Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

Incumbent Local Exchange Carriers. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange carriers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to Commission data, 1,310 carriers reported that they were incumbent local exchange service providers. Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees. Consequently, the Commission estimates that most incumbent local exchange carriers are small entities that may be affected by the rules and policies adopted herein.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

All incumbent LECs, including those that are small entities, are now required to make revisions to their federal tariffs to implement our revised PIC change charge policies. To the extent their federal tariffs do not already reflect this, all incumbent LECs must file rates equal to 50 percent of the full PIC change charge rate when an end user customer requests a PIC change in conjunction with an LPIC change. Also, all incumbent LEC that are able to process PIC changes electronically must file separate rates for PIC changes that are processed manually and electronically. If the rates are within the safe harbor rates of $5.50 for manually processed changes and $1.25 for electronically processed changes, no cost support is required. For rates in excess of the safe harbor rates, incumbent LECs must file detailed cost information justifying the higher rates.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.'' 5 U.S.C. 603(c)(1)–(c)(4).

Some commenters in this proceeding argue that incumbent LECs should be required to base their PIC change charges on their individual costs. As discussed in paragraph 10 of the report and order, we reject this approach as unduly burdensome on incumbent LECs, including any that may be small entities. Instead, adopting safe harbors for PIC change charges allows incumbent LECs to file rates without the burden of filing detailed cost support. Incumbent LECs still have the option of filing cost support if their PIC change costs exceed the safe harbor rates. As discussed in paragraphs 9–10 of the report and order, we decline to adopt a separate safe harbor rate for small and rural incumbent LECs. We note that prior to our decision in this order small and rural carriers have been subject to the same $5.00 safe harbor applicable to all other carriers. No small or rural carrier has submitted cost information seeking to increase this $5.00 charge. As has been the case since 1984, all carriers remain free to submit cost studies to justify a higher rate to the extent these companies' costs exceed the safe harbors. As discussed in paragraph 0, we do not require any small or rural carrier to implement electronic PIC change processing systems if doing so would not be economically rational.

Report to Congress

The Commission will send a copy of this Report and Order, including this FRFA, in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act. 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**. 5 U.S.C. 604(b).

Ordering Clauses

Accordingly, *it is ordered that*, pursuant to 4(i), 4(j), 201(b), 203(a), 205, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201(b), 203(a), 205, and 403, all incumbent LECs that process PIC change requests through electronic and manual methods shall file revised rates, to include one rate for PIC changes that are processed electronically and a separate rate for PIC changes that are processed manually, and all incumbent LECs shall file revised rates equal to 50 percent of the full PIC change charge rate when a customer requests a PIC change in conjunction with an LPIC change, no later than April 14, 2005. These rates shall be effective on fifteen (15) days' notice.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–5058 Filed 3–14–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 94–129, CC Docket No. 00–257; FCC 04–153]

2000 Biennial Review—Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses issues raised in petitions for reconsideration filed pursuant to the First Report and Order and Fourth Report and Order, and certain ancillary slamming issues relating to switchless resellers that were raised in CC Docket No. 94–129 and CC Docket No. 00–257 that have not yet been resolved.

DATES: Effective March 15, 2005.

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

FOR FURTHER INFORMATION CONTACT: Nancy Stevenson or David Marks, of the Consumer & Governmental Affairs Bureau at (202) 418–2512.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Order on Reconsideration and Fourth Order on Reconsideration (Reconsideration Order), CC Docket Nos. 94–129 and 00–257, FCC 04–153, adopted June 30, 2004 and released July 16, 2004. The complete text of the Reconsideration Order is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may be purchased from the Commission's duplicating contractor, Best Copy and Printing Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may also contact BCPI at their website: *www.bcpiweb.com* or call 1–800–378–3160. The Reconsideration Order addresses issues arising from the First Report and Order and Fourth Report and Order FCC 01–156, 16 FCC Rcd 11218; published at 66 FR 28117, May 22, 2001. This Reconsideration Order does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44.U.S.C. 3506(c)(4).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). This *First Order on Reconsideration and Fourth Order on Reconsideration* can also be downloaded in Word and Portable Document Format (PDF) at *http://www.fcc.gov/cgb/policy*.

Synopsis

In the *Second Report and Order and Further Notice of Proposed Rulemaking* (Section 258 Order) the Commission established a comprehensive framework of rules to implement section 258 and strengthen its existing anti-slamming rules. The Commission modified the existing requirements for the authorization and verification of preferred carrier changes, added procedures for handling preferred carrier freezes, and adopted aggressive new liability rules designed to take the profit out of slamming. (*See* 64 FR 7763, February 16, 1999). However, at that time, the Commission did not specifically address the process for carrier changes associated with the sale or transfer of a subscriber base from one carrier to another. In such situations, carriers typically sought waivers of the carrier change authorization and verification rules in order to effect the sale or transfer without obtaining individual subscriber consent. The former Common Carrier Bureau, now the Wireline Competition Bureau, routinely granted such requests, contingent upon the carrier's provision of adequate notice to the affected subscribers, along with other consumer protections. *See, DA 01–1431*, Order 16 FCC Rcd 12503 (2001); *DA 01–1450*, Order, 16 FCC Rcd 12607 (2001).

In the *Report and Order Streamlining the International Section 214 Authorization Process and Tariff Requirements* (Streamlining Order), the Commission eliminated the need for such waivers by establishing a self-certification process for compliance with the authorization and verification requirements for the carrier-to-carrier sale or transfer of subscriber bases. Incorporating the streamlined certification and notification process into the rules has significantly reduced the burden on carrier and Commission resources while still protecting consumers' interests. Under the revised rules, carriers need not obtain individual authorization and verification for carrier changes associated with the carrier-to-carrier sale or transfer of a subscriber base, provided that, not later than 30 days before the planned carrier change, the acquiring carrier notifies the Commission, in writing, of its intention to acquire the subscriber base and certifies that it will comply with the required procedures, including the provision of advance written notice to all affected subscribers. (See 61 FR 15724, April 9, 1996). The advance subscriber notice must disclose: (1) The rates, terms, and conditions of the service(s) to be provided by the acquiring carrier; (2) the fact that the acquiring carrier will be responsible for any carrier change charges associated with the transaction; (3) the subscriber's right to select a different preferred carrier, if an alternate carrier is available; (4) a toll-free customer service telephone number for inquiries about the transfer; (5) the fact that all subscribers receiving the notice, including those who have arranged preferred carrier freezes through their local service providers, will be transferred to the new carrier if they do not select a different preferred carrier before the transfer date; and (6) whether the acquiring carrier will be responsible for resolving outstanding complaints against the selling or transferring carrier. (*See* 47 CFR 64.1120(e)(3)).

The petitions for reconsideration focus on the following main issues: Costs associated with the transfer of customers, provision of the advance written notice to affected subscribers, and preferred carrier freezes. We address these in turn below.

Charges Associated With Carrier Transfers

Background. In the Streamlining Order, the Commission found that it was consistent with section 258 to require the acquiring carrier to be responsible for any carrier change charges associated with customer transfers. In addition, the Commission directed the acquiring carrier to state in its advance subscriber notice that it will assume such responsibility.

Discussion. SBC argues that the Commission should not require acquiring carriers to be responsible for any carrier change charges associated with a carrier-to-carrier sale or transfer. SBC agrees that subscribers should not bear the burden of carrier change charges for negotiated carrier-to-carrier transfers, but states that the current rule eliminates carriers' flexibility to allocate the responsibility for carrier change charges between the carriers. SBC further argues that the requirement is particularly problematic for default transfers, because the acquiring carrier is forced to transfer subscribers to its service pursuant to state-created obligations, and the Commission's requirement may conflict with state rules that require the exiting competing LEC to pay carrier change charges. According to SBC, because default carrier obligations are created by the states, the states are best situated to determine which carrier is responsible for switch-over charges in a default transfer. Additionally, SBC claims that a significant number of the customers who have been defaulted to its service have left SBC shortly after the transfer. It contends that ''a former customer that previously made a conscious decision to discard SBC's service and obtain service from a competing LEC is likely to do so again within a short period of time. Thus, SBC is unlikely to recoup any switch-over costs from the default customer via a long-term carrier-customer relationship.''

In a similar vein, Verizon seeks clarification that our rules do not prevent an incumbent LEC from assessing a nonrecurring charge on customers it acquires by default transfer. In contrast to SBC, however, Verizon does not dispute that carrier change charges should not be imposed on subscribers in the normal sale of a long distance subscriber base. Verizon states that, under these circumstances, the two carriers have agreed to a sale and the cost of carrier change charges has been taken into account when the terms of the transfer were negotiated. In a default carrier transfer, however, Verizon states that the incumbent LEC has not negotiated for these customers, but is instead required by law to take them. According to Verizon, ''[r]equiring ILECs to waive these charges, and imposing other obligations on them under these rules, is likely to cause them to resist becoming default carriers, with the possible customer service problems that could result.'' As a general rule, when subscribers are switched between carriers as a result of a negotiated sale or transfer or the exiting carrier's bankruptcy, we believe that the acquiring carrier should be responsible for carrier change charges associated with that transfer. As we stated in the Streamlining Order, because carrier change charges associated with a carrier-to-carrier sale or transfer are involuntary in terms of the subscriber, subscribers should not bear the burden of the cost of the service provider change. In addition, we noted that the acquiring carrier is in the best position to cover these charges because it would have the billing relationship with the customer after the transfer. We therefore deny SBC's request to modify this general rule. In situations where an incumbent LEC acquires customers, the revenues from those customers following the transfer will flow to the incumbent LEC. Though some subscribers may switch from the acquiring carrier to an alternative provider after the transfer, we believe a significant number will stay and generate revenues for the acquiring carrier. We note that in some situations, transferred customers would not have an alternative to the acquiring carrier when a competing LEC leaves the market and there is no other competing LEC in the service area. Thus, we continue to believe that the acquiring carrier will generally be in the best position to cover carrier change costs, because in most instances it will have a billing relationship with the customer post-transfer. (*See* Streamlining Order, 16 FCC Rcd 11228 at paragraph 25). We do not believe that this rule eliminates carrier flexibility in negotiated transfer situations. As noted in the *Streamlining Order*, if carrier change charges are known to be the responsibility of the acquiring carrier, we expect that these charges will be factored into the terms of the agreement between the selling/transferring carrier and the acquiring carrier.

We also deny Verizon's request to impose carrier change charges on subscribers who are switched as the result of a default carrier-to-carrier transfer, rather than imposing such charges on the acquiring carrier. As the Commission has previously held, because subscribers do not request the carrier changes associated with a carrier-to-carrier sale or transfer, they should not bear the burden of the cost of changing service providers. Also, as Sprint notes in its opposition, the modification suggested by Verizon could deter customers from switching from an incumbent LEC to a competing LEC in the first place, as the incumbent LEC would likely emphasize to subscribers that they will pay the costs of resuming incumbent LEC service in the event the competing LEC exits the market.

As noted above, when subscribers are switched between carriers as a result of a negotiated sale or transfer or the exiting carrier's bankruptcy, we believe the acquiring carrier should generally be responsible for carrier change charges associated with a negotiated sale or transfer. However, while we maintain this general rule rather than adopting either SBC's or Verizon's proposed modifications, we do 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, we will require the exiting carrier to pay such costs to meet our streamlined slamming rules.(See 47 CFR 64.1120(e)(3)(iii); *see also* Rule Changes). We recognize that States are often in the best position to evaluate the circumstances surrounding a carrier's exit from providing service in the first instance and to consider whether the circumstances warrant imposing exit costs on that carrier. Moreover, states have a valid interest, as do we, in ensuring the continuation of service to all customers. In situations where no State law assigns carrier responsibility for these costs, the Commission's general rule would control.

Advance Subscriber Notice

As noted above, in the Streamlining Order, the Commission required acquiring carriers to provide subscribers with 30-day advance notice of a carrier change associated with a sale or transfer. In reaching this conclusion, the Commission noted that providing affected subscribers with notice of the transaction at least 30 days before it occurs would enable a subscriber to make an informed decision as to whether to accept the acquiring carrier as his or her preferred carrier. The Commission also required that the advance written notice to affected subscribers must include the details of the rates, terms and conditions of the service(s) to be provided to transferred customers and the means by which customers will be notified of changes in those service features. Disclosure of such information has likewise been a feature of the waiver process.

Responsibility for Notice

SBC argues that the Commission should not require acquiring carriers to provide advance written notice to affected subscribers where State law imposes that responsibility on the exiting carrier, claiming that modification of this rule will eliminate unnecessary duplicative notice by the acquiring carrier. Verizon agrees that an exiting carrier's compliance with State notice rules should be sufficient, and that additional notice by the default carrier should not be required unless the exiting LEC has failed to provide such notice. Similarly, Qwest argues that the Commission should hold a default transferee responsible for customer notification only where ''no other processes have been established.'' According to Qwest, the transferring carrier often notifies its customers of its decision to exit the business, and therefore the Commission should not require the involuntary acquiring carrier LEC to incur the expense of additional notification. Qwest claims that there is no proof that the public interest mandates a second notice from a default carrier.

We are not persuaded by petitioners' arguments that acquiring carriers should not be responsible for providing advance notification of a default or carrier-to-carrier transfer or sale. The least cost provider of information about any given carrier's rates, terms and conditions is the carrier that is offering those services to the public. We believe providing this information to consumers is consistent with and furthers the goal of section 258 to protect consumers from fraudulent activities. Although we recognize and appreciate that both state law and contractual obligations may impose some obligations on exiting carriers, the default carrier will still be best able to inform customers of the rates, terms and conditions of the service(s) it will provide, the exact means by which it will notify the subscriber of any changes to those rates, terms and conditions, and its toll-free customer service number. Moreover, as the Commission noted in the Streamlining Order, in most cases sufficient subscriber list information will be available to the acquiring carrier such that it will be able to provide the required notice.

Timing of Notice

Verizon states that the streamlined procedures do not adequately address situations in which the competing LEC has left the marketplace due to insolvency or for other reasons and the incumbent LEC is required by a State commission to serve the exiting LEC's customers. In these cases, according to Verizon, the incumbent LEC has no control over the timing of the competing LEC's departure from the market and will not be able to comply with the streamlined procedure rules. Verizon requests that we modify the rules to require affected subscriber notice within a ''reasonable'' time of the State-ordered default carrier's learning that customers will be transferred, rather than 30 days prior to the planned change. Verizon argues that the Commission should modify the rules for such transfers ''to take their peculiar nature into account'' rather than resolving such issues on a case-by-case basis. We deny Verizon's request. Verizon has offered no evidence to refute the Commission's general finding that a 30-day notice period is necessary to provide subscribers with sufficient opportunity to make an informed decision whether to accept the acquiring carrier as his or her preferred carrier. We continue to believe that customers acquired by state order should be entitled to the same protections as subscribers acquired in a ''normal'' sale or transfer. We note that, in the case of an order by a state commission, that commission should take into consideration the 30-day notice rule when deciding the timing of the transfers it is ordering. We recognize, however, that in certain limited cases, 30 days advance notice may not be possible. Accordingly, under our current rules, default carriers unable to provide 30 days' notice to the Commission may request a limited waiver of the 30-day notice requirement. Based on our experience administering these rules, we believe that situations of the sort described by Verizon occur infrequently and under varied circumstances. As such, we continue to believe that these situations are best handled on a case-by-case basis as requests for waivers of the streamlined carrier change rules. (*See* 68 FR 19152, April 18, 2003.)

Rates, Terms, and Conditions of the New Service Provider

AT&T argues that requiring carriers to provide detailed information about their services to newly-acquired customers may result in substantial needless expense and delay for participants in carrier-to-carrier sale or transfer of subscriber bases. AT&T requests that the Commission clarify that the rules are not intended to impose more stringent advance disclosure requirements than were applied under the Commission's waiver process. AT&T argues that ''[n]othing in the Third Further Notice of Proposed Rulemaking, (Third Further Notice) proposing the new self-certification process suggested that the Commission intended the revised rule to be more onerous than the then existing waiver process in this regard.'' *See* 66 FR 8093, January 18, 2001. AT&T states that it would be more reasonable to permit acquiring carriers to summarize the material terms of their service offerings in their notifications to affected customers.

ASCENT and WorldCom support AT&T's position. ASCENT agrees that the streamlined rules ''should not impose more stringent notification requirements than had been required by the Commission under the previous waiver paradigm,'' claiming that it would be inconsistent with the goal of streamlining to simultaneously increase disclosure obligations. Similarly, WorldCom contends that the Streamlining Order was ''intended to institutionalize the amount of detail already required under the waiver process. The Commission did not intend to expand upon carriers' obligations, but to simply describe the amount of information that carriers are currently required to provide.''

We disagree with AT&T that it would be ''more reasonable'' to permit acquiring carriers to summarize the material terms of their service offerings in their notifications to affected customers. We reiterate that acquiring carriers are required to provide affected subscribers with detailed information concerning the rates, terms and conditions of the service(s) to be provided to transferred customers. Because the acquiring carrier is no longer required to obtain each individual subscriber's consent, it is critical that the advance written notice contain at least some level of detail as to the rates, terms and conditions of the services the acquiring carrier will provide. We disagree with WorldCom's assertion that such disclosure is inconsistent with the goal of streamlining. Disclosing the rates, terms and conditions of service in the advance notice to subscribers is significantly less burdensome to acquiring carriers than obtaining individual subscriber consent and verification in these transactions. Moreover, providing this information in the advance notice will enable transferred subscribers to make a timely, informed decision regarding their ultimate choice of service providers in areas where alternatives to the acquiring carrier are available. It is difficult to imagine how a subscriber could make this sort of decision without knowing, for example, the rates the acquiring carrier will charge. We also note that the Commission, in the Streamlining Order, declined to require the acquiring carrier to continue to charge affected subscribers the same rates as those charged by the selling or transferring carrier for a specified period after the transfer. Commenters in that proceeding had asserted that such a requirement could prove difficult and costly. Waivers issued by the Commission prior to the creation of the streamlined rules, however, generally were predicated on assurances that rates would not change. Therefore, the level of detail necessary to inform subscribers of the rates they will be charged may differ under the current streamlined rules as compared to the former waiver process.

Preferred Carrier Freezes

Section 64.1190 of our rules permits local service providers to offer subscribers the option of requesting a preferred carrier ''freeze'' as an additional measure of protection against unauthorized carrier changes. (47 CFR 64.1190.) With such a freeze in place, the subscriber is assured that his or her preferred carrier will not be changed without the subscriber's express consent. As discussed above, the Streamlining Order required the acquiring carrier to inform subscribers in advance that they will be transferred to it if they do not select a different preferred carrier before the transfer date. In addition, the subscriber notice must state that existing preferred carrier freezes on the service(s) involved in the transfer will be lifted, and that customers who wish to have freeze protection after the transfer must contact their local service providers to obtain this service.

SBC requests that the Commission modify its rules such that, to the extent mechanized processes or other methods allow LECs to effect the transfer without lifting the freeze, LECs would not be required to lift preferred carrier freezes on services involved in a carrier-to-carrier transfer. SBC states that mechanized processes exist that allow local service providers to transfer a subscriber base with freeze protection on some accounts by bypassing the freeze rather than actually lifting it. In such cases, SBC contends that the acquiring carrier should only be required to inform affected subscribers that their existing freeze protections will remain in place after the transfer.

SBC claims that this proposed modification will permit carriers to effectuate carrier-to-carrier transfers as efficiently as possible. Sprint opposes SBC's proposal, noting that it would require customers to determine on their own whether their preferred carrier freezes were still in place, which would be contrary to the underpinnings of the rules governing preferred carrier freezes: ''the customer—and not the LEC—should decide whether to freeze his/her service account with the acquiring carrier.''

We decline to modify the rules as SBC suggests. Although SBC represents that it has implemented a mechanized process in ''several of its operating companies,'' it does not provide any indication of how commonly used or reliable such mechanized processes are. It is thus unclear what impact the proposed modification would have—*i.e.*, whether it would address a significant problem for LECs or whether it might create headaches for subscribers should the mechanized process fail in some way. As noted in the Streamlining Order, in the event of a sale or transfer of a subscriber base, a subscriber with a freeze could be left without presubscribed service when the selling or transferring carrier ceases to provide service, if that customer failed to give consent to lift the freeze and thus was not automatically switched to the acquiring carrier. We continue to believe that, under such circumstances, it is preferable to permit the transfer of such a subscriber to the acquiring carrier, after adequate advance notice, rather than risk having the subscriber lose presubscribed service altogether. We believe that it is appropriate to ensure that subscribers with preferred carrier freezes in place do not lose presubscribed service even if they fail to respond to notice of an impending carrier change.

As the Commission has previously noted, ''the essence of a preferred carrier freeze is that a subscriber must specifically communicate his or her intent to request or lift a freeze.'' The current rule maintains the consumer's control over such freezes by requiring that customers be informed in advance of the transfer that any applicable preferred carrier freeze will be lifted, so that those customers who wish to initiate a freeze on the services they receive after the transfer must specifically express their intent to do so. Under the streamlined procedures, ''frozen'' subscribers who prefer not to receive service from the acquiring carrier will have sufficient notice of their ability to select another provider, and will have notice of the need to contact their local service providers if they wish to initiate freeze protection for the service(s) they receive after a transfer to a new carrier. The decision remains in the hands of the customer, not the LEC.

Switchless Reseller Issues

As noted above, we address in the First Report and Order and Fourth Report and Order certain ancillary slamming issues relating to switchless resellers that were raised in this docket but have not yet been resolved. Specifically, we affirm the recommendations of the NANC regarding switchless resellers' use of carrier identification codes. In 2000, the Commission sought analysis and recommendations from the NANC on a proposal to require switchless resellers to obtain their own carrier identification codes (''CICs'') in order to address ''soft slamming'' and related carrier identification problems that arise from the shared use of CICs. A switchless reseller is a carrier that lacks switches or other transmission facilities in a given local access and transport area (LATA). It purchases long distance service in bulk from facilities-based carriers and resells such service directly to consumers. Resellers frequently share CICs with the underlying carriers whose services they resell. CICs are four-digit numerical codes used by LECs to route traffic to IXCs and to identify them for billing purposes. They are assigned by the North American Numbering Plan Administration on a nationwide basis. A soft slam is the unauthorized change of a subscriber from its authorized carrier to a new carrier that uses the same CIC. Because the change is not executed by the LEC, which continues to use the same CIC to route the subscriber's calls, a soft slam bypasses the preferred carrier freeze protection available to consumers from LECs. Carrier misidentification occurs because LECs also identify carriers by their CICs for billing purposes. A LEC's call record therefore is likely to reflect the identity of the underlying carrier whose CIC is used, even if the actual service provider is a reseller. As a result, the name of the underlying carrier may appear on the subscriber's bill in lieu of, or in addition to, the reseller with whom the subscriber has a direct relationship. This makes it difficult for consumers to detect a slam and to identify the responsible carrier. In April, 2001, the NANC submitted its recommendations. (*See* Report to the NANC, April 17, 2001 (submitted April 20, 2001) (CIC IMG Report to the NANC, Analysis and Recommendation on the Adoption of a Switchless Reseller CIC Requirement to Address ''Soft Slamming''). It concluded that the proposal to require switchless resellers to obtain and fully deploy CICs would not be effective to prevent soft slamming due to technical constraints, and would speed the depletion of numbering resources, dampen competition, hinder the participation of small businesses in telecommunications, and reduce choice while increasing prices for consumers. This conclusion affirms the concerns about potential adverse impact on the industry and consumers raised in the Third Report and Order. *See* 66 FR 12877, August 15, 2000. We agree with the NANC's assessment, and therefore decline to adopt a requirement that all switchless resellers deploy CICs. While we acknowledge that soft slamming remains a problem, albeit one of undetermined dimensions, we believe that our existing rules offer some help in alleviating this problem. For example, the Section 258 Order imposes on facilities-based carriers the responsibilities of executing carriers in soft slam situations (*See Section 258 Order,* 14 FCC Rcd 1564–65 at paragraphs 92–93. *See also* 47 CFR 64.1100(b); 64.1150(a), (b); and 64.1140(b)(1)). Our rules require that the name of the service provider associated with each charge must be clearly and conspicuously identified on the telephone bill, which should help to make unauthorized carrier changes readily detectable by end users. (*See* 47 CFR 64.2401). However, we encourage the industry to work to find additional, effective ways to prevent soft slamming without adversely affecting consumer choice.

Supplemental Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA) (*See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601, *et seq.*, was amended by the Contract with America Advancement Act of 1996, Public Law

104-121, 110 Statute 87 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), an Initial Regulatory Flexibility Analysis (IRFA) (5 U.S.C. 603) was incorporated into the Third Further Notice in this proceeding. *See* 66 FR 8093 January 18, 2001. Additionally, a Final Regulatory Flexibility Analysis (FRFA) was included in the Streamlining Order. In compliance with the RFA, this Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the FRFA included in the Streamlining Order to the extent that changes to that *Order* adopted here on reconsideration require changes in the conclusions reached in the FRFA.

Need for and Objectives of This Action

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 services or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.'' In the Section 258 Order, the Commission established a comprehensive framework of rules to implement section 258 and strengthen its existing anti-slamming rules. After the release of that Order, the Commission received many requests for waiver of the carrier change and authorization rules in transactions where carriers were selling or transferring their subscriber bases to other carriers in order to transition in a seamless, efficient manner. The Streamlining Order modified those rules to provide for a streamlined approach that would meet the consumer protection goals of section 258 and also permit carriers to efficiently transfer customers without the need for Commission approval of a waiver petition. Subsequently, several petitioners sought reconsideration of the Streamlining Order's treatment of the costs associated with the transfer of customers, provision of the advance written notice to affected subscribers, and preferred carrier freezes. This Reconsideration Order addresses those issues, and also resolves an outstanding request from 2001 on a proposal to address ''soft slamming'' issues and related carrier identification problems that arise from the shared use of carrier identification codes.

Description and Estimate of the Number of Small Entities to Which This Order on Reconsideration Will Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. (*See* 5 U.S.C 603(b)(3)). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' (*See* 5 U.S.C 601(3)). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. (*See* 15 U.S.C 632). A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). (*See* 5 U.S.C 601(4)).

In the previous FRFA of the Streamlining Order, we described and estimated the number of small entities that would be affected by the streamlined rules. These included wireline carriers and service providers, local exchange carriers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, resellers (including debit card providers), toll-free 800 and 800-like service subscribers, and cellular licensees. The rule amendment adopted herein may apply to the same entities affected by the rules adopted in that order.

Summary Analysis of the Projected Reporting, Record-Keeping, and Other Compliance Requirements

The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.'' (*See* 5 U.S.C. 603(c)(1)–(c)(4)). We do not find that this Reconsideration Order creates a significant economic impact on small entities. We could therefore meet our obligations under the RFA by certifying that there is no significant economic impact on small entities, rather than including this SFRFA. (*See generally* 5 U.S.C. 605). We nonetheless include this Supplemental FRFA to demonstrate that we have considered the impact of our action on small entities in adopting this Reconsideration Order.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

As noted above, the amendment to our rules adopted in this Reconsideration Order does not have a significant impact on small entities. The amendment provides that, where applicable, state law shall determine carrier responsibility for switch-over charges associated with default transfers. The Commission concludes that this requirement would not impose significant additional costs or administrative burdens on small carriers.

Report to Congress

The Commission will send a copy of this Reconsideration Order, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. (*See* 5 U.S.C. 801(a)(1)(A)). In addition, the Commission will send a copy of this Reconsideration Order, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Reconsideration Order and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**. (*See* 5 U.S.C. 604(b)).

Ordering Clauses

Accordingly, pursuant to sections 1, 4, 201–205, 255, and 258 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 255 and 258, this reconsideration order is adopted.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Reconsideration Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Change

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

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

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

§ 64.1120 Verification of orders for telecommunications service

* * * * *

(e) * * *

(3) * * *

(iii) The acquiring carrier will be responsible for any carrier change charges associated with the transfer, except where the carrier is acquiring customers by default, other than through bankruptcy, and state law requires the exiting carrier to pay these costs;

* * * * *

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