

MAIL ROOM

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

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

**FIRST REPORT AND ORDER IN CC DOCKET NO. 00-257 AND
FOURTH REPORT AND ORDER IN CC DOCKET NO. 94-129**

Adopted: May 7, 2001

Released: May 15, 2001

By the Commission:

I. INTRODUCTION

1. As part of our biennial regulatory review effort,¹ we are amending our carrier change rules to provide a streamlined process for compliance with section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act)² in situations involving the carrier-to-carrier sale or transfer of subscriber bases.³ The streamlined procedures we adopt in this

¹ See 47 U.S.C. § 161. Section 11 of the Communications Act of 1934, as amended, requires that the Commission, in every even-numbered year beginning in 1998, review all regulations that apply to the operations and activities of any provider of telecommunications service and determine whether any of these regulations are no longer necessary in the public interest as a result of meaningful economic competition between providers of the service. See *2000 Biennial Regulatory Review*, CC Docket No. 00-175, Report, FCC 00-456 (rel. Jan. 17, 2001) (agreeing with Commission staff recommendations detailed in the 2000 Biennial Review Updated Staff Report, released concurrently); Updated Staff Report (rel. Jan. 17, 2001), Appendix IV, at 134 (recommending that the Commission propose and seek comment on expedited procedures for handling the sale or transfer of subscriber bases under the carrier change authorization and verification rules).

² 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

³ See 47 C.F.R. §§ 64.1100 *et seq.* This situation could arise through an acquisition of assets (such as customer lines or accounts) or through a transfer of corporate control. See *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996; Petition for Forbearance of the Independent Telephone and* (continued....)

Order will replace the current, more burdensome waiver process. Our new procedures provide for an acquiring carrier to simply self-certify to the Commission, in advance of the transfer, that the carrier will follow the required procedures. This will protect the interests of the affected subscribers, consistent with section 258 and our rules, by giving them adequate advance notice of the carrier change and ensuring that the change will not cause them financial harm.

2. The Commission adopted carrier change authorization and verification requirements to protect consumers from fraudulent changes in presubscribed carriers. It has become clear, however, that the need to obtain a waiver of these requirements imposes undue burdens on carriers seeking to buy, sell, or transfer customer accounts and on the Commission that could be avoided without sacrificing consumer protection. These burdens include the time and resources required to prepare and process the waiver petition and any supplemental filings, the regulatory uncertainty inherent in any waiver process, and, oftentimes, delay. Given the dynamic marketplace, and the likelihood that carriers will continue to buy, sell, and transfer customer lines in the future, we believe it is appropriate to streamline our carrier change rules to ensure that they do not inadvertently inhibit routine business transactions, while ensuring that consumers are protected from fraudulent carrier changes, consistent with section 258 and our rules.

II. BACKGROUND

3. In December 1998, the Commission adopted rules to implement section 258 of the 1996 Act.⁴ Section 258 expanded the Commission's existing authority to deter and punish "slamming," the submission and execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁵ The practice of slamming enables telecommunications carriers that engage in fraudulent activity to increase their customer and revenue bases at the expense of consumers and law-abiding companies. In the *Section 258 Order*, 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. The Commission did not, at that time, specifically

(Continued from previous page) _____
Telecommunications Alliance, Report and Order in CC Docket No. 97-11 and Second Memorandum Opinion and Order in AAD File No. 98-43, FCC 99-104 (rel. June 30, 1999) at para. 17.

⁴ 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. 94-129, 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).

⁵ 47 U.S.C. § 258(a).

address the process for carrier changes associated with the sale or transfer of a subscriber base from one carrier to another.

4. Under the Commission's carrier change authorization and verification rules, a carrier must receive individual subscriber consent before a carrier change may occur. Carriers typically seek waivers of the carrier change authorization and verification rules to effect the carrier-to-carrier sale or transfer of a subscriber base without obtaining individual subscriber consent. Such petitions usually state that it is infeasible or difficult for the acquiring carrier to obtain authorization and verification from each individual subscriber in situations involving the sale or transfer of multiple customer accounts. Because a limited waiver of these rules may prevent service disruptions, the Common Carrier Bureau routinely grants such requests, contingent upon the carrier's provision of adequate notice to the affected subscribers, along with other consumer protections.⁶ Such waivers enable subscribers to experience a seamless transition of service when their original carrier ceases to be their service provider.

5. On January 18, 2001, we released the *Third Further Notice* in which we sought comment on whether we should amend our carrier change authorization and verification rules to provide a streamlined procedure for carriers seeking to sell, transfer, or acquire subscriber accounts.⁷ In the *Third Further Notice*, we observed that the filing and processing of these waiver requests often require a significant investment of time and resources. In addition, we noted that, due to the heavy volume of such petitions, carriers cannot predict with certainty the amount of time it will take to receive a decision on their waiver requests, and that the need to supplement initial filings often adds further delay.

6. In the *Third Further Notice*, we tentatively concluded that any streamlined procedures for the sale or transfer of a subscriber base must incorporate certain principles. First, the affected subscribers should receive reasonable advance notice of the carrier change. Second, each subscriber should be advised of his or her right to choose another carrier, if an alternative carrier is available, and should be told the rates, terms, and conditions that will apply after the sale or transfer. Finally, the Commission should be notified of the planned carrier change prior to the sale or transfer to ensure that consumer interests will be protected.⁸ We sought comment on these tentative conclusions.

7. We also sought comment in the *Third Further Notice* on a specific expedited process for compliance with the Commission's authorization and verification rules and with section 258 for the sale or transfer of subscriber bases. We proposed amending section 64.1120 of our rules to provide that, not later than 30 days before the closing of a sale or transfer, the acquiring carrier must give each affected subscriber written notice of the following information: 1) the acquiring carrier will be the new provider of telecommunications service for the subscriber; 2) the rates, terms, and conditions of the services offered by the acquiring carrier; 3) no carrier change charges will be imposed as a result of the

⁶ See, e.g., *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129, Orders Granting Waivers: Startec Global Communications Corp., DA 00-2163 (Com. Car. Bur., rel. Sept. 22, 2000); Indiana Bell Telephone Company d/b/a Ameritech Indiana, Pacific Bell Telephone Company, and Southwestern Bell Telephone Company, DA 01-438 (Com. Car. Bur., rel. Feb. 16, 2001).

⁷ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129, Third Further Notice of Proposed Rulemaking, FCC 00-451 (rel. Jan. 18, 2001) (*Third Further Notice*).

⁸ *Third Further Notice*, paras. 5-6.

transaction; and 4) the subscriber has the right to select a different preferred carrier.⁹ We asked for comment on whether to require the acquiring carrier to provide each subscriber with a second written notice reiterating this information after the transfer.¹⁰ In addition, we sought comment on whether to require the acquiring carrier to notify the Commission of a sale or transfer not later than 30 days before the closing of the transaction and to certify that it has complied with the notice requirement and with all other requirements prescribed by Commission rules and orders.¹¹ We asked whether 30 days would be an appropriate length of time for notifying subscribers and/or certifying compliance and whether such certification should include copies of sample subscriber notification letters.

8. In addition, we sought comment in the *Third Further Notice* on whether the subscriber notice requirements should differ depending upon the type of telecommunications service being provided or upon the size of the carriers involved.¹² We also sought comment on whether to require acquiring carriers to provide notices in accessible formats to blind or visually impaired subscribers.¹³ We sought comment on whether acquiring carriers should be required to provide a toll-free customer service number for inquiries concerning the change in service providers, to charge the affected subscribers the same rates as those charged by the original carrier for a specified period after the transfer, or to commit to handling customer complaints about the original carrier.¹⁴ Finally, we sought comment on whether we should adopt measures to protect consumers from unscrupulous carriers that attempt to sell their customer bases to evade Commission enforcement actions.¹⁵

III. DISCUSSION

A. Overview

9. A telecommunications carrier currently must file a request for waiver of our carrier change authorization and verification rules in order to acquire part or all of a subscriber base from another carrier without obtaining individual subscriber consent. We received 51 such requests for waiver in 2000, and we received 12 more in the first four months of 2001. The preparation of these waiver petitions imposes burdens both on carriers and the Commission. These burdens are not limited to the initial filing. Often carriers consult with Commission staff prior to their initial waiver request, and, on

⁹ See *Third Further Notice* at paras. 5-6; see also, *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129, Global Telecompetition Consultants Petition for Rulemaking (filed December 30, 1999) (GTC Petition) at 6-7.

¹⁰ See *Third Further Notice*, para. 6.

¹¹ See *id.*

¹² See *Third Further Notice*, para. 7.

¹³ See *id.* Section 255 requires service providers to make their services accessible to individuals with disabilities. See *Access to Telecommunications Services, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, Report and Order and Further Notice of Inquiry, WT Docket No. 96-198, FCC 99-181 (1999) at para. 28; 48 C.F.R. Part B, Sec. 6.3(k).

¹⁴ See *id.*

¹⁵ See *id.*

occasion, carriers supplement that filing, a time-consuming process. Moreover, carriers have no way of knowing when they will receive a ruling on their waiver requests. Although some carriers have received grants of emergency petitions in as little as one week, it is more typical for carriers to wait at least a month for a ruling because of the heavy volume of these filings, and several petitioners have experienced much longer delays. Incorporating a streamlined certification and notification process into the current rules will significantly reduce the burden on carrier and Commission resources while still protecting consumers' interests. Indeed, all commenters support our proposal to amend our rules to address the sale or transfer of subscriber bases.¹⁶ All commenters also endorse our stated goals: to reduce regulatory burdens, and thereby produce greater certainty in the marketplace, while providing adequate consumer protection consistent with section 258 and our carrier change rules.¹⁷ As discussed in greater detail below, the streamlined process for the sale or transfer of subscriber bases adopted in this Order achieves both of these goals.¹⁸

10. We amend section 64.1120 of our rules to establish a streamlined self-certification process for the carrier-to-carrier sale or transfer of subscriber bases, thereby eliminating the need to obtain a waiver of Commission rules prior to closing a transaction. This process is designed to ensure that the affected subscribers have adequate information about the carrier change in advance, that they are not financially harmed by the change, and that they will experience a seamless transition of service from their original carrier to the acquiring carrier. This process also will provide the Commission with information it needs to fulfill its consumer protection obligations. 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.¹⁹

¹⁶ See, e.g., ASCENT *Third Further Notice* Comments at 2; AT&T Comments at 2-3; GTC Reply Comments at 2-3; ITAA Comments at 2; Maine Commission Comments at 2; Qwest Comments at 2; SBC Comments at 1; Sprint Comments at 1-2; Wisconsin Commission Comments at 2-3.

¹⁷ See, e.g., ASCENT Comments at 2; AT&T Comments at 2-3; Nebraska Commission Comments at 2; Qwest Reply at 4; WorldCom Comments at 2-3.

¹⁸ See *Third Further Notice*, para. 5. The majority of commenters supported our adoption of streamlined procedures that incorporate the principles identified as tentative conclusions in the *Third Further Notice*: subscribers experiencing a carrier change due to a sale or transfer must receive reasonable advance written notice of the change in providers, of their right to choose another carrier, and of the rates, terms, and conditions offered by the acquiring carrier; and the Commission must also receive reasonable advance notice of the planned carrier change. See, e.g., AT&T Comments at 3-5, 7; Maine Commission Comments at 3; Qwest Comments at 5; Wisconsin Commission Comments at 2-3; Teligent *ex parte* at 1 (filed April 3, 2001).

¹⁹ The Commission has also established streamlined procedures for carriers seeking to discontinue domestic or international service. See 47 C.F.R. § 63.71 (domestic) and 47 C.F.R. § 63.19 (international). Sections 63.71 and 63.19 of our rules implement section 214(a) of the Act, which mandates that “[n]o carrier shall discontinue, reduce, or impair service . . . unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby. . . .” 47 U.S.C. § 214(a). The discontinuance requirements of section 214 apply to carriers that transfer or sell their customer bases. The discontinuance procedures are distinct from the streamlined procedures adopted in this Order, which apply to carriers seeking to acquire or purchase customer bases in compliance with our carrier change rules and section 258. See *Reminder To Common Carriers Regarding Discontinuance Of Domestic Service Under Section 214 Of The Communications Act*, Public Notice, DA 01-1173 (Com. Car. Bur. rel. May 8, 2001).
(continued....)

B. Notice to the Commission

11. We find that it is in the public interest to adopt a carrier self-certification process as the streamlined procedure for notifying the Commission prior to the sale or transfer of a subscriber base. The acquiring carrier must certify, at least 30 days before the intended transaction date, that it will comply with the requirements established in this Order, including the provision of reasonable advance notice to the affected subscribers.²⁰ The Commission will be able to ensure that consumer interests are protected if it has advance knowledge of such transactions and certification of compliance with the requirements of this streamlined process.²¹

12. Under the streamlined process we adopt in this Order, the acquiring carrier will simply file a letter in CC Docket No. 00-257 with the Secretary of the Commission, no later than 30 days prior to the transfer of the subscriber base to the new service provider, that includes the names of the parties to the transaction, the types of telecommunications services provided to the affected subscribers, the date of the transfer of these subscribers to the acquiring carrier, a certification of compliance with the requirements of this process, and an attached copy of the notice sent to the affected subscribers.²² In the rare case in which, after the filing of the certification, there is a material change to the required information, such as a change in the date of the subscriber transfer, the acquiring carrier must file written notification of the change(s) with the Commission no more than 10 days after the transfer date designated in the prior filing. While we reserve the right to require the acquiring carrier to send an additional notice to the affected subscribers regarding such material changes, we expect that we will exercise this right infrequently. We disagree with commenters who contend that a self-certification requirement is no less burdensome than the current waiver process, or that this requirement undermines our streamlining efforts.²³ Under this streamlined approach, in contrast to the waiver process, the carrier need not obtain Commission approval in order to complete the transaction.

13. A telecommunications carrier must comply with this streamlined process whenever it acquires subscribers from another carrier through a sale or transfer. For example, if a carrier plans to acquire the subscriber base of another carrier owned by the same parent company, and if, after the transfer, the subscribers' preferred carrier will have a different name, contact number, billing address, and set of rates, terms, and conditions, the acquiring carrier must comply with the procedures adopted in this Order. However, we note that, when a carrier is simply undergoing a name change, it is not in fact acquiring customers through a sale or transfer, and therefore it need not comply with these procedures. As another example, a change in corporate structure that is invisible to the affected subscribers does not

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²⁰ See, e.g., Maine Commission Comments at 3; Qwest Comments at 5-6; Verizon Comments at 2-3; Wisconsin Commission Comments at 2; WorldCom Comments at 2; Teligent *ex parte* at 2.

²¹ We agree with these commenters that argue that mandating a broad self-certification regarding compliance with all Commission rules and orders could impede routine business transactions by requiring an excessive amount of due diligence. See, e.g., WorldCom Comments at 7-8 and n.14.

²² See, e.g., AT&T Comments at 7; Qwest Comments at 5.

²³ See, e.g., Verizon Comments at 2-3; GTC Reply at 3; ITTA Comments at 6-7; SBC Comments at 5.

constitute a sale or transfer for purposes of section 258 that implicates this streamlined process.²⁴

14. The rule amendments we adopt in this Order expressly prohibit use of the streamlined procedure to avoid liability for slamming rule violations by transferring subscribers to another corporation. We caution carriers that the Commission will continue its vigorous slamming enforcement efforts and will not tolerate carrier attempts to avoid liability for slamming rule violations by, for example, transferring subscribers to a sham company. The Commission's Enforcement Bureau will be vigilant in monitoring subscriber transfers effected under these procedures for indications of fraud and will pursue enforcement action against carriers that violate the proscription. We believe that our streamlined process for carrier changes associated with sales or transfers, coupled with vigorous enforcement of our slamming rules, will be sufficient to protect consumers from unscrupulous carriers.²⁵

C. Notice to the Affected Subscribers

15. We conclude that carriers acquiring subscribers should provide those subscribers with reasonable advance notice of a carrier change associated with a sale or transfer.²⁶ We agree with those commenters that support our proposed 30-day advance notice period.²⁷ We believe that, if an affected subscriber receives notice of the transaction at least 30 days before it occurs, the subscriber will be able to make an informed decision as to whether to accept the acquiring carrier as his or her preferred carrier. We are not persuaded that a 30-day notice requirement will be burdensome and costly to the carriers involved.²⁸ Based on our extensive experience with waiver petitions related to subscriber sales or transfers, we believe that 30 days is a reasonable notice period to provide subscribers with sufficient opportunity to make an informed decision without creating a burdensome delay for the carriers involved.

16. We conclude that the carrier acquiring a subscriber base should be responsible for notifying the affected subscribers.²⁹ We note that, in the absence of a waiver or the streamlined process adopted in this Order, the acquiring carrier would be required by the Commission's carrier change

²⁴ Indeed, in such cases, requiring notice of a change that is imperceptible to the affected subscribers might cause confusion where there would otherwise be none. As noted by Worldcom, many *pro forma* transfers of control will not implicate this streamlined process because they will be invisible to the affected customers. Worldcom *ex parte* at 2-3. However, other *pro forma* transactions, while routine in certain respects, will require use of the streamlined process because they will involve carrier-to-carrier sales or transfers of customers.

²⁵ The majority of commenters agree that the combination of a streamlined process and vigorous slamming enforcement efforts will adequately protect consumers from attempts by unscrupulous carriers to sell their customer bases and evade the repercussions of Commission slamming enforcement actions. *See, e.g.*, ASCENT Comments at 9-13; GTC Reply at 5-6; Sprint Comments at 6.

²⁶ We note that the majority of commenters support this proposal. *See, e.g.*, ASCENT Comments at 3; AT&T Comments at 3-5; ITAA Comments at 3; Qwest Comments at 5; Sprint Comments at 2-3, Reply at 1-2; Wisconsin Commission Comments at 2; *but see* Teligent *ex parte* at 2 (initial notice to subscribers should be provided by transferring or selling carrier because that carrier has existing relationship with subscribers).

²⁷ *See, e.g.*, AT&T Comments at 3-5; ITAA Comments at 3; Maine Commission Comments at 3; Nebraska Commission Comments at 3; Sprint Comments at 2-3; SBC Comments at 3-4; WorldCom Comments at 4-5.

²⁸ *See* GTC Reply at 3-4.

²⁹ *See, e.g.*, Sprint Reply at 2-4.

authorization and verification rules, and by section 258, to obtain each subscriber's express authorization and verification for the carrier change. We do not agree with SBC that the acquiring carrier will lack access to the necessary subscriber list information.³⁰ We believe that, in most cases, sufficient subscriber list information will be available to the acquiring carrier and that it is unlikely that a carrier would consummate a purchase of a subscriber base without having immediate access to the subscriber list upon the closing of the purchase agreement.³¹ We are confident that carriers can, through normal business negotiations, make arrangements for the acquiring carrier to obtain the necessary information.

17. We further find that the written notice to the affected subscribers should not differ based on the types of service provided or the size of the carriers involved.³² Because a change in presubscribed service provider affects all subscribers similarly, regardless of the service type or the size of the original or acquiring carrier, there is no basis for varying the notice requirements.³³

18. We decline to require the acquiring carrier to send a second notice to the affected subscribers. We agree with commenters that argue that the affected subscribers do not need to receive a second written notice that simply reiterates the information provided in the first notice.³⁴ We recognize that some affected subscribers may fail to read the notice sent prior to the change in service providers; however, as pointed out by several commenters, the affected subscribers will receive notification of the new service provider on their bills under the highlighting requirement of the Commission's truth-in-billing rules.³⁵ Moreover, we expect that most acquiring carriers will contact the affected subscribers after the transfer as a matter of good business practice.³⁶ We believe that a second notice may also be costly for carriers, especially smaller carriers.³⁷

19. Because section 255 and the Commission's existing rules impose disability accessibility requirements on carriers, we decline to impose additional requirements regarding advance subscriber notices sent to blind or visually-impaired consumers but will incorporate by reference the existing requirements in our amendment to section 64.1120.³⁸ We believe that our existing rules are sufficient

³⁰ See SBC Comments at 3-4.

³¹ See Sprint Reply at 2-4.

³² See, e.g., ASCENT Comments at 8; SBC Comments at 5; Verizon Comments at 2; Wisconsin Commission Comments at 4; USTA Comments at 3-4.

³³ See, e.g., ASCENT Comments at 8.

³⁴ See, e.g., ASCENT Comments at 3; AT&T Comments at 5-7; GTC Reply at 4. ITAA Comments at 4-5; Maine Commission Comments at 3; Sprint Comments at 2-3; WorldCom Comments at 2, 5.

³⁵ See, e.g., ASCENT Comments at 3; Sprint Comments at 2-3; WorldCom Comments at 2, 5; see also *Truth-in-Billing Order*, 14 FCC Rcd at 7509-7516, paras. 28-36, *Truth-in-Billing Order on Reconsideration*, 15 FCC Rcd at 6024-6026.

³⁶ See, e.g., ASCENT Comments at 3.

³⁷ See, e.g., GTC Reply at 4.

³⁸ Section 255 requires service providers to make their services accessible to individuals by disabilities. See *Access to Telecommunications Services, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, Report and Order and Further Notice of Inquiry, WT Docket No. 96-198, FCC 99-181 (1999) at (continued....)

to ensure that the requirements of section 255 are met. We will monitor the situation and, if necessary, will take further action, as appropriate. We also believe that carriers should have the flexibility to meet the needs of the disabled community consistent with statutory and Commission requirements.³⁹

20. We note that several incumbent local exchange carriers have raised an issue regarding the application of our rules in situations where a competitive local exchange carrier is leaving a particular market and is required by state law to transfer its customer base to the incumbent.⁴⁰ We disagree with these commenters that the streamlined procedures for the sale or transfer of subscriber base adopted in this Order should not be applied to incumbents that must assume the subscribers of a competitive local exchange carrier exiting the market.⁴¹ We believe that the affected subscribers of competitive local exchange carriers are entitled to the same protections and notice as any other subscriber whose carrier is changed due to a sale or transfer.⁴² To the extent a situation arises where it is impossible to comply precisely with the requirements set forth in this Order, we delegate authority to the Common Carrier Bureau to resolve on a case-by-case basis.

21. We have carefully evaluated the individual elements that comprise the advance subscriber notice under our streamlined process. We have determined that these requirements are necessary to ensure that the affected subscribers have adequate information about the carrier change, in advance, that they will not suffer financial harm from the involuntary change, and that they will experience a smooth transition to the new service provider. Not later than 30 days before the planned carrier change, the acquiring carrier must give each affected subscriber written notice of the date on which it will become the subscriber's new provider of telecommunications service and of other essential information. As discussed more fully below, 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 alternative 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.⁴³

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para. 28; 48 C.F.R. Part B, Sec. 6.3(k). *See, e.g.*, ASCENT Comments at 8; Sprint Comments at 3; USTA Comments at 2-3.

³⁹ *See* USTA Comments at 2-3.

⁴⁰ *See* SBC Comments at 1-2, 6-7; Qwest Reply at 2-4; Verizon Comments at 2.

⁴¹ *See id.*

⁴² Section 258, like our implementing rules, applies to both interstate and intrastate carrier changes. *See* 47 U.S.C. § 258(a).

⁴³ *See, e.g., Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129, Global Telecompetition Consultants Petition for Rulemaking (filed Dec. 30, 1999) (GTC Petition) at 6-7.

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

22. We conclude that the advance subscriber notice provided by the acquiring carrier must contain detailed information on the rates, terms, and conditions of the service(s) the acquiring carrier will provide.⁴⁴ The notice must advise the affected subscribers that the stated rates, terms, and conditions will apply on the date that the acquiring carrier becomes their service provider, and it must also disclose the method by which the carrier will inform them of any post-transfer changes. We believe that having such information in advance will enable consumers to make an informed decision regarding the transaction and their choice of preferred carrier, consistent with the goals of section 258.

23. We do not believe it appropriate to permit carriers to simply refer the affected subscribers to the acquiring carrier's website for this information, as several commenters suggested.⁴⁵ We recognize that, under our detariffing rules, long distance carriers will be required to provide information on their rates and service offerings on their websites.⁴⁶ We note, however, that not all consumers have website access. Moreover, we believe that the involuntary nature of carrier changes associated with a sale or transfer entitles subscribers to receive direct initial notice of the applicable rates, terms, and conditions of the new service offerings. For similar reasons, we reject the proposals made by some commenters to require the advance subscriber notice to include only the rates of the acquiring carrier or no information at all regarding the new carrier's terms or conditions of service.⁴⁷

24. We decline 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. Several commenters assert that such a requirement may prove difficult and costly, if not impossible, and may serve as a major impediment to these transactions in the marketplace.⁴⁸ We believe that such a requirement is unnecessary because the information the affected subscribers will receive in the 30-day advance subscriber notice about the acquiring carrier's rates, terms, and conditions for the telecommunications services at issue, coupled with the reminder of their right to select a different carrier, will enable them to make an informed decision about who their carrier should be and the rates they pay for these services, consistent with the goals of section 258.

⁴⁴ See, e.g., AT&T Comments at 3-5; ITAA Comments at 3; Maine Commission Comments at 3; Nebraska Commission Comments at 3; Qwest Comments at 5; Sprint Comments at 2-3; SBC Comments at 4-5.

⁴⁵ See, e.g., ASCENT Comments at 5-6; AT&T Comments at 3-5.

⁴⁶ See *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of 254(g) of the Communications Act of 1934*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730 (1996) (requiring interexchange carriers that have established websites to post information on current rates, terms, and conditions in a timely and easily accessible manner, and to update such information regularly); *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934*, CC Docket No. 96-61, Order on Reconsideration, 12 FCC 15014 (1997); *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934*, CC Docket No. 96-61, Second Order on Reconsideration and Erratum, 14 FCC Rcd 6004 (1999).

⁴⁷ See, e.g., ASCENT Comments at 5-6; WorldCom Comments at 4-5.

⁴⁸ See, e.g., AT&T Comments at 6; ASCENT Comments at 7; ITAA Comments at 5-6; SBC Comments at 5-6; Sprint Comments at 4; USTA Comments at 4; Verizon Comments at 3; WorldCom Comments at 2, 4-5.

2. Notice that the Acquiring Carrier Is Responsible for Carrier Change Charges

25. We conclude that it is appropriate, and consistent with section 258, to require the acquiring carrier to be responsible for any carrier change charges associated with the transaction.⁴⁹ We believe that, because carrier changes associated with a carrier-to-carrier sale or transfer are involuntary, subscribers should not bear the burden of the cost of changing service providers. Moreover, we believe that the acquiring carrier is in the best position to cover carrier change charges because it has the billing relationship with the customer after the transfer.⁵⁰ We modify slightly our proposal in the *Third Further Notice* to require the advance subscriber notice to state that no carrier charges will be imposed as a result of the transaction because we recognize that some acquiring carriers may not be able to prevent the assessment of a carrier change charge.⁵¹ We recognize that acquiring carriers may need the flexibility to credit or reimburse affected subscribers for such charges, if such charges are imposed outside of the acquiring carrier's control.⁵² Our amended rules require the acquiring carrier to take responsibility for any carrier change charges associated with the transaction and to make this fact clear in the advance subscriber notice.

3. Notice of the Subscriber's Right to Select a New Preferred Carrier

26. We agree with commenters that subscribers being transferred from one carrier to the next in a transaction must know that they have the right to make another preferred carrier selection, if an alternative carrier is available.⁵³ The affected subscribers did not choose the acquiring carrier and should receive reasonable notice that they have the right to select a new carrier if they do not want to be served by the acquiring carrier. Consistent with section 258, we therefore require the acquiring carrier to include such a statement in its advance notice to each of the affected subscribers. We recognize that transfers may include customers who have signed term contracts with the selling or transferring carrier, and that such term contracts may be viewed by the acquiring company as a valuable component of the transaction.⁵⁴ While we decline to make an exception to this requirement for term contracts, we conclude that a carrier may state in its notice to an affected term contract subscriber that the subscriber may face termination penalties if the subscriber selects another carrier prior to the expiration of the term

⁴⁹ See, e.g., AT&T Comments at 3-5; ITAA Comments at 3; Nebraska Commission Comments at 3; Qwest Comments at 5; Sprint Comments at 2-3; SBC Comments at 3-4; WorldCom Comments at 2, 5.

⁵⁰ We expect that, if carrier change charges are known to be the responsibility of the acquiring carrier, these charges will be factored into the terms of the agreement between the selling/transferring carrier and the acquiring carrier.

⁵¹ See *Third Further Notice*, para. 6.

⁵² For example, the affected subscribers' local exchange carriers may assess a PIC change charge for transferring them to the acquiring carrier. See AT&T Comments at 3-5.

⁵³ See, e.g., AT&T Comments at 3-5; ITAA Comments at 3; Maine Commission Comments at 3; Nebraska Commission Comments at 3; Qwest Comments at 5; SBC Comments at 3-4; Sprint Comments at 2-3; SBC Comments at 3-4; WorldCom Comments at 2, 5.

⁵⁴ See ASCENT Comments at 4.

contract, if that is the case.⁵⁵

4. Toll-free Customer Service Telephone Number

27. We further require the acquiring carrier to include a toll-free customer service telephone number in the advance subscriber notice, in order to address any questions or problems that the subscriber may have concerning the change in service providers.⁵⁶ This requirement will help ensure that the affected subscribers experience a seamless transition to the new service provider. We note that this requirement does not impose a new regulatory burden on most carriers because the Commission's truth-in-billing rules already require most carriers to provide a toll-free inquiry and dispute resolution number on consumers' telephone bills.⁵⁷ Accordingly, this aspect of the subscriber notification requirement merely provides information that most subscribers would obtain, at a minimum, upon receipt of the first bill.

5. Notice that All Affected Subscribers, Including Those with Preferred Carrier Freezes, Will Be Switched to the Acquiring Carrier Unless They Make an Alternative Selection

28. We will require the acquiring carrier to make clear in the advance subscriber notice that all subscribers receiving the notice, including those who have arranged preferred carrier freezes through their local service providers on the service(s) involved in the transfer, will be transferred to the new carrier if they do not select a different preferred carrier before the transfer date.⁵⁸ We will also require the acquiring carrier to inform subscribers that existing preferred carrier freezes on the service(s) involved in the transfer will be lifted and that, if they would like to have freeze protection after the transfer, they must contact their local service providers to obtain this service. Section 64.1190 of our rules permits local service providers to offer their subscribers the option of requesting a preferred carrier freeze, an additional measure of protection against unauthorized carrier changes that is consistent with section 258.⁵⁹ 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. Under the circumstances involved in the sale or

⁵⁵ See *id.*

⁵⁶ See, e.g., AT&T Comments at 4-5; Sprint Comments at 2; Verizon Comments at 2; Wisconsin Commission Comments at 4; Teligent *ex parte* at 2.

⁵⁷ See 47 C.F.R. § 64.2401(d); *Truth-in-Billing and Billing Format*, CC Docket No. 98170, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492 (1999), 7533-7534, paras. 65-66 (*Truth-in-Billing Order*), Order on Reconsideration, 15 FCC Rcd. 6023 (2000), 6027-6028, para. 11 (creating limited exception when the customer only accesses the bill by e-mail or Internet) (*Truth-in-Billing Order on Reconsideration*).

⁵⁸ Presenting a copy of the date-stamped letter notification/certification that the acquiring carrier filed with the Commission will be sufficient to demonstrate to a subscriber's local service provider that the local service provider must lift the preferred carrier freeze and transfer the subscriber to the acquiring carrier. See Worldcom *ex parte* (filed April 6, 2001) at 2; see also SBC *ex parte* (filed April 23, 2001) at 1-2.

⁵⁹ Section 64.1190 of our rules, 47 C.F.R. § 64.1190, permits local service providers to offer their subscribers the option of requesting a preferred carrier freeze, an additional measure of protection against unauthorized carrier changes that we have found to be consistent with section 258. *Section 258 Order*, 14 FCC Rcd at 1575-1590, paras. 112-138. Such a freeze assures subscribers that their preferred carriers will not be changed without their express consent.

transfer of a subscriber base, however, 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 and was not automatically switched to the acquiring carrier. We believe that, under such circumstances, it is preferable, and more consistent with section 258, 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. In our experience, there has occasionally been some confusion regarding the status of “frozen” subscribers who are part of a subscriber base being acquired by another carrier pursuant to a sale or transfer.⁶⁰ 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. Under the procedures adopted in this Order, “frozen” subscribers who prefer not to receive service from the acquiring carrier will have sufficient notice of their ability to select another provider, in a manner consistent with section 258. In addition, “frozen” subscribers will have notice of the need to contact their local service providers if they wish to continue to have preferred carrier freeze protection for the service(s) involved in the transfer after the transfer occurs.

6. Notice of Whether the Acquiring Carrier Will Handle Complaints Against the Selling or Transferring Carrier

29. Finally, we conclude that the acquiring carrier must include in the advance subscriber notice whether it will be assuming responsibility for handling the outstanding complaints that the affected subscribers may have against the selling or transferring carrier. As part of the transaction, an acquiring carrier may agree to assume responsibility for outstanding complaints against the selling or transferring carrier. In order to provide maximum information to affected subscribers, we believe it is appropriate to require the acquiring carrier to provide information about complaint administration to the affected subscribers if the acquiring carrier is assuming responsibility for such complaints.

30. We decline to require the acquiring carrier to handle outstanding complaints against the selling or transferring carrier. While some commenters support requiring the acquiring carrier to commit to handling customer complaints regarding the service of the original carrier and the transfer itself to ensure that transferred subscribers are not deprived of recourse after the transfer,⁶¹ other commenters strongly oppose this approach, and some believe we should place the liability for handling previous complaints on the selling or transferring carrier.⁶² We recognize that carriers often factor the costs of complaint administration into their transaction agreements,⁶³ and we are reluctant to interfere with this process. We believe that it is sufficient to require the acquiring carrier to disclose in the advance subscriber notice whether it has assumed responsibility for handling outstanding complaints against the selling or transferring carrier.

⁶⁰ See, e.g., *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129, Order Granting Waiver, GTE Service Corporation, DA 00-1113 (Com. Carr. Bur., rel. May 19, 2000); see also *Worldcom ex parte* at 1-2; *SBC ex parte* at 1-2.

⁶¹ See, e.g., Maine Commission Comments at 4; SBC Comments at 6; Wisconsin Commission Comments at 5.

⁶² See, e.g., GTC Reply at 5; Teligent *ex parte* at 2 (“If the [selling] carrier continues to be a separate entity under Commission jurisdiction [after the transfer], it should handle all complaints that stem from service it provided to the subscriber.”)

⁶³ See, e.g., Worldcom Comments at 2, 6-7; GTC Reply at 5.

IV. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

31. As required by the Regulatory Flexibility Act (RFA),⁶⁴ an Initial Regulatory Flexibility Analysis (IRFA)⁶⁵ was incorporated into the *Third Further Notice* in this proceeding.⁶⁶ The Commission sought written public comment on the proposals in the *Third Further Notice*, including comment on the IRFA. The comments received are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.⁶⁷

1. Need For and Objectives of this Action

32. 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.⁶⁸ Since the release of the *Section 258 Order*, the Commission has received many requests for waiver of its carrier change and authorization rules as a result of carriers selling or transferring their subscriber bases to other carriers, and the carriers desire not to get authorization from each affected subscriber in order to transition in a seamless, efficient manner. The objectives of the modified rules adopted in this Order are to address these types of transactions and 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.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

33. The Commission received no comments directly in response to the IRFA.

34. *Difference in Advance Notice to Affected Subscribers Based on Types of Service Provided and/or Size of Carrier.* The Commission specifically sought comment on whether the subscriber advance notice requirement should differ in some manner based on the type of service being provided, such as local, intraLATA toll, or interLATA toll service, or upon the size of the carrier(s) involved.⁶⁹ All commenters on this issue agree that the advance notice requirement should be the same

⁶⁴ 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).

⁶⁵ 5 U.S.C. § 603.

⁶⁶ *Third Further Notice*, paras. 9-30.

⁶⁷ See 5 U.S.C. § 604.

⁶⁸ See *Section 258 Order*, 14 FCC Rcd at 1510-12, paras. 1-4.

⁶⁹ See *Third Further Notice*, para. 7.

for all carriers.⁷⁰ The Commission determined that, because a change in presubscribed service provider affects all subscribers similarly, regardless of the service type or the size of the original or acquiring carrier, there is no basis for varying the notice requirements.⁷¹

35. *Second Notice to Affected Subscribers.* The Commission invited parties to comment on whether acquiring carriers should be required to provide each affected subscriber with a second written notice after the transfer has occurred reiterating the same information provided in the pre-transfer notification.⁷² Many commenters contend that the requirement of a second notice to the affected subscribers is overly burdensome and costly for carriers with little benefit to the affected subscribers.⁷³ ITAA specifically noted that a second notice requirement would be particularly burdensome for smaller and midsize carriers, which would be less able to absorb doubling the costs of the subscriber notice requirement.⁷⁴ These comments are discussed in more detail in paragraph 18 above. The Commission agrees with these commenters, and others, that affected subscribers do not need to receive a second written notice that simply reiterates the information provided in the first notice. The Commission recognized that, while some affected subscribers may fail to read the notice sent prior to the change in service providers, they will receive notification of the new service provider on their bills under the highlighting requirement of the Commission's truth-in-billing rules.⁷⁵ The Commission also concluded that a second notice would be costly for carriers, especially smaller carriers.⁷⁶

3. Description and Estimate of the Number of Small Entities to which the Rules Will Apply

36. 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 proposed rules, if adopted.⁷⁷ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" is defined as a "small business concern" under section 3 of the Small Business Act.⁷⁸ 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

⁷⁰ See, e.g., ASCENT Comments at 8; ITAA Comments at 4-5; SBC Comments at 5; Verizon Comments at 2; Wisconsin Commission Comments at 4; USTA Comments at 3-4. See also *supra*, para. 17.

⁷¹ See *supra* para. 17.

⁷² See *Third Further Notice*, para. 6.

⁷³ See, e.g., ASCENT Comments at 3; AT&T Comments at 5-7; GTC Reply at 4. ITAA Comments at 4-5; Maine Commission Comments at 3; Sprint Comments at 2-3; WorldCom Comments at 2, 5.

⁷⁴ See ITAA Comments at 4-5.

⁷⁵ See *supra*, para. 18.

⁷⁶ *Id.*

⁷⁷ 5 U.S.C. § 603(b)(3).

⁷⁸ 5 U.S.C. § 601(3).

(SBA).⁷⁹ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."⁸⁰ Nationwide, as of 1992, there were approximately 275,801 small organizations.⁸¹ "Small governmental jurisdiction"⁸² generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."⁸³ As of 1992, there were approximately 85,006 governmental entities in the United States.⁸⁴ This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.⁸⁵ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities. According to SBA reporting data, there were 4.44 million small business firms nationwide in 1992.⁸⁶ Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the rules we adopt.

37. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be data the Commission publishes in its *Trends in Telephone Service* report.⁸⁷ In a recent news release, the Commission indicated that there are 4,822 interstate carriers.⁸⁸ These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

38. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees.⁸⁹ Below, we discuss the total estimated number of

⁷⁹ 15 U.S.C. § 632.

⁸⁰ 5 U.S.C. § 601(4).

⁸¹ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

⁸² 47 CFR § 1.1162.

⁸³ 5 U.S.C. § 601(5).

⁸⁴ U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

⁸⁵ *Id.*

⁸⁶ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

⁸⁷ FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 16.3 (December 2000).

⁸⁸ FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 16.3 (December 2000).

⁸⁹ 13 CFR § 121.201, Standard Industrial Classification (SIC) codes 4812 and 4813. *See also* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987).

telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

39. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."⁹⁰ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.⁹¹ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

40. **Total Number of Telephone Companies Affected.** The U.S. Bureau of the Census ("Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.⁹² 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, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities because they are not "independently owned and operated."⁹³ 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 is reasonable to conclude that 3,497 or fewer telephone service firms are small entity telephone service firms that may be affected by the new rules.

41. **Wireline Carriers and Service Providers.** The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.⁹⁴ According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.⁹⁵ All but 26 of the 2,321

⁹⁰ 5 U.S.C. § 601(3).

⁹¹ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, e.g., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996), 61 FR 45476 (Aug. 29, 1996).

⁹² U.S. Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) (1992 Census).

⁹³ See generally 15 U.S.C. § 632(a)(1).

⁹⁴ 1992 Census, *supra*, at Firm Size 1-123.

⁹⁵ 13 CFR §121.201, SIC code 4813.

non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that 2,295 or fewer small telephone communications companies other than radiotelephone companies are small entities that may be affected by the new rules.

42. **Local Exchange Carriers.** Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.⁹⁶ According to the most recent *Telecommunications Industry Revenue* data, 1,335 incumbent carriers reported that they were engaged in the provision of local exchange services.⁹⁷ We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that 1,335 or fewer providers of local exchange service are small entities that may be affected by the new rules.

43. **Interexchange Carriers.** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.⁹⁸ According to the most recent *Trends in Telephone Service* data, 204 carriers reported that they were engaged in the provision of interexchange services.⁹⁹ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 204 or fewer small entity IXCs that may be affected by the new rules.

44. **Competitive Access Providers.** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.¹⁰⁰ According to the most recent *Trends in Telephone Service* data, 349 CAP/CLECs carriers and 60 other LECs reported that they were engaged in the provision of

⁹⁶ *Id.*

⁹⁷ FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 16.3 (December 2000).

⁹⁸ 13 CFR § 121.201, code 4813.

⁹⁹ FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 16.3 (December 2000).

¹⁰⁰ 13 CFR § 121.201, code 4813.

competitive local exchange services.¹⁰¹ We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 349 or fewer small entity CAPs and 60 other LECs that may be affected by the new rules.

45. **Operator Service Providers.** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.¹⁰² According to the most recent *Trends in Telephone Service* data, 21 carriers reported that they were engaged in the provision of operator services.¹⁰³ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 21 or fewer small entity operator service providers that may be affected by the new rules.

46. **Pay Telephone Operators.** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.¹⁰⁴ According to the most recent *Trends in Telephone Service* data, 758 carriers reported that they were engaged in the provision of pay telephone services.¹⁰⁵ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 758 or fewer small entity pay telephone operators that may be affected by the new rules.

47. **Resellers (including debit card providers).** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies.¹⁰⁶ According to the most recent *Trends in Telephone Service* data, 454 toll and 87 local

¹⁰¹ FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 16.3 (December 2000).

¹⁰² 13 CFR § 121.201, code 4813.

¹⁰³ FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 16.3 (December 2000).

¹⁰⁴ 13 CFR § 121.201, code 4813.

¹⁰⁵ FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 16.3 (December 2000).

¹⁰⁶ 13 CFR § 121.201, code 4813.

entities reported that they were engaged in the resale of telephone service.¹⁰⁷ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 454 or fewer small toll entity resellers and 87 small local entity resellers that may be affected by the new rules.

48. **Toll-Free 800 and 800-Like Service Subscribers.**¹⁰⁸ Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 and 800-like service ("toll free") subscribers. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use.¹⁰⁹ According to our most recent data, at the end of January 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers that had been assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 7,692,955 or fewer small entity 800 subscribers, 7,706,393 or fewer small entity 888 subscribers, and 1,946,538 or fewer small entity 877 subscribers may be affected by the new rules.

49. **Cellular Licensees.** Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.¹¹⁰ According to the Census Bureau, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.¹¹¹ Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Trends in Telephone Service* data, 806 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.¹¹² We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 806 or fewer small cellular service carriers that may be affected by the new rules.

¹⁰⁷ FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 16.3 (December 2000).

¹⁰⁸ We include all toll-free number subscribers in this category, including 888 number subscribers.

¹⁰⁹ *Trends in Telephone Service*, Table 19.2 (December 2000).

¹¹⁰ 13 CFR § 121.201, code 4812.

¹¹¹ 1992 Census, Series UC92-S-1, at Table 5, SIC code 4812.

¹¹² *Trends in Telephone Service*, Table 5.3 (December 2000).

4. **Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

50. Below, we analyze the projected reporting, recordkeeping, and other compliance requirements that might affect small entities.

51. **Notice to the Commission.** The Commission concludes that adopting a carrier self-certification process as the streamlined procedure for notifying the Commission prior to the sale or transfer of a subscriber base is in the public interest. Accordingly, the Commission directs carriers to file a notification letter with the Secretary of the Commission, no later than 30 days prior to the actual transfer of the subscriber base to the new service provider. This notification letter shall include the names of the parties to the transaction, the types of telecommunications services provided to the affected subscribers, the date of the transfer of these subscribers to the acquiring carrier, a certification of compliance with the statutory and Commission requirements that apply to this process, and an attached copy of the notice sent to the affected subscriber.¹¹³ This is a minimal filing requirement for small and large carriers in comparison to the Commission waiver process requirements and, unlike the waiver process, it will not require the carriers to obtain Commission action before completing the transaction. The self-certification to the Commission will serve enforcement and consumer information purposes through providing the Commission with advance notice of these transactions. Certification of these transactions will help ensure compliance with the Commission's rules and will better inform Commission of the status of these transactions in the marketplace so that the Commission can better serve and provide information to affected consumers.

52. **Notice to the Affected Subscribers.** The Commission amends its carrier change and authorization rules to provide a streamlined procedure for all telecommunications carriers that purchase or transfer all or part of their subscriber base. This streamlined approach will benefit all carriers, small and large, by eliminating the time-consuming and resource-intensive Commission waiver process. The Commission concludes that carriers acquiring subscribers should provide those subscribers with reasonable advance notice (*i.e.*, at least 30 days) of a carrier change associated with a sale or transfer.¹¹⁴ The Commission states that, based on its extensive experience with waiver petitions related to subscriber sales or transfers, 30 days is a reasonable notice period to provide subscribers with sufficient notice and opportunity to make an informed decision without creating a burdensome delay for the carriers involved.¹¹⁵

5. **Steps Taken to Minimize the Significant Economic Impact of This Action on Small Entities, and Significant Alternatives Considered**

53. **Advance Notice to the Affected Subscribers.** The Commission has considered whether the advance subscriber notice requirement adopted herein will impose significant additional costs or administrative burdens on small carriers.¹¹⁶ The Commission concludes that this requirement would not

¹¹³ See *supra*, para. 12.

¹¹⁴ See *supra*, para. 15.

¹¹⁵ See *supra*, para. 15.

¹¹⁶ See *supra*, para. 15.

impose significant additional costs or administrative burdens on small carriers. In this regard, the Commission notes that all carriers, including small carriers, already provide these types of notices as part of the waiver process and do not object to continuing to provide them under the streamlined approach prescribed in the *Third Further Notice*. Accordingly, the Commission concludes that the advance notice requirement is not burdensome.

54. **Second Notice to Affected Subscribers.** To minimize the administrative burden on carriers, particularly small carriers, the Commission has not incorporated a second notice to the affected subscribers into the streamlined process.¹¹⁷ The Commission recognizes that such a requirement may be costly and therefore burdensome to small carriers. In addition, we note that consumers will receive a *de facto* second notice through the highlighting of new service providers on telephone bills required by the Commission's truth-in-billing rules. Our decision not to adopt the proposed alternative of a required second subscriber notice is consistent with comments filed, including those addressing small entity concerns.

55. **Rates, Terms, and Conditions of the New Service Provider.** The Commission has considered whether 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.¹¹⁸ The Commission has determined that such a requirement is not necessary because the information the affected subscribers will receive in the 30-day advance subscriber notice about the acquiring carrier's rates, terms, and conditions for the telecommunications services at issue will enable them to make an informed decision about the rates they pay for these services.

6. Report to Congress

56. The Commission will send a copy of the Order, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.¹¹⁹ In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) also will be published in the Federal Register.¹²⁰

B. Paperwork Reduction Act

57. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on 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.

VI. ORDERING CLAUSES

¹¹⁷ See *supra*, para. 18.

¹¹⁸ See *supra*, para. 24.

¹¹⁹ See 5 U.S.C. § 801(a)(1)(A).

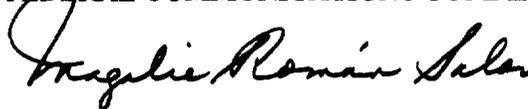
¹²⁰ See 5 U.S.C. § 604(b).

58. 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, the policies, rules, and requirements set forth herein ARE ADOPTED. IT IS FURTHER ORDERED that 47 C.F.R. Part 64 IS AMENDED as set forth in Appendix A.

59. 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.

60. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
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:

1. 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.
 - (1) No later than 30 days before the planned transfer of the affected subscribers from the selling or transferring carrier to the acquiring carrier, the acquiring carrier shall file with the Commission's Office of the Secretary a letter notification in CC Docket No. 00-257 providing the names of the parties to the transaction, the types of telecommunications services to be provided to the affected subscribers, and the date of the transfer of the subscriber base to the acquiring carrier. In the letter notification, the acquiring carrier also shall certify compliance with the requirement to provide advance subscriber notice in accordance with § 64.1120(e)(3), with the obligations specified in that notice, and with other statutory and Commission requirements that apply to this streamlined process. In addition, the acquiring carrier shall attach a copy of the notice sent to the affected subscribers.
 - (2) If, subsequent to the filing of the letter notification with the Commission required by § 64.1120(e)(1), any material changes to the required information should develop, the acquiring carrier shall file written notification of these changes with the Commission no more than 10 days after the transfer date announced in the prior notification. The Commission reserves the right to require the acquiring carrier to send an additional notice to the affected subscribers regarding such material changes.
 - (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 C.F.R. §§ 6.3, 6.5. The following information must be included in the advance subscriber notice:

-
- (i) The date on which the acquiring carrier will become the subscriber's new provider of telecommunications service,
 - (ii) The rates, terms, and conditions of the service(s) to be provided by the acquiring carrier upon the subscriber's transfer to the acquiring carrier, and the means by which the acquiring carrier will notify the subscriber of any change(s) to these rates, terms, and conditions.
 - (iii) The acquiring carrier will be responsible for any carrier change charges associated with the transfer,
 - (iv) The subscriber's right to select a different preferred carrier for the telecommunications service(s) at issue, if an alternative carrier is available,
 - (v) All subscribers receiving the notice, even those who have arranged preferred carrier freezes through their local service providers on the service(s) involved in the transfer, will be transferred to the acquiring carrier, unless they have selected a different carrier before the transfer date; existing preferred carrier freezes on the service(s) involved in the transfer will be lifted; and the subscribers must contact their local service providers to arrange a new freeze.
 - (vi) Whether the acquiring carrier will be responsible for handling any complaints filed, or otherwise raised, prior to or during the transfer against the selling or transferring carrier, and
 - (vii) The toll-free customer service telephone number of the acquiring carrier.

APPENDIX B**Parties Filing Comments and Reply Comments****Comments:**

1. Association of Communications Enterprises
2. AT&T Corporation
3. Independent Telecommunications & Telephone Alliance
4. Maine Public Utilities Commission
5. Nebraska Public Service Commission
6. Qwest Corporation
7. SBC Communications, Inc.
8. Sprint Corporation
9. United States Telecom Association
10. Verizon
11. Wisconsin Public Service Commission
12. WorldCom, Inc.

Reply Comments:

1. Global Telecompetition Consultants, Inc.
2. Qwest Corporation
3. Sprint Corporation