

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

In the Matter of)	
)	
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)	

FOURTH REPORT AND ORDER

Adopted: December 18, 2007

Released: January 9, 2008

By the Commission:

I. INTRODUCTION

1. In this Fourth Report and Order (*Order*), we revise our requirements concerning verification of a consumer's intent to switch carriers.¹ As discussed in more detail below, these new requirements will: ensure that each verification includes the date; expand the disclosure obligations of third party verifiers when consumers have questions during the verification; and otherwise clarify the required disclosures by verifiers to ensure that consumers better comprehend precisely what service changes they are approving. We believe that these requirements will increase consumer confidence, decrease the administrative costs for carriers, and alleviate the enforcement burden on state regulatory authorities and the Commission.

II. BACKGROUND

2. Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996, prohibits any telecommunications carrier from submitting or executing an unauthorized change in a subscriber's selection of a telephone exchange or toll service provider.² This practice, known as "slamming," distorts the telecommunications market by enabling companies that engage in fraudulent activity to increase their customer and revenue bases at the expense of consumers

¹ See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003) (*Third Reconsideration Order* and/or *Second FNPRM*). The *Third Reconsideration Order* amended the Commission's rules implementing section 258 and the *Second FNPRM* proposed additional revisions to these rules.

² 47 U.S.C. § 258(a).

and law-abiding companies. The Commission's rules implementing section 258 have been promulgated through a series of orders.³ In the *Second Report and Order*, the Commission sought to eliminate the profits associated with slamming by broadening the scope of its carrier change rules and adopting more rigorous slamming liability and carrier change verification measures.⁴ Specifically, the Commission stated that a preferred carrier change order must be confirmed using one of several methods, including independent third party verifications of telephone solicitations.⁵

3. In the *Third Reconsideration Order*, the Commission modified certain rules concerning verification of carrier change requests and liability for slamming.⁶ In the *Fifth Reconsideration Order*,⁷ the Commission denied petitions filed by a coalition of rural independent local exchange carriers (Rural LECs) seeking reconsideration of the Commission's verification requirement for in-bound carrier change request calls.⁸ The Commission found that any time the carrier has a financial stake in completing the

³ See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508 (1998) (*Second Report and Order*), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999) (*Stay Order*), motion to dissolve stay granted, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000) (*Order Lifting Stay*). *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, First Order on Reconsideration, 15 FCC Rcd 8158 (2000) (*First Reconsideration Order*). *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000) (*Third Report and Order*); Errata, DA 00-2163 (rel. Sept. 25, 2000); Erratum, DA 00-292 (rel. Oct. 4, 2000). *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, Order, 16 FCC Rcd 4999 (2001). 47 C.F.R. § 64.1100 *et seq.* Prior to the adoption of section 258 of the Act, the Commission had taken various steps to address the slamming problem; the adoption of section 258 expanded the Commission's authority in this area. 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 FCC 2d 935, reconsideration denied, 102 FCC 2d 503 (1985).

⁴ See *Second Report and Order*, 14 FCC Rcd at 1508-1591, paras. 1-138.

⁵ See *id.* at 1513-14, para. 6; 1551-56, paras. 69-79. Other allowable methods of verification include written or electronically-signed letters of agency (LOAs), electronic authorization (a call to a toll-free number that records the caller's originating automatic number identification), or "[a]ny State-enacted verification procedures applicable to intrastate preferred carrier change orders only." 47 C.F.R. § 64.1120(c)(4); see also *Second Report and Order*, 14 FCC Rcd at 1561-64, paras. 86-90.

⁶ See *Third Reconsideration Order*, 18 FCC Rcd at 5100-01, paras. 3-4.

⁷ *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, Fifth Order on Reconsideration, 19 FCC Rcd 22926 (2004) (*Fifth Reconsideration Order*).

⁸ See Rural LECs Petition for Reconsideration, CC Docket No. 94-129, at 3-10 (filed May 19, 2003). AT&T and MCI also sought reconsideration of the in-bound verification requirement as it was articulated in the *Third Reconsideration Order*, but the Commission addressed those concerns in a separate, clarifying order. See

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carrier change, the Commission's verification requirements are necessary to deter slamming, regardless of whether the carrier is a larger, smaller, or rural LEC.⁹

4. Since the adoption of section 258 of the Act, the Commission has intensified its commitment to eliminating unauthorized carrier changes. In 2004 alone, the Commission resolved a total of 3,642 slamming complaints, resulting in nearly \$775,000 in refunds and credits to consumers.¹⁰ Based on the Commission's experiences in handling this volume of slamming complaints, as well as the comments received in response to the *Second FNPRM*, in this *Order* we adopt rules that will provide additional safeguards within the carrier change verification process. The new rules strengthen consumer protection by requiring third party verifiers to address material terms of carrier changes that are sometimes omitted during the solicitation process. We also believe that the implementation of these proposals will increase the ability of carriers to refute false allegations of slamming, thereby providing carriers with greater certainty in the finality of transactions.

5. In the *Third Report and Order*, the Commission declined to mandate specific language for third party verification calls, but did adopt minimum content requirements for such calls.¹¹ Accordingly, the Commission concluded that scripts for third party verifications should elicit, at a minimum, the following information: (1) the identity of the subscriber; (2) confirmation that the person on the call is authorized to make the carrier change; (3) confirmation that the person on the call wants to make the change; (4) the names of the carriers affected by the change; (5) the telephone number(s) to be switched; and (6) the types of service involved (*i.e.*, local, toll, or international service).¹² In addition, the Commission found that the third party verification must be conducted in the same language that was used in the underlying sales transaction, and that the entire third party verification transaction must be recorded.¹³ The Commission also reiterated that, consistent with its rules regarding verifications

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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, Order, 18 FCC Rcd 10997 (2003) (*Clarification Order*). The Commission clarified that in-bound long distance carrier change requests made directly to a LEC must be verified in accordance with the Commission's verification rules only when the carrier change involves the LEC or an affiliate of the LEC. *Id.* at 10999, para. 5.

⁹ See *Fifth Reconsideration Order*, 19 FCC Rcd at 22931-32, para. 9.

¹⁰ See, e.g., *LCR Telecommunications, LLC*, IC Nos. 03-S84981 and 03-S85545, Order, 19 FCC Rcd 24692 (Cnsmr. Pol. Div. 2004); *AT&T Corp.*, IC No. 04-I0115373S, Order, 19 FCC Rcd 24902 (Cnsmr. Pol. Div. 2004).

¹¹ *Third Report and Order*, 15 FCC Rcd at 16014-19, paras. 33-45; 47 C.F.R. § 64.1120. The Commission stated that minimum content requirements would provide useful guidance to the third party verifiers and carriers without locking carriers into using a set script. In addition, the Commission stated that the requirements would also permit more streamlined enforcement by helping the Commission to determine the adequacy of steps taken by independent third parties in the verification process. *Third Report and Order*, 15 FCC Rcd at 16016, para. 40.

¹² *Id.* See also 47 C.F.R. § 64.1120(c)(3)(iii).

¹³ *Third Report and Order*, 15 FCC Rcd at 16016, para. 41. See also 47 C.F.R. § 64.1120(c)(3)(iv).

generally, submitting carriers must maintain and preserve the recordings for a minimum period of two years after obtaining such verification.¹⁴

6. Based on the Commission's experience since the effective date of the *Third Report and Order*, in the *Second FNPRM* the Commission sought comment on the need for additional minimum requirements for third party verification calls in order to maximize accuracy and efficiency for consumers, carriers, and the Commission.¹⁵

III. DISCUSSION

7. The requirements we adopt below address issues the Commission has seen repeatedly in its enforcement of the slamming liability rules. They are also fully consistent with *AT&T v. FCC*, in which the Court of Appeals for the District of Columbia Circuit recognized that Section 258 of the Act "authorizes the Commission to prescribe verification procedures."¹⁶ In light of this decision, the Commission's experiences in dealing with slamming complaints since the implementation of section 258 of the Act, and the comments filed in response to the *Second FNPRM*, we believe that further enhancement of the verification procedures is warranted.

A. Date of Verification

8. Background. In the *Second FNPRM*, the Commission sought comment on whether third party verifiers should be required to state the date of the verification call during the verification process.¹⁷

9. Discussion. We conclude that the date of the verification should be obtained at the time of the verification and should be readily identifiable by parties that review the verification at a later date. Requiring that the date of verification be obtained and recorded at the time of the verification, in a readily identifiable manner, protects consumers against unauthorized carrier changes, and conversely prevents customers from fraudulently revoking a validly executed agreement. This requirement also helps to prevent mistakes and confusion that could arise in the verification process, and enhances the evidentiary case on which regulatory authorities may rely in order to determine whether a slam occurred. We also note that carriers that do not wish to use third party verifications are free to use one of the other approved forms of verification. Therefore, in light of these experiences and this previous rule change, as

¹⁴ *Third Report and Order*, 15 FCC Rcd at 16016-17, para. 41. See also *Second Report and Order*, 14 FCC Rcd at 1553, para. 74. The Commission observed that, if a slamming dispute arises, a recorded verification will help determine whether the subscriber was simply seeking information or was in fact agreeing to change carriers and, if so, which service(s) the subscriber had agreed to change. *Third Report and Order*, 15 FCC Rcd at 16017, para. 41.

¹⁵ See *infra* Appendix C for a list of comments filed.

¹⁶ Section 258 of the Act provides that carriers may not submit or execute changes in subscribers' telephone service "except in accordance with such verification procedures as the Commission shall prescribe." See 47 U.S.C. § 258(a). The court concluded that carriers have no way of verifying that the person who responds to a direct solicitation is in fact authorized to change telephone services. The court found that the process of acquiring actual authorization from the customer did not constitute a "a particular step adopted for doing or accomplishing something," and was therefore inconsistent with Webster's definition of "procedure." *AT&T v. FCC*, 323 F.3d at 1087.

¹⁷ See *Second FNPRM*, 18 FCC Rcd at 5142, para. 111.

well as the substantial support by most commenters for a requirement that verifications include the date, we find that the date of the verification should be ascertained and recorded at the time of the verification, and should be readily identifiable by parties that review the verification at a later date. We agree that carriers should be free to decide how this information will be ascertained, and we therefore decline to mandate that the third party verifier must, in all cases, confirm the date verbally with the consumer during the verification.¹⁸ We decline, however, to require that verifications also include the time of the call, because we believe that including the date is sufficient to address the concerns raised by commenters regarding multiple switches.

10. Most commenters support a requirement that verifications include the date.¹⁹ The Maine and Ohio PUCs state that including the date in the verification will prevent companies from manipulating recorded conversations to portray inaccurately the consumer's most recent choice of carriers in cases of multiple switches.²⁰ VarTec and Excel acknowledge that recording the date of the verification is not very burdensome,²¹ and agree with BellSouth that it could benefit carriers in the event of disputes with consumers.²²

11. While IDT directs its third party verifiers to state the date at the end of the call, it believes that the Commission overstates the importance of date verification in preventing slamming, and argues that such a requirement unnecessarily addresses "theoretical" or "infrequent problems."²³ IDT also expressed concern that a requirement that verifications include the date of the verification will allow customers to revoke their authorization based on clerical errors during the verification process.²⁴ We

¹⁸ Though our initial proposal asked whether the third party verifier should be required to state the date during the taped verification process, as noted above, some carriers that already record the verification date engage in differing forms of date recording, and object to a rule that would require them to modify their systems to accommodate a new regulation. *See, e.g.*, Sprint Comments at 2-3; Verizon Comments at 1-2. For example, Verizon requires its verifiers to electronically date stamp the verification rather than verbally state the date in the conversation, and Verizon believes that this process is more reliable than verbally confirming the date with consumers. *Id.* We note that while Verizon asserts that electronic date stamping is more reliable than verbal confirmation by the verifier of the date, NASUCA, in arguing for adoption of a requirement that the verifier state the date verbally, suggests that some dating mechanisms are susceptible to alteration after the fact, and that a uniform requirement for verbal confirmation of the date minimizes the potential for abuse and alteration. *See* NASUCA Reply at 3. We take no position on which, if either, mechanism is more reliable.

¹⁹ Several carriers concur that including the date in the verification would benefit consumers, but maintain that carriers should remain free to decide how best to implement a date verification requirement. *See* MCI Comments at 3; SBC Comments at 1-2; Sprint Comments at 2; Verizon Comments at 1-2; AT&T Reply at 2.

²⁰ *See* Ohio PUC Comments at 3; Maine PUC Comments at 1-2. *See also* NASUCA Reply at 3.

²¹ *See* VarTec and Excel Comments at 2. *But see* IDT Comments at 1-3.

²² *See* BellSouth Comments at 2.

²³ *See* IDT Comments at 2-3. *See also* Qwest Comments at 2. The Joint Commenters do not oppose including the date of the verification on the recording, and suggest that this information already should be part of a quality verification. *See* Joint Commenters Comments at 4; *see also* Talk America Comments at 8. Conversely, Qwest states that because most carriers already state the verification date, it is unnecessary to impose a mandatory requirement. *See* Qwest Comments at 3.

²⁴ *See* IDT Comments at 3.

disagree. The record reflects that undated verifications have resulted in abuses to the system.²⁵ In addition, given that the subscriber need not identify the displaced carrier during the verification process, the potential for a slam to occur based on an outdated verification is even greater, because there is no identifying information concerning the date of the verification or the carrier from whom the subscriber is switching.²⁶ Given the generally widespread support of this proposal by the carrier commenters, we are skeptical that this particular requirement is overly burdensome.²⁷ It appears that many carriers already register this information,²⁸ for carriers that do not, we believe that this requirement will only incrementally affect costs of the existing third party verification requirement, particularly since we have given carriers latitude to devise their own methods of obtaining and recording this information.

B. Termination/Completion of Verification Process

12. **Background.** In the *Third Report and Order*, the Commission required that the carrier or carrier's sales representative drop off the call once the connection has been established between the consumer and the third party verifier.²⁹ In the *Second FNPRM*, the Commission sought comment on whether the verifier should explicitly state that, if the customer has additional questions for the carrier's sales representative regarding the carrier change after verification has begun, the verification will be terminated, and further verification proceedings will not be carried out until after the customer has finished speaking with the sales representative ("Verification Termination Proposal").³⁰ In addition, the

²⁵ See *Second FNPRM*, 18 FCC Rcd at 5142, para. 111; Maine PUC Comments at 2; Ohio PUC Comments at 3. Furthermore, as noted in the *Second FNPRM*, the Commission has become aware of situations in which, for example, a carrier may have obtained a valid authorization for a past carrier change, but the customer has since switched away from the carrier and now alleges that he or she was switched back to that carrier without authorization. Without a clearly articulated date on the verification tapes, the carrier could use the former verification tape to defend itself against the subsequent unauthorized change.

²⁶ *Third Reconsideration Order*, 18 FCC Rcd at 5120, para. 57.

²⁷ See, e.g., MCI Comments at 3; SBC Comments at 1-2; Sprint Comments at 2; Verizon Comments at 1-2; AT&T Reply at 2; VarTec and Excel Comments at 2.

²⁸ See Qwest Comments at 3; see also Verizon Comments at 1-2; IDT Comments at 2-3.

²⁹ See *Third Report and Order*, 15 FCC Rcd at 16015, para. 38. The Commission stated that a carrier's sales agent's role is concluded when a consumer is transferred to a third party verifier, because the consumer's intent to change carriers should have been sealed following a clear, non-misleading presentation by the carrier's sales agent. The Commission found that the presence of a sales agent on the verification call could compromise the independent nature of the process by creating an opportunity for improper influence if such intent had not truly been sealed. We also note that, in the *Third Reconsideration Order*, the Commission recognized that dropping off a three-way call potentially could be infeasible for carriers in certain specific situations; for example, a carrier may not be able to comply with the drop-off rule because its sales force is located in an area with an exchange that does not employ the technology necessary to support a drop-off. Accordingly, the Commission exempted from the rule those carriers that certify to the Commission that their sales agents are unable to drop off the sales call after initiating a third party verification. *Third Reconsideration Order*, 18 FCC Rcd at 5113, para. 35.

³⁰ See *Second FNPRM*, 18 FCC Rcd at 5142, para. 112. The Commission noted that, according to our rules, if a carrier's sales representative responds to a consumer's inquiry after the verification has begun, final verification cannot be obtained until after the sales representative has finished responding to the customer and the entire verification process accomplished without intervention from the sales agent. *Id.* See also *Reminder to Telecommunications Carriers of Obligations Regarding Third Party Verification Recordings of Consumer's Intent to Change Telecommunications Carriers*, Public Notice, 20 FCC Rcd 12437 (CGB 2005), reminding carriers of

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Commission sought comment on whether the verifier should be required to convey to the customer that the carrier change can be effectuated once the verification has been completed in full (“Verification Completion Proposal”), regardless of whether the customer has further contact with the carrier.³¹

13. Discussion. *Verification Termination Proposal*. We decline to adopt the Verification Termination Proposal, but do adopt what is in effect a modified Verification Completion Proposal. We agree with those commenters that question the utility of having verifiers provide this information to customers at the outset of the verification. We agree that doing so likely would increase rather than decrease consumer confusion while unnecessarily increasing costs.³² This determination does not alter existing requirements.³³ Moreover, the record reflects that under prevailing practices, the verifier generally offers the customer the option to either terminate the verification, if the customer wishes to speak to a sales representative before completing the verification, or to complete the verification and defer the question until after completion.³⁴

14. *Verification Completion Proposal*. We conclude that, if customers have questions which a verifier can not answer and the verifier indicates it will complete the verification and the question is to be deferred to a carrier’s sales representative after completion of the verification, the verifier must state that the carrier change can be effectuated once the verification has been completed.³⁵ When customers wait until after the verification is completed to ask sales agents questions that might affect their choice of whether to switch carriers, this creates a potential problem. In such cases, customers may erroneously believe that if they choose not to switch carriers after further discussions with the carrier’s agent, the previously completed verification is, in all cases, automatically invalidated.³⁶ Thus, the Maine PUC and

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their obligations in this regard; *Third Reconsideration Order*, 18 FCC Rcd at 5113, para. 35. Accordingly, we sought comment as to whether such a requirement would lessen possible customer confusion in situations in which a verification is terminated because the customer seeks further discussions with the carrier’s sales agent.

³¹ We stated that we had found that customers may not realize that a carrier cannot in most cases “undo” a carrier change after it has been submitted, even if the subscriber quickly requests cancellation of the change order. *Second FNPRM*, 18 FCC Rcd at 5142, para. 112.

³² See, e.g., SBC Comments at 3; Sprint Comments at 3. According to AT&T, the better approach is to leave it to the carriers’ sales agents, prior to dropping off the call, to inform customers that the verifiers are not in a position to answer any product-specific questions. See AT&T Comments at 4.

³³ Under these requirements, the verifier must alert the customer that if the customer has additional questions for the carrier’s sales agent, which the customer wants answered prior to completing the verification, the verification will be terminated. See *Third Reconsideration Order*, 18 FCC Rcd at 5117, para. 47. Several carriers endorse this “rebuttal” approach, pursuant to which a verifier informs the customer of the termination policy only if the customer asks a substantive question for a sales agent during the verification process. See BellSouth Comments at 4; Joint Commenters Comments at 4; MCI Comments at 4; Talk America Comments at 9.

³⁴ See, e.g., MCI Comments at 4-5. Of course, a carrier is free, as AT&T suggests, to inform a consumer that the ensuing verification must be terminated if the customer has questions he or she wants the carrier to answer prior to completion of the verification. See AT&T Comments at 4.

³⁵ In other words, consumers must be informed by the verifier that the carrier has the ability to change their service after the verification is completed, despite the fact that their question was not answered.

³⁶ The Maine PUC, for instance, suggests that some customers believe that they can cancel the verification within 24 hours by contacting the carrier. See Maine PUC Comments at 2. NASUCA reports that some consumers are misled

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NASUCA support the Verification Completion Proposal. As with the Verification Termination Proposal, however, carriers argue that implementing the Verification Completion Proposal would be superfluous,³⁷ impose unnecessary costs on carriers, and ultimately cause consumer confusion.³⁸ IDT maintains that implementing this proposal would cause undue anxiety for the consumer, delay the verification process and ultimately altogether dissuade consumers from consummating the carrier switches.³⁹

15. To accommodate these competing concerns, we adopt what is in effect a modified Verification Completion Proposal. To avoid consumer confusion, while minimizing obligations on carriers, we require verifiers to directly state that the carrier change can be effectuated once the verification has been completed in full, even where the consumer has additional questions for the carrier's sales representative after the verification process. Such a requirement will avoid consumer misperception that the verification automatically will be invalidated if the consumer decides that she does not want to go through with the carrier switch, and will encourage the consumer to address any potentially confusing issues prior to consummating the verification.⁴⁰ We reject Talk America's proposal that verifiers convey this information only at the end of the verification, because we believe that waiting until that point likely will deter consumers from asking questions, out of fear they must go through the whole process again.⁴¹

16. Sprint and Talk America note that some carriers do allow customers to revoke their carrier change authorizations within a certain amount of time after completing the verification process.⁴² Therefore, they maintain that requiring third party verifiers to inform consumers that the effectuation can occur after verification is complete could create a conflict with information provided by a sales representative. We agree. In these cases, the verifier should simply inform the consumer of the carrier's verification revocation policy.

C. Confirming Intent to Change Carriers

17. Background. In the *Second FNPRM*, the Commission sought comment on whether verifiers must clarify to a customer that she is not verifying an intention to retain existing service, but is

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by carrier assurances that no change will be made unless and until the customer has received and accepted written verification of the new carrier's service terms. See NASUCA Reply at 4.

³⁷ MCI and Verizon, for instance, argue that customers should be able to glean from the nature of the questions asked during the verification process that the carrier change may be effectuated immediately. See MCI Comments at 5-6; Verizon Comments at 4-5.

³⁸ See, e.g., BellSouth Comments at 5; Talk America Comments at 9-10; and VarTec and Excel Comments at 3-4.

³⁹ See IDT Comments at 4-5. AT&T suggests that requiring verifiers to implement this proposal in all verification scripts would result in an increase in consumer confusion. See AT&T Comments at 4.

⁴⁰ Thus, although carriers are welcome to inform consumers during the sales process of the effectuation policies, verifiers also must convey this information to a consumer when the consumer reveals during the verification that he has additional questions for the carrier's sales agent.

⁴¹ See Talk America Comments at 10-11.

⁴² See Sprint Comments at 4; Talk America Comments at 10.

in fact asking for a carrier change. The Commission noted examples of carriers seeking to obtain customer authorization for carrier changes merely stating to customers that they are consenting to an “upgrade” of the customers’ service or to bill consolidation.⁴³

18. Discussion. We agree with the commenting state utility commissions and Verizon that we should require verifiers to convey explicitly to customers that the carrier change transaction is exactly that, and not a mere upgrade to existing service or any other misleading description.⁴⁴ The record reflects that carriers using ambiguous language to describe the nature of the transaction may lead to consumer confusion concerning the true purpose of the solicitation call. The Ohio PUC, for instance, cites instances in which solicitors promised consumers that they would not be changing carriers, inducing these consumers into authorizing carrier changes under the guise of offering discounts and other “upgrades” to their current services.⁴⁵ We believe that such practices are misleading and unreasonable, and warrant specific treatment in our rules. Thus, we amend section 64.1120(c)(3)(iii) of our rules to provide for verifications to elicit “confirmation that the person on the call understands that a carrier change, not an upgrade to existing service, bill consolidation, or any other misleading description of the transaction, is being authorized.”⁴⁶ We find that making these clarifications for the third party verification process will eliminate these sources of confusion.

19. We reject the contentions of some carriers that this requirement is redundant with existing regulations.⁴⁷ Though section 64.1120(c)(3)(iii) of our rules⁴⁸ already does require, *inter alia*, that the verifier confirm that the person on the call wants to make a carrier change, the record reflects that some carriers introduce ambiguity into what should be a straightforward interaction by describing the carrier change offer as a mere “upgrade” to existing service or in other ways that obscure the true purpose.⁴⁹ As the Commission concluded when it first considered proposals for third party verifier script requirements, “the scripts used by the independent third party verifier should clearly and conspicuously confirm that the subscriber has previously authorized a carrier change.”⁵⁰ We conclude that requiring the verifier to convey explicitly that the consumers will have authorized a carrier change, and not, for instance, an upgrade to existing service, is a small refinement that will eliminate a significant source of ambiguity to consumers while minimally burdening carriers.

⁴³ See *Second FNPRM*, 18 FCC Rcd at 5143, para. 113.

⁴⁴ See Maine PUC Comments at 2; Ohio PUC Comments at 3; Verizon Comments at 2; NASUCA Reply at 4.

⁴⁵ See Ohio PUC Comments at 3-4; see also NASUCA Reply at 6 (stating that “[e]xperience confirms that some companies mislead consumers into thinking there is no change of carrier and that the only service being marketed is, for example, a bill consolidation service”).

⁴⁶ See *infra* Appendix A (amendments to 47 C.F.R. § 64.1120(c)(3)(iii)).

⁴⁷ See BellSouth Comments at 6 (citing 47 C.F.R. § 64.1120(c)(3)(iii)); Sprint Comments at 5 (citing 47 C.F.R. § 64.1130(e)). See also VarTec and Excel Comments at 4. Similarly, we reject commenters’ arguments that we should place greater emphasis on enforcement of the Commission’s current rules rather than creating additional rules. See MCI Comments at 6-7; Sprint Comments at 5 n.4; Talk America Comments at 12-13; AT&T Reply at 5-6.

⁴⁸ 47 C.F.R. § 64.1120(c)(3)(iii).

⁴⁹ See Ohio PUC Comments at 2; Verizon Comments at 3.

⁵⁰ *Second Report and Order*, 14 FCC Rcd at 1553, para. 72.

20. IDT opposes this requirement on Constitutional grounds arguing that the Commission “has long avoided requiring specific language in communicating with consumers, in deference to carriers’ First Amendment rights.”⁵¹ IDT misconstrues the requirement.⁵² We did not propose, nor do we adopt, a specific incantation that verifiers must recite. Rather, we seek to ensure that verifiers confirm the consumer’s intent to receive service from a different carrier, regardless of whether that is phrased as a “change,” a “switch,” or any other non-misleading term.⁵³ Thus, First Amendment issues are not implicated by the action we take today.

D. Compound Questions

21. Background. In the *Second FNPRM*, the Commission asked commenters to address whether each piece of information that a third party verifier must gather under our rules should be the subject of a separate and distinct third party verifier inquiry and subscriber response.⁵⁴ Some state utility commission and carrier commenters state that asking compound questions during the verification process may confuse consumers and impair their ability to consent fully to the carrier switch, and thereby can negate the purpose of the verification.⁵⁵ However, the Joint Commenters and Verizon state that logic dictates grouping some questions together, and that doing so streamlines the verification process and reduces costs.⁵⁶ Moreover, carrier commenters state that prohibiting the use of compound questions will extend the verification process to an “unbearable length,”⁵⁷ “increase a carrier’s costs significantly,”⁵⁸ and allow customers to nullify valid authorizations because of minor missteps by third party verifiers.⁵⁹

22. Discussion. We are persuaded that additional regulation in this regard is unnecessary. We note that section 64.1120(b) of our rules already requires the carrier to obtain separate authorization and verification for each service that is being changed.⁶⁰ In addition, as explained in more detail below, customers should be aware of the separate and distinct nature of the types of services they are consenting to switch. Thus, we conclude that the Commission’s rules provide sufficient protection for consumers,

⁵¹ IDT Comments at 5.

⁵² *Id.*

⁵³ The Ohio PUC also urges the Commission to require verifiers to confirm additional information with the consumer, including total prices for services and the price for each separate service, length of the agreement, and other contractual conditions. *See* Ohio PUC Comments at 3-4. We agree with commenters that this recommendation is outside the scope of the *Second FNPRM*. *See* SBC Reply at 1-3; Sprint Reply at 1-2.

⁵⁴ *Second FNPRM*, 18 FCC Rcd at 5143, para. 113.

⁵⁵ *See, e.g.*, Ohio PUC Comments at 5; Sprint Comments at 5; Maine PUC Comments at 2-3; NASUCA Reply at 5; VarTec and Excel Comments at 4.

⁵⁶ *See* Joint Commenters Comments at 4-5; Verizon Comments at 2-3.

⁵⁷ *Contra* Joint Commenters Comments at 5.

⁵⁸ *Contra id.* at 4.

⁵⁹ *See* IDT Comments at 6.

⁶⁰ *See* 47 C.F.R. § 64.1120(b), (c)(3)(iii).

such that a prohibition on compound questions would be unnecessary and unduly burdensome for carriers and consumers alike.

E. Long Distance Definition

23. Background. In the *Second FNPRM*, the Commission sought comment on whether, when verifying a long distance service change, the verifier should specify that long distance service encompasses both international and state-to-state calls, and whether a verifier should define the terms “intraLATA toll” and “interLATA toll” service.⁶¹ The Commission noted its observation that carriers sometimes use different terms for these services.⁶² For example, a carrier might refer to intraLATA service as “short haul long distance, local toll, local long distance, or long distance calls within your state.”⁶³ The Commission noted receiving numerous complaints from consumers who assert they unknowingly gave up the flat rate for intraLATA service they paid to their LEC when consenting to a carrier change for different services.⁶⁴

24. Discussion. We decline to require third party verifiers to define for subscribers the terms “intraLATA toll” and “interLATA toll” service. We conclude that to do so could increase consumer confusion and add unnecessary time and cost to the verification process. In addition, we believe that other requirements adopted in this Order will go a long way toward alleviating consumer confusion about the services to which they subscribe.⁶⁵ We do, however, require third party verifiers to verify that the consumer understands that long distance service includes both international and long distance service.⁶⁶

25. While most commenters acknowledge that distinguishing intraLATA service from interLATA service is particularly complicated,⁶⁷ only some support the inclusion of explicit definitions

⁶¹ *Second FNPRM*, 18 FCC Rcd at 5143, para. 113.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *See id.*

⁶⁵ As noted above, the verifier must alert the customer that if the customer has additional questions for the carrier’s sales agent, which the customer wants answered prior to completing the verification, the verification will be terminated. *See supra* note 33. In this order, we require verifiers to directly state that the carrier change can be effectuated once the verification has been completed in full, even where the consumer has additional questions for the carrier’s sales representative after the verification process. *See supra* para. 15.

⁶⁶ As we noted in the *Second FNPRM*, 18 FCC Rcd at 5143, para. 113 n.383, in Hawaii, international service is a separate service, such that “long distance” service would not encompass both international and state-to-state calls. Because these services are separate in Hawaii (and must be separately authorized by the subscriber), the requirement to explain that long distance service includes international calls would not apply in that state. While we create this exception for verifications for consumers in Hawaii, and would apply it to any other state where international service is a separate service, we do not believe in this case that the existence of an exception or two is grounds to vitiate the benefits of adopting the requirement. *But see* VarTec and Excel Comments at 5.

⁶⁷ *See, e.g.*, BellSouth Comments at 7; Verizon Comments at 4.

in the verification process.⁶⁸ Many carriers believe instead that, in the context of carrier changes, this responsibility should be allocated to the carriers themselves, rather than the third party verifiers.⁶⁹ These carriers are concerned primarily that requiring third party verifiers to define complicated terms such as interLATA service and intraLATA service will confuse consumers and cause them to ask questions beyond the verifier's capacity to answer, resulting in likely termination of the verification and an unnecessary and costly reconnection with the carrier's sales representative.⁷⁰ We agree that requiring a third party verifier to explain the differences between intraLATA service and interLATA service could confuse consumers, a majority of whom are unfamiliar with the terms, and increase verification costs. Therefore, we decline to adopt such a requirement. We also note that these terms have little, if any significance since the former Bell Operating Companies have now been granted permission to re-enter the InterLATA market and provide both IntraLATA and InterLATA service by grant of applications filed pursuant to Section 271 of the Act.⁷¹ We do, however, revise certain paragraphs in Subpart K of Part 64 of the Commission's rules, 47 C.F.R. 64.1100 *et seq.*, to clarify terminology which heretofore could have been construed to render "intraLATA" synonymous with "intrastate" and "interLATA" synonymous with "interstate."⁷²

26. In adopting the proposal that verifiers specify that long distance service also includes international calls,⁷³ we disagree with carriers who suggest that the proposal is unnecessary due to many consumers' purported disinterest in international services.⁷⁴ The record reflects that customers have an interest in how carrier changes will affect all aspects of their telecommunications services.⁷⁵ Moreover, given the expense of international calling plans, we believe that these services merit special consideration

⁶⁸ See Ohio PUC Comments at 5-6; Sprint Comments at 6; NASUCA Reply at 5. The Joint Commenters and MCI suggest that verifiers only should provide definitions to these terms when asked by consumers. See Joint Commenters Comments at 6; MCI Comments at 8.

⁶⁹ See BellSouth Comments at 7; IDT Comments at 7; Qwest Comments at 3-6; SBC Comments at 3; Talk America Comments at 14; AT&T Reply at 7.

⁷⁰ See, e.g., AT&T Comments at 6-7; BellSouth Comments at 6-7; IDT Comments at 7; Qwest Comments at 5; Verizon Comments at 4.

⁷¹ See, e.g., *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953 (1999); *Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, WC Docket No. 02-314, Memorandum Opinion and Order, 17 FCC Rcd 26303 (2002).

⁷² See *infra* Appendix A, 47 C.F.R. §§ 64.1120(b), 64.1130(e), 64.1190(c),(d) (2003) (removing the words "intrastate" and interstate" from each of these sections). Though it could be accurate in some cases to treat the terms as synonyms, there are numerous states that have multiple LATAs within them, such that an intrastate call is interLATA. Likewise, there are several LATAs that cover portions of more than one state, such that an interstate call is intraLATA.

⁷³ The state utility commissions and a couple of carriers supported the proposal. See Maine PUC Comments at 3; Ohio PUC Comments at 6; Sprint Comments at 6; Talk America Comments at 13.

⁷⁴ See Joint Commenters Comments at 6; MCI Comments at 7.

⁷⁵ See Maine PUC Comments at 3; NASUCA Reply at 5-6.

during the verification process. The cost of international connectivity varies widely from carrier to carrier. According to NASUCA, carriers often will charge exorbitant prices after executing an unauthorized carrier change, and international charges are among the most frequently abused.⁷⁶ Consequently, customers who erroneously believe that their international rates have not been affected by a carrier change can receive charges for such calls that exceed by many times the rates they expect. In light of the risks of such uninformed consent, we disagree that many consumers simply are “not interested” in this aspect of their telecommunications services.

27. We also disagree with Verizon’s suggestion that it should be obvious to consumers that long distance service includes international service.⁷⁷ Furthermore, we note that some carriers have conducted campaigns that target minorities and consumers with modest English speaking abilities.⁷⁸ We believe that these measures are appropriate and necessary to protect such consumers. Finally, we reject the argument of some carriers that carriers are better situated than verifiers to specify that long distance service also encompasses international service.⁷⁹ While we encourage carriers to keep their subscribers informed in this regard,⁸⁰ we believe that assigning this role to verifiers will burden the verification process only minimally, if at all. We further believe that doing so will alleviate, rather than exacerbate, consumer confusion.

F. Other Issues

28. We decline to adopt rule changes proposed by the Joint Commenters regarding the preemption of state slamming regulations that differ from the Commission’s. We also reject VarTec and Excel’s proposal to change the Commission’s requirement that carrier sales representatives drop off the sales call once the connection has been established between the subscriber and the verifier.⁸¹ We do, however, adopt clerical changes to our rules to correct previous typographical errors, or to reflect changes in Commission organization.⁸²

⁷⁶ See NASUCA Reply at 6.

⁷⁷ See Verizon Comments at 4.

⁷⁸ See *Communications Telesystems Int'l v. California Pub. Utilities Commission*, 14 F. Supp. 2d 1165, 1166 (N.D. Cal. 1998).

⁷⁹ AT&T Comments at 6; Qwest Comments at 3; SBC Comments at 3; AT&T Reply at 6.

⁸⁰ See, e.g., IDT Comments at 7. We also note that carriers’ doing so is in the spirit of our rules. See *Second Report and Order*, 14 FCC Rcd at 1558, para. 82 (“requir[ing] that each service be identified and delineated clearly to the subscriber”).

⁸¹ See Joint Commenters Comments at 3; VarTec and Excel Comments at 2-3. These issues were not raised in the *Second FNPRM* and are thus beyond the scope of this proceeding.

⁸² See *infra* Appendix A, 47 C.F.R. §§ 64.1110(a),(b) (removing the words “Consumer Information Bureau Chief” and adding in their place, “Consumer & Governmental Affairs Bureau Chief”; 64.1120(c)(3) (inserting a left parenthesis); 64.1150(d) (removing “§§ 64.1150 through 64.1160” and adding in their place, “§§ 64.1120 through 64.1130”); and 64.1160(c) (changing “either;” to “either”; changing “section or;” to “section, or”; and changing “subscriber’s” to “subscriber”).

IV. PROCEDURAL MATTERS

A. Regulatory Flexibility Act Analysis

29. Pursuant to the Regulatory Flexibility Act of 1980, as amended,⁸³ the Commission's Final Regulatory Flexibility Analysis in this *Order* is attached as Appendix B.

B. Paperwork Reduction Act Analysis

30. This *Order* has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, and has been found to contain new or modified information collection requirements. It will be submitted to the Office of Management and Budget (OMB) for review under § 3507(d) of the PRA. Implementation of these new or modified reporting and recordkeeping requirements will be subject to OMB approval and will go into effect upon announcement in the Federal Register of OMB approval.

31. In addition, pursuant to the Small Business Paperwork Review Act of 2002, Public Law No. 107-198, *see* 44 U.S.C. § 3506(c)(4), in this present document we have assessed the effect of rule changes and find that there likely will be an increased administrative burden on businesses with fewer than 25 employees. We have taken steps, however, to minimize the information collection burden for small business concerns, including those with fewer than 25 employees. The rules permit carriers to decide how the date of verification will be ascertained. In addition, though in some instances the rules require verifiers to inform the consumer that the carrier change can be effectuated once the verification is completed, they require verifiers to do so only in situations where the subscriber has additional questions for the carrier's sales representative. We also decline to prohibit verifiers from using compound questions during the verification process. These measures should substantially alleviate any burdens on businesses with fewer than 25 employees.

C. Congressional Review Act

32. The Commission will send a copy of this *Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

D. Materials in Accessible Formats

33. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0531 (voice), (202) 418-0432 (TTY). This *Order* also can be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/policy/>.

V. ORDERING CLAUSES

34. IT IS ORDERED that, pursuant to sections 1, 4(i), 4(j), 201, 206-208 and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 206-208, and 258, and section 1.421 of the Commission's rules, 47 C.F.R. § 1.421, this *Fourth Report and Order* in CC Docket

⁸³ *See* 5 U.S.C. § 604.

No. 94-129 IS ADOPTED, and that Part 64 of the Commission's rules, 47 C.F.R. Part 64, IS AMENDED as set forth in Appendix A.

35. IT IS FURTHER ORDERED that the requirements of this *Fourth Report and Order* SHALL BECOME EFFECTIVE 30 days after publication of a summary thereof in the Federal Register. However, amended section 64.1120 contains new or modified information collections that have not been approved by OMB. These information collections will go into effect upon announcement in the Federal Register of OMB approval.

36. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Fourth Report and Order* in CC Docket No. 94-129, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Rules Amended**

Title 47, Part 64 of the Code of Federal Regulations, is amended as follows:

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 as of January 3, 2008 continues to read as follows:

47 U.S.C. 154, 254(k); secs. 403(b)(2)(B),(c), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254(k) unless otherwise noted.

2. Section 64.1110 is amended by revising the second sentence in paragraph (a) and the second sentence in paragraph (b), to read as follows:

§ 64.1110 State notification of election to administer FCC rules.

(a) * * * State notification of an intention to administer the Federal Communications Commission's unauthorized carrier change rules and remedies, as enumerated in §§ 64.1100 through 64.1190, shall be filed with the Commission Secretary in CC Docket No. 94-129 with a copy of such notification provided to the Consumer & Governmental Affairs Bureau Chief.* * *

(b) * * * State notification of an intention to discontinue administering the Federal Communications Commission's unauthorized carrier change rules and remedies, as enumerated in §§ 64.1100 through 64.1190, shall be filed with the Commission Secretary in CC Docket No. 94-129 with a copy of such amended notification provided to the Consumer & Governmental Affairs Bureau Chief.* * *

3. Section 64.1120 is amended by revising the first sentence in paragraph (b), the first sentence in paragraph (c)(3), and the second sentence in paragraph (c)(3)(iii), to read as follows:

§ 64.1120 Verification of orders for telecommunications service.

* * * * *

(b) Where a telecommunications carrier is selling more than one type of telecommunications service (e.g., local exchange, intraLATA toll, and interLATA toll), that carrier must obtain separate authorization from the subscriber for each service sold, although the authorizations may be obtained within the same solicitation.* * *

(c) * * *

(3) An appropriately qualified independent third party has obtained, in accordance with the procedures set forth in paragraphs (c)(3)(i) through (c)(3)(iv) of this section, the subscriber's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification data (e.g., the subscriber's date of birth or social security number).* * *

(iii) * * * Any description of the carrier change transaction by a third party verifier must not be misleading, and all third party verification methods shall elicit, at a minimum: the date of the verification; the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the carrier change; confirmation that the person on the call understands that a carrier change, not an upgrade to existing service, bill consolidation, or any other misleading description of the transaction, is being authorized; the names of the carriers affected by the change (not including the name of the displaced carrier); the telephone numbers to be switched; and the types of service involved (including a brief description of a service about which the subscriber demonstrates confusion regarding the nature of that service). Except in Hawaii, any description of interLATA or long distance service shall convey that it encompasses both international and state-to-state calls, as well as some intrastate calls where applicable. If the subscriber has additional questions for the carrier’s sales representative during the verification, the verifier shall indicate to the subscriber that, upon completion of the verification process, the subscriber will have authorized a carrier change. * * *

* * * * *

- 4. Section 64.1130 is amended by revising the second sentence in paragraph (e)(4), to read as follows:

§ 64.1130 Letter of agency form and content.

* * * * *

(e) * * *

(4) * * * To the extent that a jurisdiction allows the selection of additional preferred carriers (e.g., local exchange, intraLATA toll, interLATA toll, or international interexchange), the letter of agency must contain separate statements regarding those choices, although a separate letter of agency for each choice is not necessary; and

* * * * *

- 5. Section 64.1150 is amended by revising the third sentence in paragraph (d), to read as follows:

§ 64.1150 Procedures for resolution of unauthorized changes in preferred carrier.

* * * * *

(d) * * * This proof of verification must contain clear and convincing evidence of a valid authorized carrier change, as that term is defined in §§ 64.1120 through 64.1130.* * *

* * * * *

6. Section 64.1160 is amended by revising the second sentence in paragraph (c), to read as follows:

§ 64.1160 Absolution procedures where the subscriber has not paid charges.

* * * * *

(c) * * * An allegedly unauthorized carrier choosing to challenge such allegation shall immediately notify the complaining subscriber that: the complaining subscriber must file a complaint with a state commission that has opted to administer the FCC’s rules, pursuant to § 64.1110, or the FCC within 30 days of either the date of removal of charges from the complaining subscriber’s bill in accordance with paragraph (b) of this section, or the date the allegedly unauthorized carrier notifies the complaining subscriber of the requirements of this paragraph, whichever is later; and a failure to file such a complaint within this 30-day time period will result in the charges removed pursuant to paragraph (b) of this section being reinstated on the subscriber’s bill and, consequently, the complaining subscriber will only be entitled to remedies for the alleged unauthorized change other than those provided for in § 64.1140(b)(1).* * *

* * * * *

7. Section 64.1190 is amended by revising the first sentence in paragraph (c), and the second sentence in paragraph (d)(3)(ii)(B), to read as follows:

§ 64.1190 Preferred carrier freezes.

* * * * *

(c) Preferred carrier freeze procedures, including any solicitation, must clearly distinguish among telecommunications services (e.g., local exchange, intraLATA toll, and interLATA toll) subject to a preferred carrier freeze.* * *

(d) * * *

(3) * * *

(ii) * * *

(B) * * * To the extent that a jurisdiction allows the imposition of preferred carrier freezes on additional preferred carrier selections (e.g., for local exchange, intraLATA toll, and interLATA toll), the authorization must contain separate statements regarding the particular selections to be frozen;

* * * * *

APPENDIX B

Final Regulatory Flexibility Certification

1. The Regulatory Flexibility Act of 1980, as amended (RFA),¹ requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”² The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”³ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁴ 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).⁵

2. This *Fourth Report and Order* adopts clarifications and modifications to sections 64.1110, 64.1120, 64.1130, 64.1150, 64.1160, and 64.1190 of the Commission’s rules pertaining to changes in preferred telecommunications service providers that do not have a significant economic impact on entities subject to those rules. Our modifications to subsection 64.1110(a) and (b) clarify to whom state notification of the election to administer our carrier-change rules is to be sent at the Commission. Our modification to subsection 64.1120(b) clarifies examples of the types of services for which a verifier conducting a third party verification must obtain separate authorization. We modify subsection 64.1120(c)(3) to add the date of the third-party verification. We modify subsection 64.1120(c)(iii) to add the requirement that the verifier clarify what constitutes long distance service, and to add the requirement that, when a subscriber has a question for the sales representative, the verifier must explain that the subscriber will have authorized a carrier change at the end of the verification. Subsection 64.1130(e) is modified to clarify examples of the types of services switched through the use of a letter of agency. We modify subsection 64.1150(d) to clarify which subsections apply concerning proof of verification. Subsection 64.1160(c) is modified to correct a grammatical error. In subsection 64.1190(c) and subsection 64.1190(d)(3)(ii)(B) we clarify the types of services for which a subscriber may request a preferred carrier freeze.

3. As noted above, the modified verification requirements in this *Fourth Report and Order* provide that a third-party verification must include the date of the verification, and that the verifier must

¹ The RFA, *see* 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² 5 U.S.C. § 605(b).

³ 5 U.S.C. § 601(6).

⁴ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁵ 15 U.S.C. § 632.

convey to the consumer that long distance service includes international service, and, if the subscriber has additional questions for the carrier's sales representative, the verifier must indicate that once the verification is completed, the subscriber's service will be switched. These additions should require only minor modifications to third-party verifications. Specifically, from our experience with verifications, as well as from the record in this proceeding, we believe that most verifications already contain the date; in addition, we will allow carriers to decide themselves how they would like this information to be ascertained. Likewise, from our experience, as well as from the record in this proceeding, we believe that customers have additional questions in relatively few cases, and thus will generally not trigger the requirement that the verifier inform the customer that the service will still be switched if the verification is completed. Other rule changes in this *Fourth Report and Order* are minor clarifications (such as grammatical corrections to the existing rules) that would not generate any additional burdens. Thus, the Commission believes that the compliance burden, and resulting economic impact on entities subject thereto, will be *de minimus*.

4. Therefore, we certify for purposes of the RFA that the clarifications and modifications we adopt in this *Fourth Report and Order* will not have a significant economic impact on a substantial number of small entities.

5. The Commission will send a copy of the *Fourth Report and Order*, including a copy of this Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.⁶ This final certification will also be published in the *Federal Register*.⁷

⁶ 5 U.S.C. § 605(b).

⁷ 5 U.S.C. § 605(b).

APPENDIX C**Comments Filed**Comments:

AT&T Corp (AT&T)
BellSouth
IDT Corporation (IDT)
Maine Public Utilities Commission (Maine PUC)
National Association of State Utility Consumer Advocates (NASUCA)
Oklahoma Corporation Commission
Public Utilities Commission of Ohio (Ohio PUC)
Qwest Communications International Inc. (Qwest)
Sage Telecom, Inc., Third Party Verification, Inc., and Z-Tel Communications, Inc. (Joint Commenters)
SBC Communications Inc. (SBC)
Sprint Corporation (Sprint)
Talk America, Inc. (Talk America)
Vartec TeleCom, Inc. and Excel Telecommunications, Inc. (VarTec and Excel)
Verizon
WorldCom, Inc. (MCI)

Reply Comments:

AT&T
NASUCA
SBC
Sprint