

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

)	
2000 Biennial Regulatory Review --)	
Review of Policies and Rules Concerning)	CC Docket No. 00-257
Unauthorized Changes of Consumers)	
Long Distance Carriers)	
)	
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)	

THIRD FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: December 27, 2000

Released: January 18, 2001

Comment Date: 21 days after publication in the Federal Register

Reply Comment Date: 31 days after publication in the Federal Register

By the Commission:

I. INTRODUCTION

1. In this Third Further Notice of Proposed Rulemaking (*Third Further Notice*), we propose modifications to our carrier change authorization and verification rules in situations when a telecommunications carrier sells or transfers its subscriber base to another carrier. We propose and seek comment on expedited procedures for handling the sale or transfer of subscribers that will adequately protect consumers as a part of our biennial regulatory review.¹

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

II. BACKGROUND

2. In 1998, we adopted rules to implement section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).² Section 258 expanded the Commission's existing authority to deter and punish "slamming," the submission and execution of unauthorized changes in a subscriber's selection of a provider of telephone exchange service or telephone toll service.³ 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. The rules we adopted in the *Section 258 Order* modified our existing requirements for the authorization and verification of preferred carrier changes and added procedures for handling preferred carrier freezes. In the *Section 258 Order*, we also adopted liability rules designed to take the profit out of slamming. The *Section 258 Order*, however, did not specifically address carrier changes associated with the sale or transfer of a subscriber base from one carrier to another.

3. Since the release of the *Section 258 Order*, carriers typically have sought waiver of the carrier change authorization and verification rules to effect the sale or transfer of a subscriber base from one carrier to another. The Commission now receives numerous waiver petitions every

service. See *2000 Biennial Regulatory Review*, CC Docket No. 00-175, Report, FCC 00-456 (released January 17, 2000) (agreeing with Commission staff recommendations detailed in the 2000 Biennial Review Updated Staff Report, released concurrently); Federal Communications Commission Biennial Regulatory Review 2000 Updated Staff Report (released January 17, 2000), 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); *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 (released September 25, 2000), Erratum, DA No. 00-2192 (released October 4, 2000), *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) (*PIC Change Recon. Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911 (*Allocation Order*), 101 F.C.C.2d 935 (*Waiver Order*), *reconsideration denied*, 102 F.C.C.2d 503 (1985) (*Reconsideration Order*) (the *Reconsideration Order* denied reconsideration of both the *Allocation Order* and the *Waiver Order*).

³ 47 U.S.C. § 258 (a).

month.⁴ Such petitions usually state that it is infeasible or difficult for the 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 disruption of service, 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.⁵ Such waivers enable subscribers to experience a seamless transition of service when their original carrier ceases to be their service provider. Filing waiver petitions, however, requires petitioning carriers to expend significant time and resources. In addition, due to the heavy volume of these petitions, carriers cannot predict with certainty how long it will take to receive a decision on a given waiver petition. If carriers have not provided adequate information with their waiver petitions, they must supplement their initial filings, a process that may add further delay. Moreover, in addition to seeking a waiver of the authorization and verification rules, carriers selling or transferring subscriber bases must also comply with other Commission requirements.⁶

III. DISCUSSION

4. Our carrier change authorization and verification requirements were adopted to protect consumers from fraudulent activities. We believe that the process of seeking a waiver of the authorization and verification requirements potentially is burdensome to carriers seeking to sell or acquire customer accounts. Given the dynamic marketplace, and the likelihood that carriers will continue to buy, sell, and transfer customer lines in the future, we think it is time to reexamine our rules in this limited situation to ensure that we do not inadvertently inhibit routine business transactions. In conjunction with our biennial regulatory review effort, we propose to modify the authorization and verification requirements of the Commission's carrier change rules to reduce regulatory burdens in situations involving the purchase or transfer of customer lines, while adequately protecting consumers.⁷ We invite comment on whether the Commission's

⁴ Between January 1, 2000 and December 27, 2000, the Commission received 51 requests for waiver of the carrier change authorization and verification rules to permit the sale or transfer of presubscribed customers.

⁵ 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., Sept. 22, 2000); McLeod USA Telecommunications Services, Inc., DA 00-2641 (Com. Car. Bur., Nov. 24, 2000), *corrected*, (Com. Car. Bur., Dec. 6, 2000).

⁶ For example, section 214(a) of the Act requires a carrier to obtain Commission authorization before discontinuing service to a community. 47 U.S.C. § 214(a). Section 63.71 of our regulations requires a carrier seeking discontinuance authority to notify its customers that the Commission will normally authorize the discontinuance unless customers are unable to receive service or a reasonable substitute from another carrier and that customers may object to the proposed discontinuance. The carrier must then file an application with the Commission. Except in unusual circumstances, the application will be granted automatically in 31 days. See 47 C.F.R. § 63.71.

⁷ See 47 C.F.R. §§ 64.1100 *et seq.*

carrier change authorization and verification rules should be amended to provide a streamlined procedure for carriers desiring to transfer the presubscribed customers of another carrier to their own customer bases.⁸

5. We tentatively conclude that the following principles should underlie any expedited procedures for handling the sale or transfer of a subscriber base. First, the affected subscribers should receive reasonable advance notice of the carrier change associated with the sale or transfer. Second, we believe that subscribers should be told that they have the right to make another preferred carrier selection, if alternative carriers are available, and of the charges, rates, terms, and conditions that they may expect when they are moved from one carrier to another as a result of the sale or transfer of a subscriber base. Finally, we believe that it is in the public interest for the Commission to receive notice prior to the sale or transfer of a subscriber base. The Commission will be better able to ensure that consumer interests will be protected if it has advance knowledge of such transactions. We seek comment on these tentative conclusions.

6. We propose the following expedited process for the sale or transfer of subscriber bases.⁹ We seek comment on whether to amend section 64.1120 of our rules to eliminate the need for authorization and verification of a carrier change to effect any sale or transfer of a subscriber base, provided that, not later than 30 days before the closing of the transaction, the acquiring carrier gives 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 purchasing carrier; 3) no carrier change charges will be imposed as a result of the transaction; and 4) the subscriber has the right to select a different preferred carrier.¹⁰ We also seek comment on whether to require the acquiring carrier to provide each subscriber with another written notice reiterating this information after the transfer has occurred. Insofar as these notices directly affect the provision of a subscriber's telephone service, we seek comment on the need for acquiring carriers to provide these notices in accessible formats to people who are blind or visually impaired.¹¹ In addition, we seek comment

⁸ We note that the Commission has already streamlined its procedures for granting authority to discontinue service under section 214 of the Communications Act. *See supra*, n.6.

⁹ 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 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 (released June 30, 1999) at para. 17.

¹⁰ *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 December 30, 1999) (GTC Petition) at 6-7. With this *Third Further Notice*, we are initiating a rulemaking to amend the carrier change rules to permit, without a waiver, the carrier-to-carrier sale or transfer of subscriber bases, thereby addressing the GTC Petition.

¹¹ Section 255 requires service providers to make their services accessible to individuals by disabilities. *See*

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 its compliance with the Commission's rules and any outstanding Commission orders, including the provision of reasonable notice to the affected customers regarding the transaction and the customers' subsequent rights. We seek comment on whether 30 days is the appropriate length of time for notifying subscribers and/or certifying compliance with Commission requirements. We also invite comment on whether such certification should include copies of sample notification letters. We seek comment on these proposals and any other alternative proposals that would minimize regulatory burdens, while adequately protecting consumers.

7. We ask commenters to address whether this proposed expedited process properly balances our obligation under section 258 to protect subscribers from the unauthorized change of their preferred carrier with the goal of ensuring that our rules do not unnecessarily impede marketplace transactions involving the sale or transfer of customer lines or accounts from one carrier to another. We also invite parties to comment on whether notice requirements should differ depending upon the type of telecommunications service being provided, such as local, intraLATA toll, or interLATA toll service, or upon the size of the carriers involved. We also seek comment on whether any additional obligations should be imposed on the carriers. For example, should the acquiring carrier be required to provide a toll-free customer service number to the affected subscriber in order to address any questions or problems that the subscriber may have concerning the change in service providers? Should the acquiring carrier be required to continue to charge affected subscribers the same rates as those charged by the original carrier for a specified period after the transfer? Should the carriers commit to handling customer complaints regarding the service of the original carrier to ensure that transferred subscribers are not deprived of recourse after the transfer? We also seek comment on whether we should adopt specific measures to protect consumers from unscrupulous carriers that may attempt to sell their customer bases to evade the repercussions of Commission enforcement actions.

IV. PROCEDURAL MATTERS

A. Initial Paperwork Reduction Analysis

8. This *Third Further Notice* contains either a proposed or modified information collection. As part of a continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *Third Further Notice*, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this *Third Further Notice*; OMB comments are due 31 days from the

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).

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

B. Initial Regulatory Flexibility Analysis

9. As required by the Regulatory Flexibility Act (RFA),¹² the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant impact on small entities by the policies and rules proposed in this *Third Further Notice*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on the *Third Further Notice* provided below in the Comment Filing Procedures section. The Commission will send a copy of the *Third Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.¹³ In addition, the *Third Further Notice* and IRFA (or summaries thereof) will be published in the Federal Register.¹⁴

1. Need for and Objectives of this Order and the Rules Proposed Herein

10. The goal of section 258 of the Act is to eliminate the illegal practice of slamming – the unauthorized change of a subscriber's preferred carrier. The Commission, in its efforts to protect consumers from the unauthorized selection of preferred carriers, is issuing this *Third Further Notice*. The Commission seeks comment on the proposed amendments to the authorization and verification of subscriber preferred carrier changes associated with the sale or transfer of a subscriber base from one carrier to another.

11. Under the Act and the proposed rules, a small entity that violates the Commission's preferred carrier change authorization and verification rules may be liable for damages. Small entities may be affected by the proposals for modifying the Commission's rules with regard to the sale or transfer of customer base from one carrier to another.

2. Legal Basis

¹² See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

¹³ See 5 U.S.C. § 603(a).

¹⁴ See *id.*

12. This *Third Further Notice* is adopted pursuant to sections 1, 4(i), 4(j), 201-205, 258, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 258, 303(r).

3. Description and Estimates of the Number of Small Entities to Which Rules Will Apply

13. 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.¹⁵ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," "small governmental jurisdiction," and "small business concern" under section 3 of the Small Business Act.¹⁶ 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).¹⁷ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."¹⁸ Nationwide, as of 1992, there were approximately 275,801 small organizations.¹⁹ "Small governmental jurisdiction"²⁰ generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."²¹ As of 1992, there were approximately 85,006 such jurisdictions in the United States.²² This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.²³ 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 1992.²⁴ Below, we further

¹⁵ 5 U.S.C. § 603(b)(3).

¹⁶ 5 U.S.C. § 601(3).

¹⁷ 15 U.S.C. § 632.

¹⁸ 5 U.S.C. § 601(4).

¹⁹ 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).

²⁰ 47 CFR § 1.1162

²¹ 5 U.S.C. § 601(5).

²² U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

²³ *Id.*

²⁴ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to

describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

14. 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.²⁵ The Commission indicated that there are 4,144 interstate carriers.²⁶ 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.

15. 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.²⁷ Below, we discuss the total estimated number of 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.

16. 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."²⁸ 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.²⁹ We have therefore included small incumbent LECs in

Office of Advocacy of the U.S. Small Business Administration).

²⁵ FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

²⁶ *Id.*

²⁷ 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).

²⁸ 5 U.S.C. § 601(3).

²⁹ 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).

this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

17. **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.³⁰ 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."³¹ 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.

18. **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 1992.³² 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.³³ All but 26 of the 2,321 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.

19. **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

³⁰ 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).

³¹ *See generally* 15 U.S.C. § 632(a)(1).

³² 1992 Census, *supra*, at Firm Size 1-123.

³³ 13 CFR § 121.201, SIC code 4813.

(wireless) companies.³⁴ According to the most recent *Telecommunications Industry Revenue* data, 1,348 incumbent carriers reported that they were engaged in the provision of local exchange services.³⁵ 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 1,348 or fewer providers of local exchange service are small entities that may be affected by the new rules.

20. **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.³⁶ According to the most recent *Trends in Telephone Service* data, 171 carriers reported that they were engaged in the provision of interexchange services.³⁷ 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 171 or fewer small entity IXCs that may be affected by the new rules.

21. **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.³⁸ According to the most recent *Trends in Telephone Service* data, 212 CAP/CLECs carriers and 10 other LECs reported that they were engaged in the provision of competitive local exchange services.³⁹ 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

³⁴ *Id.*

³⁵ FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

³⁶ 13 CFR § 121.201, SIC code 4813.

³⁷ FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

³⁸ 13 CFR § 121.201, SIC code 4813.

³⁹ FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

SBA's definition. Consequently, we estimate that there are 212 or fewer small entity CAPs and 10 other LECs that may be affected by the new rules.

22. **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.⁴⁰ According to the most recent *Trends in Telephone Service* data, 24 carriers reported that they were engaged in the provision of operator services.⁴¹ 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 24 or fewer small entity operator service providers that may be affected by the new rules.

23. **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.⁴² According to the most recent *Trends in Telephone Service* data, 615 carriers reported that they were engaged in the provision of pay telephone services.⁴³ 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 615 or fewer small entity pay telephone operators that may be affected by the new rules.

24. **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.⁴⁴ According to the most recent *Trends in Telephone Service* data, 388 toll and 54 local entities reported that they were engaged in the resale of

⁴⁰ 13 CFR § 121.201, SIC code 4813.

⁴¹ FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

⁴² 13 CFR § 121.201, SIC code 4813.

⁴³ FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

⁴⁴ 13 CFR § 121.201, SIC code 4813.

telephone service.⁴⁵ 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 388 or fewer small toll entity resellers and 54 small local entity resellers that may be affected by the new rules.

25. **Toll-Free 800 and 800-Like Service Subscribers.**⁴⁶ 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.⁴⁷ 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.

26. **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.⁴⁸ 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.⁴⁹ 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 *Telecommunications Industry Revenue* data, 808 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services,

⁴⁵ FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

⁴⁶ We include all toll-free number subscribers in this category, including 888 number subscribers.

⁴⁷ FCC, CCB Industry Analysis Division, *FCC Releases, Study on Telephone Trends*, Tbls. 21.2, 21.3 and 21.4 (February 19, 1999).

⁴⁸ 13 CFR § 121.201, SIC code 4812.

⁴⁹ *1992 Census, Series UC92-S-1*, at Table 5, SIC code 4812.

which are placed together in the data.⁵⁰ 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 808 or fewer small cellular service carriers that may be affected by the new rules.

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

27. There are no certain projected reporting, recordkeeping, or other compliance requirements at this time. In the event the Commission amends its rules to address situations involving the transfer of a customer base from one carrier to another, acquiring carriers may be required to provide written notice to the affected subscribers of the transaction both before and after its completion and provide some form of certification to the Commission regarding the transaction.⁵¹

5. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

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

29. If this *Third Further Notice* results in the promulgation of new rules to address the sale or transfer of subscriber bases, the Commission will actively consider the economic impact on small entities and significant alternatives that would be less burdensome for small entities. The intent of this *Third Further Notice* is to propose rule changes that would reduce regulatory burdens associated with the sale or transfer of subscriber bases for all telecommunications carriers, including small entities. Specifically, the Commission is considering amending section 64.1120 of our rules to eliminate the requirement that carriers obtain each affected subscriber's authorization and verification of a carrier change in order to effect the sale or transfer of a subscriber base, provided that, within a specified time period, the purchasing carrier gives each affected subscriber written notice of certain information. This proposed amendment would also

⁵⁰ *Trends in Telephone Service*, Table 19.3 (March 2000).

⁵¹ *See supra*, paras. 5-7.

eliminate the need to obtain a waiver of our carrier change authorization and verification rules, which can be particularly burdensome for some carriers. In addition, in examining the proposals and comments received, the Commission will consider other measures that might give small carriers more relief from regulatory requirements. For example, in determining whether to require carriers to certify to the Commission that they have provided certain notifications to customers, the Commission may consider whether the certification requirement should only apply to the sale or transfer of subscriber bases of a minimum threshold size. As another example, in considering whether to require a purchasing carrier to continue to charge affected subscribers the same rates as those charged by the selling carrier for a specified period after the transfer, the Commission may consider whether small carriers should be exempt from such a requirement when acquiring customers through a sale or transfer. A third example is that the Commission may consider whether small carriers should be permitted to provide notification to the affected subscribers and/or the Commission in less than the proposed time period of 30 days.

6. Federal Rules that May Overlap, Duplicate, or Conflict with the Proposed Rules.

30. None.

C. Ex Parte Presentations

31. This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁵² Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.⁵³

D. Comment Dates and Filing Procedures

32. We invite comment on the issues and questions set forth above. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission’s rules,⁵⁴ interested parties may file comments as follows: comments are due 21 days after publication in the Federal Register and reply comments are due 31 days after publication in the Federal Register. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

⁵² *See Amendment of 47 C.F.R. 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings*, Report and Order, 12 FCC Rcd 7348, 7356-57, 27 (citing 47 C.F.R. § 1.1204(b)(1)) (1997).

⁵³ *See* 47 C.F.R. § 1.1206(b)(2).

⁵⁴ 47 C.F.R. §§ 1.415, 1.419.

33. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, “get form <your e-mail address>.” A sample form and directions will be sent in reply.

34. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission’s Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Parties also should send three paper copies of their filings to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5-B540, Washington, D.C. 20554.

35. Parties who choose to file by paper should also submit their comments on diskette to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5-B540, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM-compatible format using Microsoft Word 97 for Windows or a compatible software. The diskette should be accompanied by a cover letter and should be submitted in “read-only” mode. The diskette should be clearly labeled with the commenter’s name, proceeding, including the lead docket number in the proceeding (CC Docket No. 00-257), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase (“Disk Copy Not an Original.”) Each diskette should contain only one party’s pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission’s copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

36. Written comments by the public on the proposed and/or modified information collections discussed in this Further Notice are due 21 days after publication in the Federal Register. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 31 days after the date of publication of this Notice in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward C. Springer,

OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503, or via the Internet to vhuth@omb.eop.gov.

V. ORDERING CLAUSES

37. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 4, 201-205, and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, and 258, that this THIRD FURTHER NOTICE OF PROPOSED RULEMAKING IS ADOPTED, that COMMENTS ARE REQUESTED as described above, and that NOTICE IS HEREBY GIVEN of proposed amendments to Part 64 of the Commission's rules, 47 C.F.R. Part 64, as described in this Third Further Notice of Proposed Rulemaking.

38. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this THIRD FURTHER NOTICE OF PROPOSED RULEMAKING, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary