

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 07-223

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)*, 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*, 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*

¹ *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, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998); 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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Notice seeking comment on a number of additional proposals to further improve the preferred carrier change process and to prevent unauthorized carrier changes.

In the *Third Report and Order*, the Commission adopted a number of rules proposed in the *Further Notice*.³ 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, (Third Order on Reconsideration)*, the Commission revised and clarified certain rules to implement Section 258 of the Act.⁴ The rules and requirements implementing Section 258 can be found primarily at 47 CFR Part 64. The modified and revised rules strengthen the Commission's ability 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 contained a *Further Notice of Proposed Rulemaking*, in which the Commission sought comment on rule modifications with respect to third party verifications.

In the *Third Order on Reconsideration*, the Commission also addressed petitions filed by a coalition of rural local exchange carriers (Rural LECs) and the national Telephone Cooperative Association (NTCA) 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.⁵ The Commission also

³ *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 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001)

⁴ *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 Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003).

⁵ See also *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, Declaratory Ruling, 20 FCC Rcd 10599 (2005) (affirming the Commission's prohibition against re-verification)(*Declaratory Ruling*); See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, CC Docket 94-129, Order, 73 FR 6444 (rel. January 4, 2008) (denying an Application for Review of the *Declaratory Ruling*).

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addressed a petition filed by SBC Communications, Inc. (SBC) seeking clarification of the prohibition on the use of carrier change information for marketing purposes and of the application of our slamming rules to Responsible Organization (RespOrg) changes for 800 number service.⁶ Additionally, the Commission addressed a petition filed by AT&T seeking clarification regarding the application of the slamming rules to newly installed lines, and petitions filed by Sprint and WorldCom seeking the elimination of certain carrier reporting requirements and modification of certain carrier liability rules.

The Commission further addressed petitions for reconsideration of our *Third Report and Order* in which the Commission, among other things, modified its rules on the verification of carrier change requests, including third party verification (TPV) using a three-way conference call or a call through an automated verification system.⁷ The Commission addressed petitions for reconsideration and/or clarification of local exchange carrier liability for unauthorized carrier changes, and addressed the related issue of local exchange carrier verification of inbound carrier changes. Finally, the Commission released an Order on May 23, 2003, clarifying that such verifications are required only when the carrier change involves the LEC or an affiliate of the LEC.

In the *First Order on Reconsideration and Fourth Order on Reconsideration, (Fourth 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.⁸

Also, in the *Fourth Reconsideration Order*, 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 transfer⁹ or the exiting carrier's bankruptcy, the Commission believes the acquiring carrier should generally be responsible for carrier change charges associated with a negotiated sale or transfer. However, while the Commission maintained this general rule rather than adopt either SBC's or Verizon's proposed modifications,¹⁰ the Commission did adopt one minor modification to the rule for particular, limited circumstances. Specifically, when an acquiring carrier acquires customers by default – other than through bankruptcy – and state law would require the exiting carrier to pay these costs, the Commission required

⁶ *SBC Communications, Inc.*, Petition for Reconsideration and for Clarification, CC Docket No. 94-129, at 13-14 (filed March 18, 1999).

⁷ *Third Report and Order*, 15 FCC Rcd at ¶ 38.

⁸ *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 Nos. 00-257 and 94-129, First Order on Reconsideration and Fourth Order on Reconsideration 19 FCC Rcd 13,432 (2004).

⁹ Negotiated sale or transfers occurs when a carrier sells a customer base to another carrier.

¹⁰ SBC argued 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 sought 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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the exiting carrier to pay such costs to meet our streamlined slamming rules. 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 the *Fifth Order on Reconsideration* the Commission addressed petitions filed by a coalition of independent local exchange carriers (LEC Petitioners) seeking reconsideration of the Commission's verification requirement for LECs engaging in in-bound carrier change request calls involving their affiliates.¹¹ Additionally, the Commission addressed a petition filed by AT&T seeking clarification of the decision to apply the Commission's slamming rules to newly-installed lines. Finally, the Commission addressed a petition filed by WorldCom seeking a finding that credits made to the consumer before a slamming complaint has been filed will be considered "unpaid" when calculating liability under the slamming rules, or will be deducted from the amount owed to the authorized carrier by a carrier found liable for a slam.

Revised Information Collection Requirements:

On January 9, 2008, the Commission released the *Fourth Report and Order*.¹² In the *Fourth Report and Order*, the Commission revises its requirements concerning verification of a consumer's intent to switch carriers. These new requirements will: ensure that each verification includes the date; expand the disclosure obligations of third party verifiers when consumers have questions during the verification; and otherwise clarify the required disclosures by verifiers to ensure that consumers better comprehend precisely what service changes they are approving. The Commission believes that these requirements and additions adopted in the Fourth Report and Order will increase consumer confidence, clarify existing rules, and decrease the likelihood of slamming.

These rule changes involve modifications to 47 CFR Sections 64.1110(a), 64.1110(b), 64.1120(b), 64.1120 (c)(3), 64.1120(c)(3)(iii), 64.1130(e)(4), 64.1150(d), 64.1160(c), 64.1190(c), and 64.1190(d)(3)(ii)(B).¹³

¹¹ *In the Matter of 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, Fifth Order on Reconsideration, 19 FCC Rcd 22926 (2004).

¹² *In the Matter of 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, Fourth Report and Order, CC Docket No. 94-129, FCC 07-223, (rel. Jan. 9, 2008).

¹³ The minor modifications to section 64.1120(c)(3)(iii) will have a negligible impact on burden hours for the collection of information. Remaining rule sections 64.1110(a), 64.1110(b), 64.1120(b), 64.1120 (c)(3), 64.1130(e)(4), 64.1150(d), 64.1160(c), 64.1190(c), and 64.1190(d)(3)(ii)(B) do not modify any information collection requirements.

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Therefore, Rule Delineating the Amendment made to the Information Collection Requirement by the Fourth Report and Order is as follows:

Section 64.1120. Verification of Orders for Telecommunications Service

Section 64.1120(c)(3)(iii). Pursuant to Section 64.1120(c)(3)(iii), any description of the carrier change transaction by a third party verifier must not be misleading, and all third party verification methods shall elicit, at a minimum: the date of the verification; 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; confirmation that the person on the call understands that a carrier change, not an upgrade to existing service, bill consolidation, or any other misleading description of the transaction, is being authorized; 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 (including a brief description of a service about which the subscriber demonstrates confusion regarding the nature of that service). Except in Hawaii, any description of interLATA or long distance service shall convey that it encompasses both international and state-to-state calls, as well as some intrastate calls where applicable. If the subscriber has additional questions for the carrier's sales representative during the verification, the verifier shall indicate to the subscriber that, upon completion of the verification process, the subscriber will have authorized a carrier change. Third party verifiers may not market the carrier's services by providing additional information, including information regarding preferred carrier freeze procedures.

Rules Delineating Currently Approved Information Collection Requirements:

(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 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.

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

- i. Section 64.1120(a). Pursuant to Section 64.1120(a), no telecommunications carrier shall submit or execute a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service except in accordance with the procedures prescribed in 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. 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. Section 64.1120(b). Pursuant to Section 64.1120(b), where a telecommunications carrier is selling more than one type of telecommunications service (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) that carrier must obtain separate authorization from the subscriber for each service sold, although the authorizations may be made within the same solicitation. Each authorization must be verified separately from any other authorizations obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in this part.
- iv. Section 64.1120(c). Pursuant to Section 64.1120(c), no telecommunications carrier shall submit a preferred carrier change order unless and until the order has been confirmed in accordance with one of the following procedures: (1) The telecommunications carrier has obtained the subscriber's written authorization in a form that meets the requirements of Section 64.1130; or (2) the telecommunications carrier has obtained, in accordance with the procedures set forth in paragraphs (c)(3)(i) through (c)(3)(iv) of this section, 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 data(e.g., the subscriber's date of birth or social security number). 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.

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

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

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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 64.1130(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(d), the letter of agency may be combined with checks that contain only the required letter of agency language as prescribed in paragraph (e) of this section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain in easily readable, bold-face type on the front of the check, a notice that the subscriber is authorizing a preferred carrier change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.
 - 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

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

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

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provided. However, the subscriber shall have the right to reject use of this 50% proxy method and require that the authorized carrier perform a re-rating of the services provided, as described in paragraph (e)(1) of this section.¹⁴

(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.

¹⁴ 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 complainant, the

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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 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.

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.

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

- (a) As required by OMB Memorandum M-03-22 (September 26, 2003), the FCC completed a Privacy Impact Assessment (PIA) on June 28, 2007, that gives a full and complete explanation of how the FCC collects, stores, maintains, safeguards, and destroys the PII covered by these information collection requirements. The PIA may be viewed at http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.
- (b) Furthermore, as required by the Privacy Act, 5 U.S.C. § 552a, the FCC also published a system of records notice (SORN), FCC/CGB-1, "Informal Complaints and Inquiries", in the *Federal Register* on October 11, 2001 (66 FR 51955). (Please note that at the time of publication, the SORN was titled FCC/CIB-1 "Informal Complaints and Inquiries").
3. The Commission contemplates that 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 *Fourth Report and Order*, the Commission's modified reporting requirements represent a balance between reducing these burdens and ensuring that consumer's telecommunications carrier selections are not changed without their authorization. The rules permit carriers to decide how the date of verification will be ascertained. In addition, though in some instances the rules require verifiers to inform the consumer that the carrier change can be effectuated once the verification is completed, they require verifiers to do so only in situations where the subscriber has additional questions for the carrier's sales representative. The Commission also declines to prohibit verifiers from using compound questions during the verification process. These measures should substantially alleviate any burdens on small businesses.
6. Without these information collection requirements, consumers might not be aware of their rights and responsibilities with concern to carrier changes. In addition, additional further requirements for third party verification should maximize the accuracy and efficiency of carrier changes 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.

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8. Pursuant to 5 CFR § 1320.8(d), the Commission published a 60 day *Federal Register* notice on March 12, 2008 at 73 FR 13230. The Commission received no comments following publication of this notice.
9. These disclosure requirements do not involve any payment or gift to respondents.
10. 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). PII is contained in the operations support for complaint analysis and resolution (OSCAR), the consumer information management system (CIMS), and the consumer case management system (CCMS) databases, which are covered under the Commission's SORN, FCC/CGB-1, "Informal Complaints and Inquiries." 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. The rule changes noted above will not change the estimates of the hour burden for collection of information by respondents. For purposes of these estimates, the minor modifications to

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Section 64.1120(c)(3)(iii) will have a negligible impact on burden hours for collection of information. The only changes herein are ones to update the 2008 hourly wage of a GS-13/5 and a GS-7/5 level government employee used to calculate costs. Estimates of the hour burden for this collection of information continue to be as follows:

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

The Commission estimates that there are approximately 52 state commissions subject to the requirement. This process will be done “on occasion” and will require approximately 2 hours to comply with the requirement. In fact, fewer state commissions may opt to comply with this requirement, which is voluntary. In addition, the Commission anticipates that many states will only comply with this requirement once.

52 state commissions x 1 notification x 2 hours = **104 hours**

The Commission assumes that respondents use “in house” personnel whose pay is comparable to mid-to-senior level federal employee (GS-13/5, plus 30% overhead). The Commission estimates respondent’s cost to be about \$58.57 per hour to comply with the requirements:

52 state commissions x 1 notification x 2 hours x \$58.57/hr = **\$6091.28**

- (b) Section 64.1120 – Verification of Orders for Telecommunications Service. The following represents the estimate of hour burden for the information collection under Section 64.1120:¹⁵

The Commission estimates that there are approximately 3,202 carriers subject to the requirement. This process will be done “on occasion” and will require approximately 2 hours to comply with the requirements. This estimate of the average burden contemplates that some companies will experience no burden, while others may need several more hours to comply with the requirements. A significant number of the above estimated respondents may opt to use other verification methods allowed by our rules as opposed to the verification method that is the subject of this rule. Thus, the number of companies actually employing this verification method may be significantly lower than the above estimate.

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

The Commission assumes that respondents use “in house” personnel whose pay is comparable to mid-to-senior level federal employee (GS-13/5, plus 30% overhead). The

¹⁵ The minor modifications to Section 64.1120(c)(3)(iii) will have a negligible impact on burden hours for the collection of information. Therefore, the current number of respondents for each requirement, number of responses, and hourly burdens for this rule section remains unchanged.

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Commission estimates respondent's cost to be about \$58.57 per hour to comply with the requirements:

3,202 carriers x 1 verification document x 2 hours x \$58.57/hr = **\$375,082.28**

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

The Commission estimates that there are approximately 3,202 carriers subject to the requirement. This process will be done “on occasion” and will require approximately 4 hours to comply with the requirement. This estimate of the average burden contemplates that some companies will experience no burden, while others may need several more hours to comply with the requirements. A significant number of the above estimated respondents may opt to use other verification methods allowed by our rules as opposed to the verification method that is the subject of this rule. Thus, the number of companies actually employing this verification method may be significantly lower than the above estimate.

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

The Commission assumes that respondents use “in house” personnel whose pay is comparable to mid-to-senior level federal employee (GS-13/5, plus 30% overhead). The Commission estimates respondent's cost to be about \$58.57 per hour to comply with the requirement:

3,202 carriers 1 letter of agency & consent/carrier form x 1 hour x \$58.57/hr = **\$187,541.14**

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 estimates respondent's cost to be about \$27.77 per hour to comply with the requirement:

3,202 carriers x 1 letter of agency & consent/carrier form x 3 hours x \$27.77/hr = **\$266,758.62**

- (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 estimates that there are approximately 1,910 carriers subject to the requirement. This process will be done “on occasion” taking approximately 2 hours to comply with the requirement. This estimate of the average burden contemplates that some companies will experience no burden, while others may need several more hours to comply with the requirements.

1,910 carriers x 1 notification/carrier x 2 hours = **3,820 hours**

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The Commission assumes that the respondents use "in house" personnel whose pay is comparable to mid-to-senior level federal employee (GS-13/5, plus 30% overhead). The Commission estimates respondent's cost to be about \$58.57 per hour to comply with the requirement:

$$1,910 \text{ carrier} \times 1 \text{ notification/carrier} \times 2 \text{ hours} \times \$58.57/\text{hr} = \mathbf{\$223,737.40}$$

- (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 estimates that there are approximately 3,202 carriers and 39 state commissions subject to the requirement. This process will be done "on occasion" and will require approximately 5 hours to comply with the requirement.

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

The Commission assumes that respondents use "in house" personnel whose pay is comparable to mid-to-senior level employee (GS-13/5, plus 30% overhead). The Commission estimates respondent's cost to be about \$58.57 per hour to comply with the requirement:

$$3,202 \text{ carriers} + 39 \text{ states} \times 1 \text{ notification/respondent} \times 5 \text{ hours} \times \$58.57/\text{hr} = \mathbf{\$949,126.85}$$

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

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

$$3,202 \text{ carriers} + 39 \text{ states} \times 1 \text{ notification or complaint/respondent} \times 8 \text{ hours} = \mathbf{25,928 \text{ hours}}$$

The Commission assumes that respondents use "in house" personnel whose pay is comparable to mid-to-senior level federal employee (GS-13/5, plus 30% overhead). The Commission estimate respondent's cost to be about \$58.57 per hour to comply with the requirement:

$$3,202 \text{ carriers} + 39 \text{ states} \times 1 \text{ notification or complaint/respondent} \times 8 \text{ hours} \times \$58.57/\text{hr} = \mathbf{\$1,518,602.96}$$

- (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:

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The Commission estimated that there are approximately 3,202 carriers and 39 states 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). The Commission estimated respondent's cost to be about \$58.57 per hour to comply with the requirement:

3,202 carriers + 39 states x 1 notification/filings/respondent x 7 hours each x \$58.57/hr = **\$1,328,777.59**

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

The Commission estimates that there are approximately 1850 carriers 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 x 2 hours = **3,700 hours**

The Commission assumes that respondents use "in house" personnel whose pay is comparable to mid-to-senior level federal employee (GS-13/5, plus 30% overhead). The Commission estimates respondent's cost to be about \$58.57 per hour to comply with the requirement:

1,850 carriers x 1 preferred carrier freeze document x 2 hours x \$58.57/hr = **\$216,709.00**

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

The Commission estimated that there are approximately 3,200 consumers 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.

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

The Commission estimated that there are approximately 52 state commissions 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). The Commission estimated respondent's cost to be about \$58.57 per hour to comply with the requirement:

52 state commissions x 1 filing/respondent x 10 hours each x \$58.57/hr = **\$30,456.40**

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

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

1,850 carriers x 1 certification/respondent x 0.50 hours each¹⁶ = **925 hrs/year**

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). The Commission estimated respondent's costs to be about \$58.57 per hour to comply with the requirement annually.

1,850 carriers x 1 certification/respondent x 0.50 hours each x \$58.57/hr = **\$54,177.25**

Total number of respondents: 3,202 carriers + 3,200 consumers + 52 states = **6,454 respondents**

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**

¹⁶ The Commission based its estimate on a yearly calculation which equals 0.50 hours per year.

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Total "in house" cost of this burden using 2008 wages: \$6091.28 + \$375,082.28 + 187,541.14 + \$266,758.62 + 223,737.40 + \$949,126.85 + \$1,518,602.96 + \$1,328,777.59 + \$216,709.00 + \$30,456.40 + \$54,177.25 = **\$5,157,060.77**

13. The Commission believes that there are approximately 30 companies that perform the verification services for carriers, when consumers switch 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 annually for approximately 19,500,000 consumers who change carriers through this method. Industry estimates of the verification cost per subscriber average \$2.63.

19,500,000 verifications x \$2.63 per verification = **\$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 **\$392,419.00**. 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 \$58.57 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 \$58.57 /hour = **\$392,419.00**

15. In the previous submission, the Commission miscalculated the number of respondents. Due to this re-estimation, the Commission's estimated number of respondents has decreased from **25,041** to **6,454**. There are no program changes.
16. The Commission intends to make the slamming 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 *Federal Register* Notice published March 12, 2008 (73 FR 13230), the Commission reported the number of respondents to be 25,041 and the estimated time per response to be 1 to 10 hours. The Commission corrects the number of respondents to read as: "6,454 respondents", and the estimated time per response to read as "0.50 to 10 hours". There are no other exceptions to Item 19, "Certification for Paperwork Reduction Act Submission", on 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.

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