.05/\text{hr} = \mathbf{\$214,111}$$

- (e) Section 64.1150 – Procedures for Resolution of Unauthorized Changes in Preferred Carrier. The following represents the estimate of hour burden of the information collection under 64.1150:

The Commission estimated that their will be approximately 3,202 carriers and 39 state commissions would be subject to the requirement. This process will be done "on occasion" and will require approximately 5 hours to comply with the requirement.

$$3,202 \text{ carriers} + 39 \text{ states} \times 1 \text{ notification/respondent} \times 5 \text{ hours each} = \mathbf{16,205 \text{ hours}}$$

The Commission assumed that respondents use "in house" personnel whose pay is comparable to mid-to-senior level employee (GS-13/5, plus 30% overhead), it estimated respondent's cost to be about \$56.05 per hour to comply with the requirement:

$$3,202 \text{ carriers} + 39 \text{ states} \times 1 \text{ notification/respondent} \times 5 \text{ hours each} \times \$56.05/\text{hr} =$$

$$\mathbf{\$908,290.25}$$

- (f) Section 64.1160 – Absolution Procedures Where the Subscriber has not paid Charges. The following represents the estimate of hour burden of the information collection under 64.1160:

The Commission estimated there will be approximately 3,202 carriers and 39 would be subject to the requirement. This process will be done "on occasion" and will require approximately 8 hours to comply with the requirement.

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3,202 carriers + 39 states x 1 notification or complaint/respondent x 8 hours each =
25,928
hours

The Commission assumed that respondents use "in house" personnel whose pay is comparable to mid-to-senior level federal employee (GS-13/5, plus 30% overhead), it estimated respondent's cost to be about \$56.05 per hour to comply with the requirement:

3,202 carriers + 39 states x 1 notification or complaint/respondent x 8 hours each x
 \$56.05/hour = **\$1,453,264.40**

- (g) Section 64.1170 – Reimbursement Procedures Where the Subscriber Has Paid Charges. The following represents the estimate of hour burden of the information collection under Section 64.1170:

The Commission estimated that there will be approximately 3,202 carriers and 39 states would be subject to the requirement. This process will be done "on occasion" and will require approximately 7 hours to comply with the requirement.

3,202 carriers + 39 states x 1 notification/filings/respondent x 7 hours each = **22,687 hrs**

The Commission assumed that respondents use "in house" personnel whose pay is comparable to mid-to-senior level federal employee (GS-13/5, plus 30% overhead), it estimated respondent's cost to be about \$56.05 per hour to comply with the requirement:

3,202 carriers + 39 states x 1 notification/filings/respondent x 7 hours each x \$56.05/hr =
\$1,271,606.35

- (h) Section 64.1190 – Preferred Carrier Freezes. The following represents the estimate of hour burden of the information collection under Section 64.1190:

The Commission estimated that there will be approximately 1,850 carriers would be subject to the requirement. This process will be done "on occasion" and will require approximately 2 hours to comply with the requirement.

1,850 carriers x 1 preferred carrier freeze document/respondent x 2 hours each =
3,700 hrs

The Commission assumed that respondents use "in house" personnel whose pay is comparable to mid-to-senior level federal employee (GS-13/5, plus 30% overhead), it estimated respondent's cost to be about \$56.05 per hour to comply with the requirement:

1,850 carriers x 1 preferred carrier freeze documents/respondent x 2 hours each x
 \$56.05/hour = **\$207,385**

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- (i) Section 1.719 – Informal Complaints Filed Pursuant to Section 258 of Act. The following represents the estimate of hour burden of the information collection under Section 1.719:

The Commission estimated that there will be approximately 3,200 consumers would be subject to the requirement. This process will be done “on occasion” and will require approximately 4 hours to comply with the requirement.

3,200 consumers x 1 complaint/document/filing/respondent x 4 hours each = **12,800 hrs**

Because consumers utilize FCC Form 501 to file informal complaints pursuant to Section 258 of the Act, there will be no “in-house” personnel to comply with the requirement.

- (j) Voluntary Reporting Requirement. The following represents the estimate of hour burden of the voluntary information collection under paragraph 34 of the *First Order on Reconsideration*:

The Commission estimated that there will be approximately 52 state commissions would be subject to the requirement. This process will be done “twice per year” which will take approximately 10 hours in total (5 hours each time) to comply with the requirement. In fact, fewer state commissions may opt to undertake this voluntary information collection.

52 state commissions x 1 filing/respondent x 10 hours each = **520 hours**

The Commission assumed that respondents use “in house” personnel whose pay is comparable to mid-to-senior level federal employee (GS-13/5, plus 30% overhead), it estimated respondent’s cost to be about \$56.05 per hour to comply with the requirement:

52 state commissions x 1 filing/respondent x 10 hours each x \$56.05/hr = **\$29,146**

- (k) Drop-off Rule Exemption Requirement. The following represents the estimate of hour burden of the voluntary information collection under paragraph 35 of the *Third Order on Reconsideration*:

The Commission estimated that there will be approximately 1,850 carriers would be subject to the requirement. This process will be “once every two years” which will take approximately 1 hour every two years (which equals 0.50 hours per year) to comply with the requirement annually.

1,850 carriers x 1 certification/respondent x 0.50 hours each⁹ = **925/year**

⁹ The Commission based its estimate on a yearly calculation which equals 0.50 hours per year.

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The Commission assumed that the respondents use "in house" personnel whose pay is comparable to mid-to-senior level federal employee (GS-13/5, plus 30% overhead), it estimated respondent's costs to be about \$56.05 per hour to comply with the requirement annually.

1,850 carriers x 1 certification/respondent x 0.50 hours each x \$56.05/hr = **\$51,846.25**

Total number of respondents: 52 + 3,202 + 3,202 + 1,910 + 3,241 + 3,241 + 3,241 + 1,850 + 3,200 + 52 + 1,850 = **25,041**

Total number of responses: 25,041

Total annual hour burden: 104 + 6,404 + 12,808 + 3,820 + 16,205 + 25,928 + 22,687 + 3,700 + 12,800 + 520 + 925 = **105,901 hours**

Total "in house" cost of this burden: \$5,829.20 + \$358,944.20 + \$179,472.10 + \$255,231.42 + \$214,111 + \$908,290.25 + \$1,453,264.40 + \$1,271,606.35 + \$207,385 + \$29,146 + \$51,846.25 + = **\$4,935,126.17**

13. The Commission believes that there are approximately 30 companies that perform the verification services for carriers, when consumer switches their telephone service from one carrier to another carrier. Based on industry estimates, it takes on average approximately 5 minutes (0.0833 hours) to perform the verification procedure. These 30 companies perform this verification service for approximately 19,500,000 consumers annually who change carriers through this method and industry estimates of the verification cost per subscriber average \$2.63.

19,500,000 verifications x \$2.63 per verifications = **\$51,285,000**

14. Cost to the Federal Government: The cost to the Federal Government for administering the slamming liability rules is estimated to be **\$375,535**. This cost is based on the following calculations:

(1) The Commission estimates the expected number of complaints = 1,675

(2) The Commission estimates that it will take 4 hours for a GS-13/5 staff attorney at approximately \$56.05 to review/process complaints received, which includes 30% for operational expenses such as storage space and support staff:

1,675 complaints x 4 hours/complaint x \$56.05/hour = **\$375,535**

15. In the previous submission, the Commission miscalculated the total annual hourly burden for some of the components of the information collection requirements. The Commission has recalculated the number of respondents, total annual hourly costs, and number of responses

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due to the Commission's re-estimation of the various hourly burdens for the existing information collection requirements. Due to this re-estimation:

- (a) The Commission's estimated number of respondents has decreased from 35,036 respondents to 25,041 respondents;
- (b) The Commission's estimated number of responses has decreased from 35,036 responses to 25,041 responses;
- (c) The Commission's estimated total annual burden hours have decreased from 146,794 to 105,901 hours;
- (d) The Commission's estimated total cost burden has increased from \$51,187,500 to \$51,285,000.

- 16. The Commission intends to make the reports available for public inspection.
- 17. The Commission does not intend to seek approval not to display the expiration date for OMB approval on the information collection.
- 18. In the 60 day FRN published July 5, 2007 (72 FR 36704), the Commission reported the number of respondents to be 35,036, the total annual burden hours to be 145,869, and the total annual cost as \$51,187,500. The Commission corrects these numbers to read: 25,041 respondents, 105,901 total annual burden hours, and total annual cost burden as \$51,285,000. There are no other exception to Item 19, "Certification for Paperwork Reduction Act Submission," OMB Form 83-I.

B. Collections of Information Employing Statistical Methods:

The Commission does not anticipate that the collection of information will employ statistical methods.