not changed by the 1996 SDWA Amendments.

The current rule sets different requirements based on the type of violation and type of system. The 1996 SDWA amendments substantially alter what is currently in place: (1) SDWA section 1414(c)(2)(C) requires notice within 24 hours and sets other new, more prescriptive notice requirements for violations with ''Potential to Have Serious Adverse Health Risks to Human Health''; (2) SDWA section 1414(c)(2)(D) gives EPA more discretion to set less prescriptive notice requirements for all other violations, including requiring the notice in an annual report; and (3) SDWA section 1414(c)(2)(B) allows the State to prescribe alternative notification requirements by rule to the form and content of the notice, consistent with the current primacy requirements.

To meet the letter and spirit of the new statutory provisions, EPA will hold three or more public stakeholder meetings prior to drafting the regulation. This is the first of the scheduled stakeholder meetings that are planned over the next several months, to exchange information on our mutual experience with the current regulation and the elements needed in the new regulation to meet the intent of Congress. The legislative changes provide an excellent opportunity to streamline the existing regulations by focusing the notices on situations that have potential to have serious adverse effects on human health. EPA will also solicit from the stakeholders existing public notification programs that work, and seek to share these experiences through our rulemaking communication. The reports from these meetings will be presented to the public notification workgroup to define the issues and to develop options for their resolution.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–21537 Filed 8–13–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 94–129; FCC 97–248]

Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission adopted a combined Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration which amends the Commission's rules and policies governing the unauthorized switching of subscribers' primary interexchange carriers (PICs), an activity more commonly known as ''slamming.'' In the Further NPRM, the Commission proposes specific requirements to implement Section 258 of the Telecommunications Act of 1996, which extends the Commissions PIC-change verification rules to apply with equal force to all telecommunications carriers. The Commission also seeks comment regarding the liability among carriers and subscribers when slamming occurs. The Commission's objective in seeking comment in the FNPRM is to identify and evaluate further safeguards to protect consumers from unauthorized switching of their long distance carriers and to encourage full and fair competition among telecomunications carriers in the marketplace.

DATES: Written comments by the public on the proposed and/or modified information collections are due September 15, 1997 and reply comments on or before September 29, 1997. Written comments must be submitted by the OMB on the proposed and/or modified information collections on or before October 14, 1997.

ADDRESSES: In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Cathy Seidel, Enforcement Division, Common Carrier Bureau, (202) 418–0960. For additional information concerning the information collections contained in this Further NPRM contact Judy Boley at 202–418–0217, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further NPRM in CC Docket No. 94–129 [FCC 97–248], adopted on July 14, 1997 and released on July 15, 1997. The full text of the Further NPRM is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, N.W., Washington, D.C. This Further NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It has been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. Paperwork Reduction Act: This Further NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the OMB to comment on the information collections contained in this Further NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this Further NPRM; OMB notification of action is due Otober 14, 1997.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None.

Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit, including small business.

Proposed sec.	Number of resp.	Est. time per resp.	Tot. annual burden	Est. costs per resp.
Sec. 64.1100	675	1.25	844	
Sec. 64.1150	1800	2	3600	
Sec. 64.1170	1800	3	5400	

Needs and Uses: The Commission, in its effort to protect subscribers from unauthorized switching of their preferred carriers, and to implement Section 258 of the Telecommunications Act of 1996 pertaining to illegal changes in subscriber carrier selections, issued the Further NPRM to propose specific requirements and seek comments regarding, *inter alia*, the liability of (1) slammed subscribers to carriers, (2) unauthorized carriers to properly authorized carriers, and (3) carriers to slammed subscribers. This information will be used to revise the Commission's rules to reflect its expanded authority to address unauthorized changes of both telephone toll and telephone exchange service by any telecommunications carrier.

Summary of Further Notice of Proposed Rule Making

I. Background

1. On July 14, 1997, the Commission adopted a combined Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration in Docket 94–129. The Commission adopted the Further NPRM to seek comment on (1) a proposal to amend the Commission's rules regarding verification of orders for long distance service generated by telemarketing to apply to all telecommunications carriers who submit or execute orders for telecommunications service; (2) whether the verification rules should apply to solicitation of preferred carrier freezes; (3) whether the ''welcome package'' verification option described in § 64.1100(d) continues to be a viable and necessary verification alternative; (4) the costs and benefits associated with verification of in-bound (or consumer-initiated) carrier change requests; (5) liability among carriers and subscribers when slamming occurs; and, (6) whether to establish a bright-line evidentiary standard for determining whether a subscriber has relied on a resale carrier's identity of its underlying, facilities-based network provider, hence requiring that the resale carrier notify the subscriber if the underlying network provider is changed.

2. The Commission first established safeguards to deter slamming when equal access was implemented in 1985. By 1992, because the interexchange market had become more competitive, the need for additional safeguards to deter slamming increased. Therefore, the Commission adopted rules requiring that all IXCs institute one of four verification procedures before submitting a carrier change request generated through telemarketing, on behalf of a customer. 7 FCC Rcd 1038 (1992), *recon. denied*, 8 FCC Rcd 3215 (1993). In 1994, the Commission on its own motion and in response to continuing complaints from subscribers regarding slamming, instituted a rule making and adopted rules in its *1995 Report and Order*, 10 FCC Rcd 9560 (1995), 60 FR 35846 (July 12, 1995), establishing further anti-slamming safeguards to deter misleading letters of agency (LOAs). A LOA is a document signed by a subscriber which states that a particular carrier has been selected as that subscriber's preferred carrier. Despite the Commissions anti-slamming efforts, the number of written slamming complaints received by the Commission in 1995 was 11,278, which represents a six-fold increase over the number of such complaints received in 1993. That number has continued to rise; over 16,000 such complaints were received in 1996. Shortly after the adoption of the *1995 Report and Order*, the Commission, on its own motion, stayed its *1995 Report and Order* insofar as it extends the PIC-change verification requirements set forth in § 64.1100 of the Commission's rules to consumer-initiated or in-bound telemarketing calls. The stay was imposed before the effective date of the *1995 Report and Order*. The consumer-initiated or in-bound telemarketing provision is the only component of its anti-slamming rules that the Commission stayed. The stay of this provision of the *1995 Report and Order*, remains in effect.

II. Discussion

3. The Commission expanded the above-captioned docket to seek comment on proposed modifications to its rules to implement Section 258 of the Communications Act of 1934, 47 U.S.C. 258, as amended by the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (Act). Section 258 of the Act makes it unlawful for any telecommunications carrier to ''submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.'' The section further provides that:

> [a]ny telecommunications carrier that violates the verification procedures described in subsection (a) 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 such subscriber after such violation.

The plain language of Section 258 reflects Congressional recognition that unauthorized changes in subscribers' carrier selections, or ''slamming,'' is a significant consumer problem that threatens the pro-competitive goals and policies underlying the Act.

4. By enacting Section 258, Congress has substantially bolstered the Commission's continuing efforts and ability to deter, punish and, ultimately, eliminate slamming. The Commission stated that its verification procedures, together with the economic disincentives embodied in Section 258 (whereby unauthorized carriers must forfeit all charges collected from a subscriber it has slammed to the subscriber's properly authorized carrier) and the rules proposed in the Further NPRM, provide a two-pronged approach to deter slamming. The Commission has tentatively concluded that its current rules, with the additions and modifications described in the Further NPRM, will best implement the statutory prohibition against slamming by any telecommunications carrier, protect the right of consumers to be free of deceptive and misleading marketing practices, and help promote full and fair competition among telecommunications carriers in the marketplace by ensuring that consumers' choices are honored in the marketplace.

III. Ex Parte Requirements

5. This Further NPRM is a permit-but-disclose rule making proceeding. *Ex parte* presentations are permitted, in accordance with Commission rules, see generally 47 CFR 1.1200, 1.1202, 1.1204, 1.1206, provided that they are disclosed as required.

IV. Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in the Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Further NPRM. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further NPRM. The Secretary shall send a copy of this NPRM to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with the RFA, 5 U.S.C. § 603(a).

i. Need for and Objectives of the Proposed Rules

7. The Commission, in its effort to protect subscribers from unauthorized switching of preferred carriers, and to implement provisions of the Telecommunications Act of 1996 pertaining to illegal changes in subscriber carrier selections, issues the Further NPRM to propose specific verification requirements for all carriers and to seek comments regarding the liability of (1) slammed subscribers to carriers, (2) unauthorized carriers to properly authorized carriers, and (3) carriers to slammed subscribers.

ii. Legal Basis

8. This Further NPRM is adopted pursuant to Sections 1, 4(i), 4(j), 201–205, 258, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 258, 303(r).

iii. Description and Number of Small Entities Which May Be Affected

9. As set forth above, in its specific efforts to deter unauthorized changes in subscribers' preferred carriers, the Commission is seeking comment on rules regarding changes in subscriber carrier selections. Under the Act and proposed rules, small entities that violate the Commission's preferred carrier change verification rules by slamming subscribers shall be liable to the subscriber's properly authorized carrier for all charges paid by the slammed subscriber and for the value of any premiums to which the subscriber would have been entitled if the slam had not occurred.

10. For the purposes of the analysis, the Commission examined the relevant definition of ''small entity'' or ''small business'' and applied this definition to identify those entities that may be affected by the rules adopted in this Further NPRM. The RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. Moreover, the SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1,500 employees.

11. Consistent with prior practice, the Commission excludes small incumbent LECs from the definition of ''small entity'' and ''small business concerns'' for the purpose of this IRFA. Because the small incumbent LECs subject to these rules are either dominant in their field of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definition of ''small entity'' and ''small business concerns.'' Accordingly, the Commission's use of the terms ''small entities'' and ''small businesses'' does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, the Commission considers small incumbent LECs within this analysis and uses the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by SBA as ''small business concerns.''

Telephone Companies (SIC 4813)

12. *Total Number of Telephone Companies Affected.* The decisions and rules adopted by the Commission may have a significant effect on a substantial number of small telephone companies identified by the SBA. The United States Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone service, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the Further NPRM.

13. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telecommunications companies other than radiotelephone (wireless) companies (Telephone Communications, Except Radiotelephone). The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons. Of the 2,321 non-radiotelephone companies listed by the Census Bureau, 2,295 companies (or, all but 26) were reported to have fewer than 1,000 employees. Thus, at least 2,295 non-radiotelephone companies might qualify as small incumbent LECs or small entities based on these employment statistics. However, because it seems certain that some of these carriers are not independently owned and operated, this figure necessarily overstates the actual number of non-radiotelephone companies that would qualify as ''small business concerns'' under the SBA definition. Consequently, the Commission estimates using this methodology that there are fewer than 2,295 small entity telephone communications companies (other than radiotelephone companies) that may be affected by the actions proposed herein and seeks comment on this conclusion.

14. *Local Exchange Carriers.* Although neither the Commission nor the SBA has developed a definition of small providers of local exchange services, the Commission considered two methodologies available for making these estimates. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813) (Telephone Communications, Except Radiotelephone) as previously detailed, *supra*. The Commission's alternative method for estimation utilizes the data

that it collects annually in connection with the Telecommunications Relay Service (TRS). This data provides the Commission with the most reliable source of information of which it is aware regarding the number of LECs nationwide. According to the Commission's most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of incumbent LECs that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 1,347 small LECs (including small incumbent LECs) that may be affected by the actions proposed in the Further NPRM.

15. *Non-LEC wireline carriers.* Next the Commission estimates the number of non-LEC wireline carriers, including interexchange carriers (IXCs), competitive access providers (CAPs), Operator Service Providers (OSPs), Pay Telephone Operators, and resellers that may be affected by these rules. Because neither the Commission nor the SBA has developed definitions for small entities specifically applicable to these wireline service types, the closest applicable definition under the SBA rules for all these service types is for telephone communications companies other than radiotelephone (wireless) companies. However, the TRS data provides an alternative source of information regarding the number of IXCs, CAPs, OSPs, Pay Telephone Operators, and resellers nationwide. According to the Commission's most recent data: 130 companies reported that they are engaged in the provision of interexchange services; 57 companies reported that they are engaged in the provision of competitive access services; 25 companies reported that they are engaged in the provision of operator services; 271 companies reported that they are engaged in the provision of pay telephone services; and 260 companies reported that they are engaged in the resale of telephone services and 30 reported being ''other'' toll carriers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of IXCs, CAPs, OSPs, Pay Telephone Operators, and resellers that would qualify as small business concerns under SBA's definition. Firms filing TRS Worksheets are asked to select a single category that best describes their operation. As a result, some long distance carriers describe themselves as resellers, some as OSPs, some as ''other,'' and some simply as IXCs. Consequently, the Commission estimates that there are fewer than 130 small entity IXCs; 57 small entity CAPs; 25 small entity OSPs; 271 small entity pay telephone service providers; and 260 small entity providers of resale telephone service; and 30 ''other'' toll carriers that might be affected by the actions proposed in the Further NPRM.

16. *Radiotelephone (Wireless) Carriers:* The SBA has developed a definition of small entities for Wireless (Radiotelephone) Carriers. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, the Commission is unable to estimate with greater precision the number of radiotelephone carriers and service providers that would both qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 1,164 small entity radiotelephone companies that might be affected by the actions proposed in the Further NPRM.

17. *Cellular and Mobile Service Carriers.* In an effort to further refine its calculation of the number of radiotelephone companies affected by the rules adopted herein, the Commission considers the categories of radiotelephone carriers, Cellular Service Carriers and Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to Cellular Service Carriers and to Mobile Service Carriers. The closest applicable definition under SBA rules for both services is for telephone companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of Cellular Service Carriers and Mobile Service Carriers nationwide of which the Commission is aware appears to be the data that it collects annually in connection with the TRS. According to the Commission's most recent data, 792 companies reported that they are engaged in the provision of cellular services and 138 companies reported that they are engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of Cellular Service Carriers and Mobile Service Carriers that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 792 small entity Cellular Service Carriers and fewer than 138 small entity Mobile Service Carriers that might be affected by the actions proposed in the Further NPRM.

18. *Broadband PCS Licensees.* In an effort to further refine its calculation of the number of radiotelephone companies affected by the rules adopted herein, the Commission considers the category of radiotelephone carriers, Broadband PCS Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F. As set forth in 47 CFR 24.720(b), the Commission has defined ''small entity'' in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The Commissions definition of a ''small entity'' in the context of broadband PCS auctions has been approved by SBA. The Commission has auctioned broadband PCS licenses in Blocks A through F. The Commission does not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. There were 183 winning bidders that qualified as small entities in the Blocks C, D, E, and F auctions. Based on this information, the Commission concludes that the number of broadband PCS licensees that may be affected by the actions proposed in the Further NPRM includes, at a minimum, the 183 winning bidders that qualified as small entities in the Blocks C through F broadband PCS auctions.

19. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small entity'' in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average

annual gross revenues of less than $15 million in the three previous calendar years. This definition of a ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The rules proposed in the Further NPRM may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. The Commission assumes, for purposes of the IRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the rules proposed in the Further NPRM.

20. *Potential SMR Licensees.* The Commission completed its auctions for geographic area licenses in the 900 MHz SMR band on April 15, 1996. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, the Commission concludes that the number of geographic area SMR licensees that might be affected by the rules proposed in this Further NPRM includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, the Commission assumes, for purposes of the IRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the rules proposed in the Further NPRM.

21. *Cable Systems:* SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,423 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992.

(a) The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company,'' is one serving fewer than 400,000 subscribers nationwide. 47 CFR 76.901(e). Based on the Commission's most recent information, it estimates that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are fewer than 1,439 small entity cable system operators that may be affected by the rules proposed in the Further NPRM.

(b) The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' 47 U.S.C. 543(m)(2). The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, the Commission found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, the Commission finds that the number of cable operators serving 617,000 subscribers or less totals 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, the Commission is unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

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

22. The proposed rules would impose verification and disclosure requirements upon telecommunications carriers that wish to submit or execute a change in a subscriber's selection of a provider of telecommunications service. Submitting and executing telecommunications carriers would be required to ensure that a carrier change comports with the verification requirements of 47 CFR 64.1100 and 64.1150 established by the Commission. Furthermore, if a subscriber is a victim of slamming, the unauthorized carrier would be required to remit to the properly authorized carrier (1) all charges paid by the subscriber from the time the slam occurred, and (2) the value of any premiums to which the subscriber would have been entitled if the slam had not occurred. The properly authorized carrier would be required to request such payments from the unauthorized carrier within ten days of notification from the subscriber that an unauthorized carrier change has occurred. Upon notification that the subscriber has been slammed, the unauthorized carrier would be required to remit such payments to the properly authorized carrier. The subscriber's properly authorized telecommunications carrier would then be responsible for restoring to the subscriber any premiums to which the subscriber would have been entitled had the slam not occurred. In the event of disputes between carriers regarding the transfer of charges and the value of lost premiums, the carriers would be required to pursue private settlement negotiations before instituting proceedings before the Commission to resolve such disputes.

v. Significant Alternatives to Proposed Rules Which Minimize the Significant Economic Impact on Small Entities and Small Incumbent LECs and Accomplish Stated Objectives

23. The Commission has considered proposing no rule changes beyond those specifically required by the Act. Therefore, as discussed above, the Commission is proposing very limited rule changes to its existing rules which, given that slamming is becoming an increasingly prevalent practice, it believes that there are minimally intrusive steps necessary to discourage possible evasion of the Subscriber Carrier Selection Change requirements contained in Section 258 of the Communications Act. The Commission proposes that, in the event of a dispute between carriers under these liability provisions, the carriers involved in such disputes must pursue private settlement negotiations regarding the transfer of charges and the value of lost premiums from the unauthorized carrier to the properly authorized carrier. The

Commission believes that the adoption of such a dispute mechanism will lessen the economic impact of a dispute on small entities. Under the proposed rules, telecommunications carriers, including small entities, that violate the Commission's verification rules and slam subscribers would be liable to the subscriber's properly authorized carrier in an amount equal to all charges paid by the slammed subscriber plus the value of premiums to which the subscriber would have been entitled had the slam not occurred. The Commission invites parties commenting on the regulatory analysis to provide information as to the number of small businesses that would be affected by the proposed regulations and identify alternatives that would reduce the burden on these entities while still ensuring that subscribers' telecommunications carrier selections are not changed without their authorization.

24. Although the Commission has proposed no rule regarding the circumstances under which resale carriers must notify their subscribers of a change in their underlying network provider, the Commission received a request for clarification of this issue from TRA. TRA proposes that, instead of determining the materiality of such changes on a case-by-case basis, the Commission establish a ''bright-line'' materiality test that would offer the subscriber safeguards now provided by the current case-by-case approach, while minimizing the regulatory burden on small to mid-sized carriers. According to TRA, the unpredictability of the case-by-case approach is unduly burdensome on small to mid-sized resale carriers, and thus diminishes competition. The Commission invites parties to comment on whether the current case-by-case approach has a significant economic impact on small entities, and on whether the Commission's proposal to establish a bright-line test for determining whether a subscriber has relied on a resale carrier's identity of its underlying facilities-based network provider, hence requiring that the resale carrier notify the subscriber if the underlying network provider is changed, would minimize any significant economic impact. The Commission also seeks comment on alternatives that would reduce the burden on these entities without diminishing consumer safeguards now in place.

vi. Federal Rules That May Overlap, Duplicate, or Conflict With the Proposed Rules

25. None.

V. Conclusion

26. With the Further NPRM, the Commission seeks comment on the foregoing issues regarding implementation of Section 258 of the Telecommunications Act of 1996 and PC-change verification procedures to deter illegal changes in subscriber carrier selections. Any party disagreeing with the Commission's tentative conclusions should explain with specificity its position in terms of costs and benefits.

VI. Ordering Clauses

27. *It is ordered,* pursuant to Sections 1, 4, 201–205, 215, 218, 220 and 258 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 215, 218, 220, and 258, that a further notice of proposed rule making is issued, proposing the amendment of 47 CFR Part 64 as set forth below.

28. *It is further ordered* that the Chief of the Common Carrier Bureau is delegated authority to require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

29. *It is further ordered* that the Secretary shall send a copy of this further notice of proposed rule making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 64

Communications common carriers, Consumer protection, Telecommunications.

Federal Communications Commission

William F. Caton,

Acting Secretary.

Rules Changes

47 CFR Part 64 is proposed to be amended as follows:

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

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 258, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228, 258, unless otherwise noted.

2. The heading for Subpart K is proposed to be revised to read as follows:

Subpart K—Changing Telecommunications Service

3. Section 64.1100 is proposed to be revised to read as follows:

§ 64.1100 Verification of orders for telecommunications service generated by telemarketing.

No telecommunications carrier shall submit a primary carrier change order generated by telemarketing unless and until the order has first been confirmed in accordance with the following procedures:

(a) The telecommunications carrier has obtained the subscriber's written authorization in a form that meets the requirements of § 64.1150; or

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

(c) An appropriately qualified independent third party operating in a location physically separate from the telemarketing representative has obtained the subscriber's oral authorization to submit the primary carrier change order that confirms and includes appropriate verification data (*e.g.,* the subscriber's date of birth or social security number); or

(d) Within three business days of the subscriber's request for a primary carrier change, the telecommunications carrier must send the subscriber an information package by first class mail containing at least the following information concerning the requested change:

(1) An explanation that the information is being sent to confirm a telemarketing order placed by the subscriber within the previous week;

(2) The name of the subscriber's current carrier;

(3) The name of the newly-requested carrier;

(4) A description of any terms, conditions, or charges that will be incurred;

(5) The name of the person ordering the change;

(6) The name, address, and telephone number of both the subscriber and the soliciting carrier;

(7) A postpaid postcard which the subscriber can use to deny, cancel or confirm a service order;

(8) A clear statement that if the customer does not return the postcard the customer's long distance service will be switched within 14 days after the date the information package was mailed to [name of soliciting carrier];

(9) The name, address, and telephone number of a contact point at the Commission for consumer complaints; and

(10) Carriers must wait 14 days after the form is mailed to subscribers before submitting their primary carrier change orders. If subscribers have cancelled their orders during the waiting period, carriers cannot submit the subscribers' orders.

4. Section 64.1150 is proposed to be revised to read as follows:

§ 64.1150 Letter of agency form and content.

(a) A telecommunications carrier relying on a written authorization for a primary carrier change must obtain a letter of agency as specified in this section. Any letter of agency that does not conform with this section is invalid.

(b) The letter of agency shall be a separate document (an easily separable document containing only the authorizing language described in paragraph (e) of this section) having the sole purpose of authorizing a telecommunications carrier to initiate a primary carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the primary carrier change.

(c) The letter of agency shall not be combined on the same document with inducements of any kind.

(d) Notwithstanding paragraphs (b) and (c) of this section, the letter of agency may be combined with checks that contain only the required letter of agency language 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 consumer is authorizing a primary carrier change by signing the check. The letter of agency language also shall be placed near the signature line on the back of the check.

(e) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

(1) The subscriber's billing name and address and each telephone number to be covered by the primary carrier change order;

(2) The decision to change the primary carrier from the current telecommunications carrier to the prospective telecommunications carrier;

(3) That the subscriber designates [name of the submitting carrier] to act as the subscriber's agent for the primary carrier change;

(4) That the subscriber understands that only one telecommunications carrier may be designated as the subscriber's interstate or interLATA primary interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional primary interexchange carriers (*e.g.*, for intrastate, intraLATA or international calling), the letter of agency must contain separate statements regarding those choices. One telecommunications carrier can be both a subscriber's interstate or interLATA primary interexchange carrier and a subscriber's intrastate or intraLATA primary interexchange carrier; and

(5) That the subscriber understands that any primary carrier selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's primary carrier.

(f) Any carrier designated in a letter of agency as a primary interexchange carrier must be the carrier directly setting the rates for the subscriber.

(g) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current telecommunications carrier.

(h) If any portion of a letter of agency is translated into another language then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

5. Section 64.1160 is proposed to be added to subpart K to read as follows:

§ 64.1160 Changes in subscriber carrier selections.

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

(1) Where the submitting carrier submits a verification that fails to comply with § 64.1160, the executing carrier will be liable where there has been some wrongdoing or malfeasance on the part of the executing carrier; otherwise the submitting carrier will be solely liable for violating § 64.1160(a).

(2) Where the submitting carrier has complied with § 64.1160(a), but the executing carrier executes the change inconsistent with the subscriber carrier change selection, the executing carrier will be solely liable for violating § 64.1160(a).

(3) When a dispute arises between the submitting and executing carriers the carriers must pursue private settlement negotiations prior to requesting that the Commission institute proceedings to resolve any such dispute.

(b) *Carrier Liability for Charges.* Any telecommunications carrier that violates the verification procedures prescribed by the Commission and that collects charges for telecommunications service from a subscriber shall be liable to the subscriber's properly authorized carrier in an amount equal to all charges paid by such subscriber after such violation. The remedies provided by this subsection are in addition to any other remedies available by law.

6. Section 64.1170 is proposed to be added to subpart K to read as follows:

§ 64.1170 Reimbursement procedures.

(a) Upon receiving notification from the subscriber that the subscriber's carrier selection was changed without authorization, the properly authorized carrier must, within ten days, request from the unauthorized carrier the following:

(1) An amount equal to the charges paid by the subscriber to the unauthorized carrier; and,

(2) An amount equal to the value of any premiums to which the subscriber would have been entitled if the subscriber's selection had not been changed. Where a subscriber notifies the unauthorized carrier, rather than the properly authorized carrier, of an unauthorized subscriber carrier selection change, the unauthorized carrier must, within ten days, notify the properly authorized carrier.

(b) Upon notification of a violation of § 64.1160(a), the unauthorized carrier must remit to the affected subscriber's properly authorized carrier the total charges collected from the subscriber and the value of any premiums to which the consumer would have been entitled if the subscriber's selection had not been changed.

(c) *Restoration of Premium Programs.* Upon receiving from the unauthorized

carrier the value of premiums to which the consumer would have been entitled if the subscriber's selection had not been changed, the properly authorized carrier must provide or restore to the subscriber any premiums to which the consumer would have been entitled if the subscriber's selection had not been changed. Where a particular premium cannot be restored, the properly authorized carrier may substitute an equivalent premium or dollar amount as reasonably determined by the properly authorized carrier.

(d) *Dispute Resolution.* Carriers must pursue private settlement negotiations regarding the transfer of charges and the value of lost premiums from the unauthorized carrier to the properly authorized carrier prior to requesting that the Commission institute proceedings to resolve any dispute regarding such transfer of charges and the value of lost premiums.

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