

be effectuated without any further contact with the customer once the verification has been completed in full. We have found that customers may not realize that a carrier cannot in most cases “undo” a PIC change after it has been submitted, even if the subscriber quickly requests cancellation of the change order.

5. We seek comment on whether verifiers should be required to make clear to a customer that he or she is not verifying an intention to retain existing service, but is in fact asking for a carrier change. We have observed instances in which, for example, carriers seeking to obtain customer authorization for a carrier change merely inform customers that they are consenting to an “upgrade” of the customers’ service or to bill consolidation. We also note that it can be difficult to ascertain whether a subscriber has fully and knowingly provided an answer to each question posed by a third party verifier if some questions are presented as a group rather than individually. Accordingly, commenters should 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. Finally, we seek comment on whether, when verifying an interLATA service change, the verifier should specify that interLATA service encompasses both international and state-to-state calls, and whether a verifier should define the terms “intraLATA toll” and “interLATA toll” service. We have observed that carriers sometimes use differing terms for these services; 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.” Accordingly, we have received numerous complaints from consumers that 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.

#### Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA), as amended, the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking (Second Further NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the *Second Further NPRM*. The Commission will

send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 603(a). In addition, the Notice and the IRFA (or summaries thereof) will be published in the **Federal Register**.

#### A. Need for, and Objectives of, the Proposed Rules

2. Section 258 prohibits any telecommunications carrier from submitting or executing an unauthorized change in a subscriber’s selection of a provider of telephone exchange service or telephone toll service. 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 and law-abiding companies. In this *Order*, we address certain issues raised in petitions for reconsideration of the *Second Report and Order and Further Notice of Proposed Rulemaking*, the *First Order on Reconsideration*, and the *Third Report and Order*. This *Order* also contains a Second Further Notice of Proposed Rulemaking, in which we propose several modifications to our carrier change rules. Specifically, we seek comment on rule modifications with respect to third party verifications.

#### B. Legal Basis

3. The *Second Further Notice* is adopted pursuant to Sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and § 1.429 of the Commission’s Rules, 47 CFR 1.429.

#### C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. 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. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under section 3 of the Small Business Act. Under the Small business Act, a “small business concern” is one that: (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). A small organization is generally “any not-for-profit enterprise which is independently

owned and operated and is not dominant in its field.” Nationwide, as of 1992, there were approximately 275,801 small organizations.

5. The definition of “small governmental jurisdiction” is one with populations of fewer than 50,000. There are approximately 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

6. We have included small incumbent LECs in this 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 wireline telecommunications business having 1,500 or fewer employees), and “is not dominant in its field of operation.” 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. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission’s analyses and determinations in other, non-RFA contexts.

7. *Incumbent Local Exchange Carriers*. Neither the Commission nor the SBA has developed a specific small business size standard for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC’s *Telephone Trends Report* data, 1,329 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services. Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, we estimate that the majority of providers of local exchange service are small entities that may be affected by the rules and policies adopted herein.

8. *Competitive Local Exchange Carriers*. Neither the Commission nor