Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2000 Biennial Review - Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers	)))	CC Docket No. 00-257
	)	
Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996	)))	CC Docket No. 94-129
	)	
Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers	))	

FIRST ORDER ON RECONSIDERATION AND FOURTH ORDER ON RECONSIDERATION

Adopted: June 30, 2004 **Released:** July 16, 2004

By the Commission: Commissioner Adelstein issuing a statement.

I. INTRODUCTION

1. In this *Reconsideration Order*, we address issues raised in petitions for reconsideration of our *Streamlining Order*[1] and certain ancillary slamming issues relating to switchless resellers that were raised in this docket but have not yet been resolved.[2] In the *Streamlining Order*, the Commission amended its carrier change rules to provide a streamlined process for compliance with section 258 of the Communications Act of 1934 (Act),[3] as amended by the Telecommunications Act of 1996 (1996 Act),[4] in situations involving the carrier-to-carrier sale or transfer of subscriber bases. Section 258 makes it

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[1] *See 2000 Biennial Review-Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers; Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996,* First Report and Order in CC Docket No. 00-257 and Fourth Report and Order in CC Docket No. 94-129 ("*Streamlining Order*"), 16 FCC Rcd 11218 (2001), adopting 47 C.F.R. § 64.1120(e).

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

[3] 47 U.S.C. § 258.

[4] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

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."[5] This practice, known as "slamming," distorts the telecommunications market by enabling telecommunications companies that engage in fraudulent activity to increase their customer and revenue bases at the expense of consumers and law-abiding companies. For the reasons described below, we deny in part and grant in part the petitions for reconsideration and clarification filed by AT&T, Qwest, SBC, and Verizon. In addition, we affirm the recommendations of the North American Numbering Council ("NANC") regarding switchless resellers' use of carrier identification codes.

II. BACKGROUND

2. In the *Section 258 Order*, the Commission established a comprehensive framework of rules to implement Section 258 and strengthen its existing anti-slamming rules.[6] 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.[7] 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[8] routinely granted such requests, contingent upon the carrier's provision of adequate notice to the affected subscribers, along with other consumer protections.[9]

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[5] 47 U.S.C. § 258(a).

[6] 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15966 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); reconsideration pending. Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. *See, e.g., Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

[7] *See Section 258 Order,* 14 FCC Rcd at 1510-12, ¶¶ 1-4.

[8] Now the Wireline Competition Bureau.

[9] *See*, *e.g.*, *Implementation of The Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Pacific Lightnet, Inc. Petition for Waiver*, CC Docket No. 94-129, Order 16 FCC Rcd 12503 (2001); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Southwestern Bell Telephone Company Emergency Petition For Waiver*, CC Docket No. 94-129, Order, 16 FCC Rcd 12607 (2001).

3. In the *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.[10] 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.[11]

4. 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.

III. DISCUSSION

A. Charges Associated With Carrier Transfers

5. 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.[12] In addition, the Commission directed the acquiring carrier to state in its advance subscriber notice that it will assume such responsibility.[13]

6. 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.[14] 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

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[10] *Streamlining Order*, 16 FCC Rcd at 11224, ¶ 15.

[11] 47 CFR § 64.1120(e)(3).

[12] *Streamlining Order*, 16 FCC Rcd at 11228, ¶ 25.

[13] *Id*.

[14] SBC Petition at 2-3.

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."[15]

7. 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.[16] 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."[17]

8. 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.[18] 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.[19] 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.[20] We do not believe that this rule eliminates carrier flexibility in negotiated transfer situations.[21] As noted in the

[15] *Id*. at 4.

[16] Verizon Petition at 3-4, citing *Streamlining Order*, 16 FCC Rcd at 11228, n.50.

[17] Verizon Petition at 4.

[18] *Streamlining Order*, 16 FCC Rcd at 11228, ¶ 25. 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. *Id.* 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. *Id.*

[19] ASCENT Comments at 8.

[20] *Streamlining Order*, 16 FCC Rcd at 11228, ¶ 25

[21] SBC Petition at 2-3.

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.[22]

9. 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.[23] 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.[24]

10. 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.[25] 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.[26] 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.

B. Advance Subscriber Notice

11. Background. 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.[27] The

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[22] *Id.*, 16 FCC Rcd at 11228, n.50.

[23] *Id.*, 16 FCC Rcd at 11228, ¶ 25.

[24] Sprint Comments at 4.

[25] *Streamlining Order*, 16 FCC Rcd at 11228, ¶ 25. 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. *Id.* 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. *Id.*

[26] *See* 47 C.F.R. § 64.1120(e)(3)(iii); *see also* Appendix A.

[27] *Streamlining Order*, 16 FCC Rcd at 11224, ¶ 15.

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.[28] Disclosure of such information has likewise been a feature of the waiver process.

1. Responsibility for Notice

12. 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.[29] 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.[30] Similarly, Qwest argues that the Commission should hold a default transferee responsible for customer notification only where "no other processes have been established."[31] 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.[32] Qwest claims that there is no proof that the public interest mandates a second notice from a default carrier.

13. 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.

2. Timing of Notice

14. 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

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[28] *Id.*, 16 FCC Rcd at 11227, ¶ 22.

[29] SBC Petition at 3-4.

[30] Verizon Petition at 3.

[31] Qwest Petition at 3.

[32] *Id.* at 4.

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.[33]

15. 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.[34] 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.[35]

3. Rates, Terms, and Conditions of the New Service Provider

16. 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* 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."[36] 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.[37]

17. 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," [38] claiming that it would be inconsistent with the

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33 Verizon Petition at 2.

34 *Streamlining Order*, 16 FCC Rcd at 11224, ¶ 15.

35 *See, e.g., 2000 Biennial Review - Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 00-257, *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Sprint Corp. Petition For Waiver*, CC Docket No. 94-129, Order, 17 FCC Rcd 10424 (2002).

36 AT&T Petition at 3.

37 AT&T Petition at 5.

38 ASCENT Comments at 2.

goal of streamlining to simultaneously increase disclosure obligations.[39] 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."[40]

18. 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.[41] 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.

C. Preferred Carrier Freezes

19. Background. 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.[42] 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.[43]

[39] *Id*. at 3.

[40] WorldCom Comments at 4.

[41] *Streamlining Order*, 16 FCC Rcd at 11227, ¶ 24.

[42] 47 C.F.R. § 64.1190.

[43] *Streamlining Order*, 16 FCC Rcd at 11229, ¶ 28.

20. Discussion. 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.[44] 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.[45] 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."[46]

21. 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.

22. 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."[47] 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.

D. Switchless Reseller Issues

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44 SBC Petition at 6.

45 *Id*. at 8.

46 Sprint Comments at 3-4.

47 *Section 258 Order*, 14 FCC Rcd at 1586, ¶ 131.

23. As noted above, we address in this 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.[48] 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.[49]

24. In April, 2001, the NANC submitted its recommendations.[50] 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.[51] This conclusion affirms the concerns about potential adverse impact on the industry and consumers raised in the *Third Report and Order*.[52] 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,[53] and 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.[54] However, we encourage the industry to

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[48] 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. *Third Report and Order*, 15 FCC Rcd at 16007, ¶ 22.

[49] *Id*. at 16007-08, ¶ 22.

[50] *Analysis and Recommendation on the Adoption of a Switchless Reseller CIC Requirement to Address "Soft Slamming"*, Report to the NANC, April 17, 2001 (submitted April 20, 2001) (CIC IMG Report to the NANC).

[51] CIC IMG Report to the NANC at 14.

[52] *Third Report and Order*, 15 FCC Rcd at 16009-11, ¶¶ 26-29.

[53] *Section 258 Order*, 14 FCC Rcd at 1564-65, ¶¶ 92-93. *See also* 47 C.F.R. § 64.1100(b); 47 C.F.R. § 64.1150(a), (b); 47 C.F.R. § 64.1140(b)(1).

[54] 47 C.F.R. § 64.2401.

work to find additional, effective ways to prevent soft slamming without adversely affecting consumer choice.

IV. PROCEDURAL MATTERS

A. Supplemental Final Regulatory Flexibility Analysis

25. As required by the Regulatory Flexibility Act (RFA),[55] an Initial Regulatory Flexibility Analysis (IRFA)[56] was incorporated into the *Third Further Notice* in this proceeding.[57] Additionally, a Final Regulatory Flexibility Analysis (FRFA) was included in the *Streamlining Order*.[58] 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.

1. Need for and Objectives of this Action

26. 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.[59] 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.

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[55] *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, Pub. L. 104- 121, 110 Stat. 87 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[56] 5 U.S.C. § 603.

[57] *Third Further Notice*, at ¶¶ 9-30.

[58] *Streamlining Order*, 16 FCC Rcd at 11231-39, ¶¶ 31-56.

[59] *See Section 258 Order*, 14 FCC Rcd at 1510-12, ¶¶ 1-4.

2. Description and Estimate of the Number of Small Entities to which this Order on Reconsideration Will Apply.

27. 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.[60] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[61] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[62] 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).[63]

28. In the previous FRFA at paragraphs 36-49 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.[64] The rule amendment adopted herein may apply to the same entities affected by the rules adopted in that order. We therefore incorporate by reference paragraphs 36-49 of the *Streamlining Order*.

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

29. 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."[65]

30. 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.[66] 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*.

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[60] 5 U.S.C § 603(b)(3).

[61] 5 U.S.C § 601(3).

[62] 15 U.S.C § 632.

[63] 5 U.S.C § 601(4).

[64] *Streamlining Order*, 16 FCC Rcd at 11232-37, ¶¶ 36-49.

[65] 5 U.S.C. § 603(c)(1) - (c)(4).

[66] *See generally* 5. U.S.C. § 605.

4. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

31. 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.

5. Report to Congress.

32. 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.[67] 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.[68]

B. Paperwork Reduction Act Analysis

33. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose new or modified reporting or recordkeeping requirements or burdens to the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement in the Federal Register of OMB approval.

V. ORDERING CLAUSES

34. Accordingly, IT IS ORDERED that, 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.

35. IT IS FURTHER ORDERED that 47 C.F.R. Part 64 IS AMENDED as set forth in Appendix A.

36. IT IS FURTHER ORDERED that the requirements or rules adopted herein pertain to new or modified reporting or recordkeeping requirements, are subject to approval by OMB, and shall become effective no sooner than 30 days after publication of a summary in the Federal Register, upon announcement in the Federal Register of OMB approval.

37. IT IS FURTHER ORDERED that the Commission's Consumer Information 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.

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[67] *See* 5 U.S.C. § 801(a)(1)(A).

[68] *See* 5 U.S.C. § 604(b).

38. 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 *Reconsideration Order* can also be downloaded in Word and Portable Document Format (PDF) at http://www.fcc.gov/cgb/dro.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

RULE AMENDED

Part 64 of the Commissions Rules and Regulations, Chapter 1 of Title 47 of the Code of Federal Regulations, is amended as follows:

Part 64, Subpart K, is amended by modifying section 64.1120 to read as follows:

§ 64.1120 Verification of Orders for Telecommunications Service

* * * *

(e) A telecommunications carrier may acquire, through a sale or transfer, either part or all of another telecommunications carrier's subscriber base without obtaining each subscriber's authorization and verification in accordance with § 64.1120(c), provided that the acquiring carrier complies with the following streamlined procedures. A telecommunications carrier may not use these streamlined procedures for any fraudulent purpose, including any attempt to avoid liability for violations under Part 64, Subpart K of the Commission rules.

* * * *

(3) Not later than 30 days before the transfer of the affected subscribers from the selling or transferring carrier to the acquiring carrier, the acquiring carrier shall provide written notice to each affected subscriber of the information specified below. The acquiring carrier is required to fulfill the obligations set forth in the advance subscriber notice. The advance subscriber notice shall be provided in a manner consistent with 47 U.S.C. § 255 and the Commission's rules regarding accessibility to blind and visually-impaired consumers, 47 U.S.C. §§ 6.3, 6.5. The following information must be included in the advance subscriber notice:

* * * *

(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;

* * * *

STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN

Re: 2000 Biennial Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers; Implementation of the Subscriber Carrier Selection Change Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket Nos. 00-257, 94-129.

In the Telecommunications Act of 1996, Congress recognized the importance of protecting consumers from unscrupulous practices such as slamming. Through a series of Orders, this Commission has sought to establish and strengthen its anti-slamming rules in a manner consistent with Congress' directive. This Reconsideration Order addresses the unique situation where service providers acquire the entire subscriber base of another provider, rather than the more typical situation under which consumers might switch service providers. This sort of subscriber base transfer has become more common in recent years, as carriers have entered and exited the market. I am pleased this Order affirms that such consumers receive advanced notice of a proposed carrier change and that they receive detailed information about the rates, terms, and conditions of the new provider. By addressing a potentially confusing situation and putting consumers' interests first, we fulfill the consumer protection goal of the Act.