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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

G. Nanette Thompson, Chair
Bernie Smith
Patricia M. DeMarco
Will Abbott
James S. Strandberg

In the Matter of the Consideration
of Regulations Governing Changes
to a Customer's Preferred Telecommunications
Carriers)

R-00-6
ORDER NO. 2

**ORDER ISSUING PROPOSED REGULATIONS FOR COMMENT
AND ESTABLISHING HEARING AND FILING SCHEDULE**

BY THE COMMISSION:

Summary

In this Order we issue for comment proposed regulations that deal with the procedures for changing a customer's preferred carrier for long distance or local exchange telecommunications service. We also establish schedules for submitting written comments and for public hearing on the proposed regulations.

Background

Slamming is the practice where a customer's preferred carrier for long distance or local service is changed without the customer's permission. Currently both

1 state and federal regulations exist to discourage and prevent slamming.¹ Those
2 regulations generally identify how a carrier change-request must be submitted (e.g., in
3 writing, electronically) and what verification practices are needed to ensure that the
4 customer is the entity authorizing the request and the request is valid.

5 By Order R-00-6(1)² we concluded that our slamming regulations are
6 unenforceable where inconsistent with the federal rules. First, our slamming
7 regulations require executing carriers to verify customer change requests while federal
8 slamming regulations prohibit executing carriers from executing carrier change
9 requests. Second, our slamming regulations do not allow carrier changes to be
10 verified by an independent third party whereas federal slamming rules require third-
11 party verification as an option. There are also other minor inconsistencies between
12 the two sets of regulations.³

13 In that Order we stated that no punitive action would be taken against a
14 utility for violating our slamming regulations as a result of complying with federal
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16
17 ¹State regulations addressing unauthorized carrier changes (i.e., slamming) are
18 set forth at 3 AAC 52.334 (procedures for changing interexchange carriers) and
19 3 AAC 53.260 (procedures for changing local exchange carriers). Federal
20 Communications Commission (FCC) regulations addressing slamming are contained
21 at 47 C.F.R. §§ 64.1100 - 64.1195.

22 ²Issued April 5, 2000.

23 ³Among the noted inconsistencies were differences in record-retention
24 obligations. Federal rules require the submitting carrier to retain the subscriber
25 authorization for a period of two years. (47 C.F.R. § 64.1120(a)(1)(ii).) Record-
26 retention requirements under our regulations differ depending on whether the change
involves intrastate interexchange or local exchange carriers. For intrastate
interexchange carrier changes, the executing carrier must retain subscriber
authorizations for an unspecified period of time. (3 AAC 52.334(d).) For local
exchange carrier changes, whichever carrier obtained the subscriber's authorization
must retain that authorization for a six-month period. (3 AAC 53.260(b).)

1 slamming rules.⁴ We requested comments on several issues, including whether our
2 slamming regulations should be repealed or amended and whether we should adopt
3 federal slamming rules.

4 ACS,⁵ AT&T Alascom,⁶ and GCI⁷ filed comments in response to Order
5 R-00-6(1). ACS supported amending our existing slamming regulations to incorporate
6 the FCC-approved methods of verification. AT&T Alascom and GCI favored repealing
7 the existing regulations, adopting the federal regulations, and notifying the FCC
8 pursuant to 47 C.F.R. § 64.1110(a) that we will serve as the administrator of the FCC's
9 slamming rules in Alaska.

10 On October 24, 2000, the Commission Staff (Staff) submitted a
11 recommendation on slamming issues.⁸ Staff noted the inconsistencies between our
12 regulations and the federal rules as discussed *supra* and addressed the requirements
13 of the federal slamming regulatory scheme. Staff recommended that we repeal our
14 slamming regulations (3 AAC 52.334(b) and (d); 3 AAC 53.260(a) and (b)) and enact
15 new slamming regulations that adopt the current version of the FCC's slamming rules.⁹

16 ⁴Order R-00-6(1), pp. 4-5.

17 ⁵ACS of Anchorage, Inc., d/b/a Alaska Communications Systems, ACS Local
18 Service and ACS. At the time comments were filed in response to the notice of inquiry
19 in this proceeding, this utility was known as Alaska Communications Systems, Inc. By
20 Order U-00-38(1), dated July 5, 2000, the Commission authorized a change of name
21 to ACS of Anchorage.

22 ⁶Alascom, Inc., d/b/a AT&T Alascom.

23 ⁷GCI Communication Corp. d/b/a General Communication, Inc., and d/b/a GCI.

24 ⁸Staff's recommendation is attached to this Order as Appendix A.

25 ⁹Staff also recommended that our regulations adopting the federal slamming
26 rules clarify that in the event federal slamming rules are subsequently amended,
carriers may comply with the amended federal rules pending the related amendment
of our slamming regulations. In that circumstance, penalties should be waived for
carriers who violate existing state slamming regulations by complying with those newer
federal slamming rules.

1 Staff also proposed other changes to ensure that our regulations are consistent with
2 federal slamming rules and to change or remove references to repealed regulations.
3 Further, Staff recommended that we elect to administer the FCC's slamming rules and
4 file notification of that intent with the FCC.¹⁰

5 We considered Staff's recommendations at our Special Public Meeting of
6 October 26, 2000. At that Meeting, we concurred with Staff and instructed that the
7 proposed regulation amendments be issued for public comment. The proposed
8 amendments repeal our slamming regulations at 3 AAC 52.334(b) and (d) and
9 3 AAC 53.260(a) and (b) and adopt by reference, in a new section,¹¹ the current
10 version of federal slamming rules; i.e., those adopted and corrected through
11 February 22, 2001.

12 In the proposed amendments, the current provisions of 3 AAC 52.334(c)
13 and 3 AAC 53.260(c) are relocated as subsections to the new section adopting the
14 FCC slamming rules. Further, the provisions of 3 AAC 52.333(b) are amended to be
15 consistent with federal slamming rules, and 3 AAC 52.200(b) and 3 AAC 53.290(d) are
16 amended to remove references to 3 AAC 52.334 and 3 AAC 53.260, respectively,
17 which are being repealed in this project.

18 Attached hereto as Appendix B are the proposed regulations that the
19 Commission has determined should be issued for public comment.¹² Written
20

21 ¹⁰Pursuant to 47 C.F.R. § 64.1110(a), states electing to administer the FCC's
22 slamming rules are required to notify the FCC of that election by November 28, 2000.
23 We notified the FCC of our intent by Letter Order L0001084, dated November 22,
24 2000.

25 ¹¹Proposed as 3 AAC 53.675(a) in Staff's memorandum, but it is renumbered to
26 3 AAC 53.190 in the regulations attached hereto for comment.

¹²For ease of reference, a copy of the FCC's slamming rules is attached as
Appendix C to this Order.

1 comments on the proposed regulations must be filed by 4 p.m., April 16, 2001. Reply
2 comments must be filed by 4 p.m., May 4, 2001. Since this is a regulation proceeding,
3 commentors are not required to serve their comments on the other entities set out on
4 the service list of this Order. However, interested persons may request copies of the
5 comments filed in this proceeding from the Commission's Records and Filing Section.

6 Commentors should discuss whether we should adopt the proposed
7 regulations and/or whether any other changes to our current or proposed regulations
8 are necessary. We specifically encourage commentors to discuss issues related to
9 our administration of a federal regulatory scheme, including any perceived problems
10 with such an arrangement. For example, commentors may wish to discuss whether
11 our resolution of slamming allegations involving international and interstate toll service
12 is appropriate where the carrier(s) involved in the alleged slam do not pay Regulatory
13 Cost Charges (RCCs).¹³ Further, we ask commentors to address our penalty statutes
14 at AS 42.05.571 – 42.05.581 vis-à-vis the remedy/penalty provisions of 47 C.F.R.
15 §§ 64.1140, 1160, 1170.

16 We request that commentors include a summary of their comments with
17 their filings. We also request that commentors include a diskette with their comments
18 in IBM compatible text (.txt), Word (.doc), or Adobe Acrobat (.pdf) format.

19 A public hearing to receive oral comments in this proceeding will be held
20 at 8:30 a.m., May 25, 2001.¹⁴ The hearing is scheduled from 8:30 a.m. – 1:30 p.m., on

21 ¹³The Commission's budget is funded through RCC payments collected from
22 pipeline carriers and utilities operating in Alaska, including intrastate interexchange
23 and local exchange carriers. The RCC payments can be flowed through to shippers
and consumers.

24 ¹⁴If you are a person with a disability who may need a special accommodation,
25 auxiliary aid, or service or alternative communication format in order to participate in
26 this matter, please contact Georgann Joy at 1-907-276-6222 or TTY 1-907-276-4533
by no later than 4 p.m., April 2, 2001, to make any necessary arrangements.

1 that date, but the time may be extended to accommodate those present before
2 1:30 p.m. who did not have an opportunity to comment. We request that persons
3 wishing to present oral comment at the hearing submit a statement of that intent by
4 May 4, 2001, but such a statement is not mandatory.

5
6 **ORDER**

7 THE COMMISSION FURTHER ORDERS:

8 1. Proposed regulations governing the changes in telecommunications
9 carriers are attached as Appendix B to this Order and issued for public comment.

10 2. Interested persons may file written comments on, or suggested
11 revisions to, the proposed adoption of regulations as discussed in and set out in
12 Appendix B to this Order. The comments must be filed with the Commission by
13 4 p.m., April 16, 2001. Commentors are requested to include a summary of their reply
14 comments as well as a diskette of the comments in either IBM compatible text (.txt)
15 format, Word (.doc) or Adobe Acrobat (.pdf) format.

16 3. By 4 p.m., May 4, 2001, any interested person may file with the
17 Commission comments in reply to those filed in response to Ordering Paragraph No. 2
18 of this Order. Commentors are requested to include a summary of their reply
19 comments as well as a diskette of the comments in either IBM compatible text (.txt)
20 format, Word (.doc), or Adobe Acrobat (.pdf) format.
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1 4. A public hearing¹⁵ in this proceeding shall commence at 8:30 a.m.
2 May 25, 2001, in the Commission's hearing room, at 701 West Eighth Avenue, Third
3 Floor, East Hearing Room, Anchorage, Alaska, for the purpose of taking public
4 comment on the proposed regulations.

5 5. Those individuals wishing to present oral comment at the public
6 hearing scheduled in this proceeding are requested to notify the Commission of their
7 intent by 4 p.m., May 4, 2001, but such notification is not mandatory.

8 DATED AND EFFECTIVE at Anchorage, Alaska, this 6th day of March, 2001.

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10 BY DIRECTION OF THE COMMISSION

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14 (S E A L)
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25 ¹⁵See n. 13.
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MEMORANDUM

TO: Commissioners:
G. Nanette Thompson, Chair
Bernie Smith
Patricia DeMarco
Will Abbott
James Strandberg

DATE: October 24, 2000

FROM: Rich Gazaway, Common Carrier Specialist
SUBJECT: R-00-6 Carrier Change Regulations/Slamming

Recommendation

Staff recommends that the Commission:

- a) repeal 3 AAC 52.334(b) and (d);
- b) repeal 3 AAC 53.260(a) and (b);
- c) propose new regulations designated as 3 AAC 53.675(a) to adopt by reference the current version of unauthorized carrier change (slamming) rules and remedies promulgated by the Federal Communications Commission (FCC), as enumerated in 47 C.F.R. §§ 64.1100-1190;
- d) revise 3 AAC 52.334(c) in a manner consistent with federal slamming regulations, and renumber that subsection so it is a subsection of the regulation adopting the FCC's slamming rules (designated as 3 AAC 53.675(b));
- e) renumber 3 AAC 53.260(c) so that it is a subsection of the regulation adopting the FCC's slamming rules (designated as 3 AAC 53.675(c));
- f) once state regulations are appropriately modified to accommodate the administration of the FCC's slamming rules, elect to administer the slamming rules and remedies promulgated by the FCC, as enumerated in 47 C.F.R. §§ 64.1100-1190, and file notification of the Commission's intent to administer the FCC's slamming rules and remedies in accordance with the procedures stated at 47 C.F.R. § 64.1110(a);
- h) amend 3 AAC 52.333(b) in a manner consistent with the new section addressing slamming;
- i) amend 3 AAC 52.200(b) and 3 AAC 53.290(d) to remove references to 3 AAC 52.334 and 53.260, respectively, and to add references to, the new section addressing slamming (3 AAC 53.675); and
- j) issue a public notice on the proposed amendments.

Summary

As concluded by the Commission in Order R-00-6(1), state regulations addressing slamming are inconsistent with federal requirements and thus are currently unenforceable. The Commission must decide upon a state regulatory scheme that is consistent with federal slamming regulations. In addition, the Commission must determine the degree of involvement and responsibility it will assume for resolving slamming allegations concerning local exchange and intrastate, interstate, and international toll service.

Background

“Slamming” is the practice where a customer's preferred carrier for long distance or local service is changed without the customer's permission. Both state and federal regulations exist to discourage and prevent slamming.¹ Those regulations generally identify how a carrier change request must be submitted and what verification practices are needed to ensure that the customer/subscriber is the entity authorizing the request and that the request is valid. Both state and federal regulations distinguish between executing and submitting carriers for the purpose of establishing verification responsibilities and liability for slamming.

Definitions

To fully explain the differences between state and federal slamming regulations, it is necessary to understand the terminology used by each governmental body. Federal regulations generally define the “executing carrier” as any telecommunications carrier that effects a request that a subscriber’s telecommunications carrier be changed.² Federal regulations define the “submitting carrier” as any telecommunications carrier that requests on behalf of a subscriber that the subscriber’s telecommunications carrier be changed, and seeks to provide retail services to the end user subscriber.³ While the terms “executing carrier” and “submitting carrier” are not used in state slamming regulations, those regulations require the customer’s local exchange carrier to execute carrier changes.⁴

State slamming regulations use the term “customer”, generally defined as a person or entity supplied with telecommunications service by a telephone utility.⁵ Federal slamming regulations refer to the “subscriber”, defined as the party identified in common carrier records as responsible for payment of the telephone bill, any adult person authorized by such party to change the telecommu-

¹State slamming regulations are set forth at 3 AAC 52.334 (interexchange carrier changes) and 3 AAC 53.260 (local exchange carrier changes). (Those regulations are included as Attachment RLG-1 to this memorandum). Federal slamming regulations are stated at 47 C.F.R. §§ 64.1100-.1190. The federal prohibition against slamming is codified in the Communications Act of 1934, as amended by the Telecommunications Act of 1996. *See* 47 U.S.C. § 258.

²47 C.F.R. § 64.1100(b). *See also* In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, CC Docket 94-129, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration, FCC 97-248, 12 FCC Rcd. 10674, 10683-84, ¶¶ 13-14 (released July 15 1997) (“Further Notice and Order”); Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-334, 14 FCC Rcd. 1508, 1565-66, ¶¶ 94-96 (released December 23, 1998) (“Section 258 Order”).

³47 C.F.R. § 64.1100(a). *See also* Further Notice and Order, 12 FCC Rcd. at 10683-84, ¶¶ 13-14; Section 258 Order, 14 FCC Rcd. at 1564-65, ¶¶ 91-93.

⁴*See* 3 AAC 52.334(b); 3 AAC 53.260(a).

⁵3 AAC 52.340(19).

nications services or charge services to the account, and any other person contractually or otherwise lawfully authorized to represent such party.⁶

State Slamming Regulations

State regulations require that the customer's local exchange carrier execute carrier changes, verify carrier change requests, and maintain records of carrier change requests. While rules pertaining to interexchange carrier changes and local exchange carrier changes are similar, there are significant differences in those rules.

A. Interexchange Carrier Changes

Before executing a request to change a customer's intrastate interexchange carrier, the executing carrier (the customer's local exchange carrier) must verify the authenticity of a change request by obtaining either (a) a letter of authorization signed and dated by the subscriber, or (b) verbal authorization from the subscriber who has been positively identified.⁷ The Commission has also waived its regulations to allow the use of recorded messages to make interexchange carrier changes.⁸ The executing carrier is also responsible for maintaining a written record of each change for an indefinite period of time.⁹

B. Local Exchange Carrier Changes

Before executing a request to change a customer's local exchange carrier, the executing carrier or submitting carrier must verify the authenticity of a change request by obtaining either (a) a letter of authorization signed and dated by the customer, or (b) recorded authorization from the subscriber who has been positively identified.¹⁰ The carrier that obtained the written or recorded authorization must maintain the record for at least six months.¹¹

C. Civil Penalties

While state regulations do not provide for specific penalties applicable to violations of slamming regulations, statutory civil penalties applicable to public utilities are set forth at AS 42.05.571-.581. The violation of any regulation is subject to a penalty of \$100 for each violation, with each act

⁶47 CFR § 64.110(h). *See also* In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, CC Docket 94-129, Third Report and Order and Second Order On Reconsideration, FCC 00-255, (released August 15, 2000) ("Second Reconsideration Order"), ¶¶ 48-52.

⁷3 AAC 52.334(b).

⁸*See* Order U-95-10(1)/R-95-2(1), dated February 15, 1995.

⁹3 AAC 52.334(d).

¹⁰3 AAC 53.260(a).

¹¹3 AAC 53.260(b).

considered a separate violation and each day's continuance of a violation considered a separate offense.¹²

FCC Slamming Regulations

The FCC's slamming regulations apply to changes of interexchange (intrastate, interstate, and international toll service) and local exchange carriers.¹³ Federal regulations require submitting carriers to verify a subscriber's authorization to change interexchange or local exchange carriers before submitting a carrier change request on the behalf of a subscriber.¹⁴ Executing carriers are prohibited from verifying the carrier change request.¹⁵

A. Methods of Verification

Verification may consist of (1) the subscriber's written authorization in a form that meets the requirements of 47 C.F.R. § 64.1130 (written letter of agency), (2) the subscriber's electronic (telephonic) authorization, (3) the subscriber's oral authorization obtained by an independent third party, (4) the subscriber's authorization submitted over the Internet (Internet letter of agency), or (5) any state-enacted verification procedure applicable to intrastate preferred carrier changes only.¹⁶ The validity of the letter of agency is limited to 60 days from the date of execution.¹⁷ The submitting carrier must retain the written or recorded verification for a two-year period.¹⁸

1. Written Letter of Agency

The provisions of 47 C.F.R. § 64.1130 specify the required contents for the letter of agency (LOA). The LOA must be a separate document containing only the language specified in section 64.1130(e) and have the sole purpose of authorizing a carrier to initiate a preferred carrier change. The LOA must be signed and dated by the subscriber to the telephone lines requesting the preferred carrier change.¹⁹ The LOA must contain clear and unambiguous language that confirms (1) the subscriber's billing name and address and each telephone number to be covered by the preferred carrier change order, (2) the decision to change the preferred carrier from the current carrier to the soliciting carrier, (3) that the carrier designates the submitting carrier to act as the subscriber's agent for

¹²See AS 42.05.571(a); AS 42.05.581.

¹³47 C.F.R. § 64.1120. See also Section 258 Order, 14 FCC Rcd. at 1557-58, ¶ 81.

¹⁴47 C.F.R. § 64.1120(a)(1).

¹⁵47 C.F.R. § 64.1120(2). See also Section 258 Order, 14 FCC Rcd. at 1567-69, ¶¶ 97-101.

¹⁶47 C.F.R. § 64.1120(c). See also Section 258 Order, 14 FCC Rcd. at 1555, ¶ 78; Second Reconsideration Order, FCC 00-255, ¶¶ 7, 11.

¹⁷47 C.F.R. § 64.1130(j). The 60-day limit applies to submitting rather than executing carriers. The FCC cautioned that there may be delays in executing the preferred carrier change attributable to preferred carrier freezes and advised submitting carriers to submit change orders immediately after obtaining authorization. Second Reconsideration Order, FCC 00-255, ¶¶ 80-81.

¹⁸47 C.F.R. § 64.1120(a)(1)(ii).

¹⁹47 C.F.R. § 64.1130(b).

the preferred carrier change, (4) that the subscriber understands that only one carrier may be designated as the subscriber's interstate interexchange carrier for any one telephone number,²⁰ and (5) that the subscriber understands that any preferred carrier selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's preferred carrier and that the subscriber may consult with the carrier as to whether a fee applies to the change.²¹

2. Electronic (Telephonic) Notification

The electronic authorization must be placed from the telephone number on which the preferred carrier is to be changed, must contain the information required for LOAs, and must be recorded by the carrier. Telecommunications carriers electing to confirm sales electronically must establish one or more toll free numbers exclusively for that purpose.²²

3. Third Party Verification

The independent third party may not be owned, managed, controlled or directed by the carrier or the carrier's marketing agent; may not have any financial incentive to confirm preferred carrier change orders for the carrier or the carrier's marketing agent; and must operate in a location physically separate from the carrier or the carrier's marketing agent.²³ Third party verifications must elicit the identity of the subscriber, confirm that the person on the call is authorized to make the carrier change, confirm that the person on the call wants to make the carrier change, elicit the names of the carriers affected by the change, confirm the telephone numbers to be switched, and confirm the type of service involved (i.e., local exchange, intrastate interexchange, interstate interexchange, or international).²⁴ The third-party verification must be in the same language that was used in the underlying sales transaction. The entire third-party transaction must be recorded and the submitting carrier must maintain the recording for at least 2 years after obtaining the verification.²⁵

Independent third party verification may be initiated by means of a three-way conference call between the subscriber, the submitting carrier, and the independent third party. The submitting carrier's sales representative may initiate the three-way conference call but must drop off once the connection has been established between the subscriber and the third-party verifier.²⁶ Automated systems that preserve the independence of the third party verification procedure may be used to

²⁰If the LOA pertains to other preferred carriers (e.g., local exchange, intrastate toll, interstate toll, or international), the LOA must contain separate statements for each choice. A separate LOA is not necessary for each choice. 47 C.F.R. § 64.1130(e)(4).

²¹47 C.F.R. § 64.1130(e). *See also* Second Reconsideration Order, FCC 00-255, ¶¶ 82-83.

²²47 C.F.R. §64.1120(c)(2).

²³47 C.F.R. § 64.1120(c)(3). *See also* Section 258 Order, 14 FCC Rcd. at 1551-1553, ¶¶ 69-72; Second Reconsideration Order, FCC 00-255, ¶¶ 35-45.

²⁴47 C.F.R. § 64.1120(c)(2)(iii).

²⁵47 C.F.R. § 64.1120(c)(2)(iv); *see also* 47 C.F. R §64.1120(a)(1)(ii).

²⁶47 C.F.R. § 64.1120(c)(2)(i), (ii). *See also* Second Reconsideration Order, ¶¶ 35-45.

verify carrier change requests, but must comply with the requirement stated above and provide subscribers with the option of speaking with a live person at any time during the call.²⁷

4. Internet Letters of Agency²⁸

Internet LOAs must comply with FCC rules governing written LOAs and must include the consumer's disclosures required by the E-Sign Act, § 104(c).²⁹ Consumers should know what specific services are being offered and have the discretion to subscribe only to the services they desire. Internet LOAs must appear on a separate screen from any inducements or solicitations for a carrier's services and contain only the language found at 47 C.F.R. § 64.1130(e).³⁰ In addition, carriers must give subscribers the option of using one of the other authorization and verification methods authorized in Section 64.1120.³¹ If a subscriber contests the authenticity of an Internet LOA, the carrier will have the burden of proof to counter the subscriber's allegation.³²

5. Additional State-Enacted Verification Procedures (Intrastate Service)

While the FCC has primary authority to set slamming regulations for local and interexchange services, the FCC provided for continued state regulation of intrastate slamming to the extent it did not contradict federal rules:

We decline to preempt generally state regulation of carrier changes. . . . We conclude that, although a state must accept the same verification procedures as prescribed by the [FCC], a state may accept additional verification procedures for

²⁷47 C.F.R. § 64.1120(c)(2)(i), (iv).

²⁸The FCC's approval of Internet LOAs was in response to federal legislation designed to promote the use of electronic signatures and foster the development of commerce over the Internet. See The Electronic Signatures in Global and National Commerce Act (E-Sign Act), S.761, 106th Cong., 2nd Sess. (signed into law June 30, 2000; effective October 1, 2000). The E-Sign Act precludes the FCC from determining that a LOA is legally ineffective solely because an electronic record or electronic signature was used in its formation or authorization. See E-Sign Act, § 104(e). See also Second Reconsideration Order, FCC 00-255, ¶¶ 10-11.

²⁹47 C.F.R. §§ 64.1130(e), (i). Section 104(c) of the E-Sign Act requires, among other things, that the carrier obtain the subscriber's consent to use electronic records, obtain the subscriber's acknowledgment that he/she has the hardware and software necessary to access the information in electronic form (i.e. Internet LOA) used by the carrier, and inform the subscriber regarding the procedures for withdrawing consent. See Second Reconsideration Order, FCC 00-255, ¶ 13.

³⁰47 C.F.R. §§ 1130(b), (c). See also Second Reconsideration Order, FCC 00-255, ¶¶ 17-19.

³¹See 47 C.F.R. § 64.1120(d).

³²See 47 C.F.R. § 64.1150(d). See also Second Reconsideration Order, FCC 00-255, ¶ 13.

changes to intrastate services if such state concludes that such action is necessary based on its local experiences.³³

Thus while states may provide additional verification methods for intrastate carrier changes,³⁴ state regulations must at a minimum provide carriers with the verification methods approved by the FCC (written authorization, electronic (telephonic) authorization, independent third party verification, and Internet authorization).³⁵

B. Carrier Responsibility and Liability

The FCC divides responsibility and liability between submitting and executing carriers. Generally, submitting carriers are responsible for submitting, without unreasonable delay, authorized and properly verified carrier change requests; while executing carriers are charged with executing promptly and without unreasonable delay changes that have been verified by the submitting carrier. FCC slamming rules provide that only the submitting carrier is liable where the submitting carrier submits a carrier change that fails to comply with the FCC's rules - no liability is imposed on the executing carrier regardless of whether the executing carrier performs or fails to perform the change in accordance with the submission. Similarly, only the executing carrier is liable where the submitting carrier submits a change request that complies with the FCC's rules and the executing carrier fails to perform the change in accordance with the submission.³⁶ Any carrier that is informed by a subscriber of a slam must direct the subscriber to the proper state commission or the FCC for resolution of the complaint and inform the subscriber of all relevant filing requirements.³⁷

C. Penalties

FCC slamming rules absolve subscribers from liability for slammed charges for a limited period of time (i.e. the first 30 days after the unauthorized change). Where a subscriber has not paid charges to the unauthorized carrier, the authorized carrier must remove all charges incurred for service provided during the first 30 days after the alleged unauthorized carrier change occurred.³⁸ Where a subscriber has paid the unauthorized carrier, the unauthorized carrier must pay the authorized car-

³³Section 258 Order, 14 FCC Rcd. at 1561-62, ¶ 87; *see also* Second Reconsideration Order, FCC 00-255 ¶ 87 (“[a]lthough we recognize that it may be simpler for carriers to comply with one set of rules, we will not interfere with the state’s ability to adopt more stringent regulations”).

³⁴47 C.F.R. § 64.1120(c)(4).

³⁵*See* Section 258 Order, 14 FCC Rcd. at 1561-64, ¶¶ 86-90; Second Reconsideration Order, FCC 00-255, ¶ 21.

³⁶*See* Section 258 Order, 14 FCC Rcd. at 1541, ¶ 54; Second Reconsideration Order, FCC 00-255, ¶ 77.

³⁷*See* In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, CC Docket 94-129, First Order on Reconsideration, FCC 00-135, 15 FCC Rcd. 8158, 8174-75, ¶¶ 33-37 (May 3, 2000) (“First Reconsideration Order”).

³⁸47 C.F.R. § 64.1160(b). *See also* First Reconsideration Order, 15 FCC Rcd. at 8164-65, ¶¶ 13-14; Second Reconsideration Order, FCC 00-255, ¶ 68.

rier 150 % of all charges paid by the subscriber to the unauthorized carrier. The authorized carrier in turn must provide a refund or credit to the subscriber for 50 % of all charges paid by the subscriber to the unauthorized carrier. The subscriber has the option of having the authorized carrier re-rate unauthorized carrier charges so that the refund/credit amount also reflects the difference between the rates of the unauthorized and authorized carriers.³⁹ In addition, the unauthorized carrier must pay any charges associated with the transfer of the subscriber between carriers.⁴⁰ The authorized carrier must also reinstate the subscriber in any premium program in which the subscriber was enrolled prior to the unauthorized change, if the subscriber's participation in that program was terminated due to the unauthorized change.⁴¹

D. Registration and Reporting Requirements

Federal regulations contain registration requirements for interstate interexchange carriers.⁴² Federal regulations also require carriers to report on a biannual basis the number of slamming complaints received, the number investigated by the carrier and found to be valid, and the number of slamming complaints involving local, interstate, and intrastate service (investigated or not) that the carrier resolves directly with the consumer.⁴³ States that choose to administer the FCC's slamming rules are required to regularly file with the FCC information that details slamming information in their region.⁴⁴

GCI Filing

On March 15, 1999, GCI Communication Corp. d/b/a General Communication, Inc., and d/b/a GCI (GCI) filed a letter noting inconsistencies between state and federal slamming regulations. GCI

³⁹47 C.F.R. §§ 64.1170(b)(1), (c). See also First Reconsideration Order, 15 FCC Rcd. at 8165-68, ¶¶ 15-21; Second Reconsideration Order, FCC 00-255, ¶ 68.

⁴⁰47 C.F.R. §§ 64.1140(b)(3). See also Section 258 Order, 14 FCC Rcd. at 1530, ¶ 37; Second Reconsideration Order, FCC 00-255, ¶ 85. There may be two charges imposed – one when the LEC executes the slamming carrier's preferred carrier change order and a second charge imposed when the LEC returns the subscriber to his or her authorized carrier. See Second Reconsideration Order, FCC 00-255, ¶ 84.

⁴¹47 C.F.R. 64.1170(f).

⁴²47 C.F.R. § 64.1195. Carriers failing to register with the FCC may, after notice and opportunity to respond, be subject to a fine. 47 C.F.R. § 64.1195(f). The FCC also imposes an affirmative duty on facilities-based carriers to ascertain whether a potential carrier-customer (i.e. reseller) has filed registration with the FCC prior to providing that carrier-customer with service. 47 C.F.R. § 64.1195(h). See also Second Reconsideration Order, FCC 00-255, ¶¶ 61-66.

⁴³47 C.F.R. § 64.1180. See also Second Reconsideration Order, FCC 00-255, ¶¶ 55-58.

⁴⁴States that choose to administer the FCC's slamming rules must report the number of slamming complaints handled (including data on the number of valid complaints per carrier), the identity of top slamming carriers, slamming trends, and other relevant information. See First Reconsideration Order, 15 FCC Rcd. at 8175, ¶ 34; Second Reconsideration Order, FCC 00-255, n. 165.

recommended that the Commission either amend its intrastate slamming rules to ensure consistency with the federal rules or repeal its rules and rely on the federal slamming rules. GCI stated that it met with Alascom, Inc. d/b/a AT&T Alascom (AT&T Alascom) and ATU⁴⁵ and the group suggested there be a meeting between industry and Staff to help resolve slamming issues.

Staff's July 26, 1999 Memorandum

On July 26, 1999, Staff submitted a memorandum on slamming issues, identifying two major areas where state regulations were inconsistent with federal requirements:

- a) State regulations require the local exchange carrier to verify the authenticity of a subscriber request to change interexchange carrier before executing the change. In the case of a local exchange carrier change, either the customer's new (submitting) or old (executing) local exchange carrier must verify the subscriber's authorization. The federal rules prohibit the executing carrier from verifying the change.
- b) State regulations do not allow carrier changes to be verified by an independent third party. The federal rules require third party verification as an option.⁴⁶

(Staff Memorandum, p. 5.) Staff also identified numerous minor inconsistencies between state and federal regulations as well as areas (e.g., special penalties) where the federal regulations go beyond the scope of the state slamming regulations.⁴⁷

Order R-00-6(1)

By Order R-00-6(1), dated April 5, 2000, the Commission concluded that in those cases where the FCC regulations and this Commission's regulations regarding slamming are inconsistent, the Commission's rules are unenforceable. Accordingly, the Commission stated that no punitive action

⁴⁵When GCI filed the above-referenced letter, ATU was a subsidiary of the Municipality of Anchorage and did business as Anchorage Telephone Utility a/k/a ATU Telecommunications. At the time comments were filed in response to the notice of inquiry in this proceeding, ATU was known as Alaska Communications Systems, Inc. See Order U-98-173(7), dated April 9, 2000. ATU is now known as ACS of Anchorage, Inc., d/b/a Alaska Communications Systems, ACS Local Service and ACS, and is a subsidiary of Alaska Communications Systems Holdings, Inc. See Order U-00-38(1), dated July 5, 2000.

⁴⁶Subsequent to Staff's July 26, 1999 Memorandum, the FCC authorized the use of Internet LOAs as a method of verifying carrier change requests.

⁴⁷Among the noted inconsistencies were differences in record retention obligations. Federal rules require the submitting carrier to retain the subscriber authorization for a period of two years. (47 C.F.R. § 64.1120(a)(1)(ii)). State regulations require that (1) the executing carrier retain subscriber authorizations to change intrastate interexchange carriers for an unspecified period of time (3 AAC 52.334(d)), and (2) whichever carrier obtained the subscriber's authorization to change local exchange carriers must retain that authorization for a six month period (3 AAC 53.260(b)). See Staff's July 26, 1999 Memorandum, Attachment B, pp. 2, 5.

would be taken against a utility for violating state slamming regulations as a result of complying with federal slamming rules. Order R-00-6(1), pp. 4-5. The Commission requested comments on the following issues:

- a) Should 3 AAC 52.334, 3 AAC 52.336, and 3 AAC 53.260 be repealed?
- b) Should there be any state regulations governing slamming and carrier changes?
- c) What state regulations, if any, should be implemented to discourage slamming, to allow for preferred carrier freezes, and to assess slamming penalties?
- d) Should the Commission amend its existing slamming/carrier-change regulations to adopt for intrastate purposes, either in whole or in part, the FCC's regulations at 47 C.F.R. §§ 64.1100 - 64.1190?

Comments Filed in Response to Order No. 1

On May 12, 2000, ACS, AT&T Alascom, and GCI filed comments in response to Order No. 1. While noting that slamming has not been a significant issue in Alaska, ACS favored state slamming rules and contended that the potential for slamming problems increase as a greater number of carriers enter the Alaska market. ACS supported amending the existing state slamming regulations to incorporate the three FCC-approved methods of verification.

AT&T Alascom favored repealing the existing regulations, adopting the federal regulations, and notifying the FCC pursuant to 47 C.F.R. § 64.1110(a) that the Commission will serve as the administrator of the FCC's slamming rules and remedies in Alaska. AT&T Alascom argued that establishing separate state slamming rules would cause confusion and be administratively burdensome and inefficient. AT&T Alascom also stated that adopting state slamming rules could be difficult due to problems with providing notice to the public and the need to continually amend any state regulations to reflect future amendments to federal regulations. AT&T Alascom argued that since slamming is not a significant problem in Alaska, there is no justification for adopting Alaska-specific slamming rules.

GCI also supported repealing existing state slamming regulations and opting to administer the FCC slamming rules. GCI argued that since slamming is not a significant problem in Alaska, there is no need for additional state slamming rules. In addition, GCI stated that due to the infrequent occurrence of slamming in Alaska, Commission administration of the FCC rules would not create a burden on Commission resources. GCI also contended that 3 AAC 53.260(c) should be retained since it does not apply to a carrier change and thus is not inconsistent with federal rules.

Discussion

Staff's July 26, 1999 memorandum and Order R-00-6(1) note that existing state slamming regulations are inconsistent with FCC slamming rules. The Commission must decide upon a state regulatory scheme that is consistent with federal slamming regulations, and determine the degree of responsibility it wishes to assume for resolving slamming allegations concerning local exchange and intrastate, interstate, and international toll service.

Available Alternatives to Address Slamming in Alaska

Staff concurs with AT&T Alascom's comments that a dual state and federal slamming regulatory scheme is administratively burdensome and may require the Commission to repeatedly amend its slamming regulations to reflect amendments to FCC slamming regulations. However, existing state statutes implementing the Administrative Procedure Act preclude the Commission from enforcing the federal regulatory scheme absent a state regulation adopting the federal slamming rules. Based on the advice of the Assistant Attorney General assigned to the Commission, Staff does not believe the Commission has the ability to opt into the federal slamming regulatory scheme without adopting by reference the federal slamming regulations. Pursuant to AS 44.62.640(a)(3), the state must adopt regulations for any rule that makes specific any law it enforces or administers.⁴⁸ Thus in order to enforce and administer the federal slamming rules, the Commission must adopt the federal regulations by reference.

A related inquiry is whether the state may adopt federal slamming regulations in a manner that includes future amended versions. Pursuant to AS 44.60.245, a state agency may only incorporate future amended versions of a regulation if (1) the regulation is that of another state agency, or (2) incorporation of a future amended version of the document is explicitly authorized by statute. In this proceeding, the regulations that the Commission wishes to adopt were promulgated by a federal agency, and there is no express authorization for the adoption of future amended versions in the Commission's enabling statutes. Thus, federal slamming regulations may not be amended in a manner that includes future amended versions of the material.

⁴⁸The definition of "regulation" is set forth at AS 44.62.640(a)(3), which provides:

"regulation" means every rule, regulation, order, or standard of general application . . . adopted by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one that relates only to the internal management of a state agency; . . ."regulation" includes "manuals," "policies," "instructions," "guides to enforcement," "interpretative bulletins," "interpretations," and the like, that have the effect of rules, orders, regulations, or standards of general application, . . . ; whether a regulation, regardless of name, is covered by this chapter depends in part on whether it affects the public or is used by the agency in dealing with the public;

See also Reichmann v. Department of Natural Resources, 917 P2d 1197, 1201 (Alaska 1996) (indicia for identifying a regulation include (1) whether the practice implements, interprets, or makes specific the law enforced or administered by the state agency, and (2) whether the practice affects the public or is used in dealing with the public).

Based on this analysis, Staff believes the Commission has the following options:

- 1) revise state slamming regulations in a manner consistent with the federal slamming regulatory scheme as it currently exists;
- 2) repeal current state slamming regulations and adopt by reference the current version of the federal slamming regulations (enabling the Commission to opt into the federal regulatory scheme);
- 3) seek legislative authority to adopt federal slamming regulations on an “as-amended” basis (enabling the Commission to opt into the federal scheme and eliminating the need to revise state regulations each time the federal slamming rules are amended); or
- 4) repeal state regulations and decline to adopt new state slamming regulations, defaulting to the FCC to resolve all slamming allegations.

To determine the appropriate course of action, the Commission must determine the level of involvement and responsibility it will assume for resolving slamming allegations. The Commission may (1) defer responsibility for resolving all slamming allegations to the FCC, (2) only assume responsibility for resolving slamming allegations regarding local exchange and intrastate toll service, or (3) assume responsibility for resolving all slamming allegations, including those involving interstate and international toll service.

Staff Recommendation

Staff believes that the verification procedures provided for in the federal regulatory scheme adequately protect subscribers from slamming. Carriers are provided with four methods for verifying a subscriber carrier change request – written, electronic (recorded), oral verification by an independent third party, and Internet authorization. Other verification methods that the FCC viewed as misleading or confusing to the subscriber or invite abuses by carriers were excluded from the FCC-approved verification options.⁴⁹ Staff believes that the verification methods adopted by the FCC provide an acceptable balance between the interests of subscribers and carriers given current conditions in Alaska.

Staff further believes that FCC slamming regulations contain sufficient penalties to discourage carriers from engaging in slamming and thus additional state remedies for slamming are unneces-

⁴⁹One verification method rejected by the FCC was the “welcome package”, which entailed a carrier sending a subscriber who requested a change of carrier a welcome package containing information and a prepaid postcard used to deny, cancel or confirm a change order. The FCC noted that an unscrupulous carrier may use a welcome package as a “negative-option” letter of authorization (an unsolicited notice of pending carrier change that requires a subscriber to take some action to avoid the change) and stated that it did not think a consumer should have to take affirmative action to avoid being slammed. *See Section 258 Order*, 14 FCC Rcd. at 1544-47, ¶¶ 58-61.

sary. While states may adopt more stringent penalties than those contained in the FCC rules,⁵⁰ Staff believes that the FCC penalties provide a sufficient deterrent to prevent repeated slamming violations at this time. A submitting carrier found to be in violation of the slamming regulations is disgorged from any profits by being required to either (1) waive unpaid charges for the first 30 days after the slam, or (2) repay the authorized carrier for 150 % of all paid charges.⁵¹ The subscriber is protected from financial harm, having to pay no more than 50 % of the charges incurred based on the rates of the authorized carrier and having his/her previous service with the authorized carrier restored free of charge.⁵² Staff believes that the penalties protect consumers and remove any profit incentive for slamming, yet are not so excessive as to be overly punitive.

Staff recommends that the Commission assume responsibility for resolving all slamming allegations, regardless of whether local exchange, intrastate toll, interstate toll, of international service is involved. This approach provides consumers with a single location to pursue slamming allegations, allows for local adjudication of slamming complaints concerning service in Alaska, and provides a single repository for information regarding slamming in Alaska. Staff acknowledges the Commission's extensive caseload, but believes that Commission administration of FCC slamming rules will not create a significant amount of work for the agency. The infrequency of slamming allegations involving service in Alaska indicates that the administrative burden of resolving slamming allegations would be minimal.⁵³ Should dramatic increases of slamming allegations occur, FCC rules allow a state commission to opt out of administering federal slamming rules.⁵⁴

⁵⁰See First Reconsideration Order, 15 FCC Rcd. at 8177, note 105; Second Reconsideration Order, FCC 00-255, ¶ 87. The Commission may impose the civil penalties stated at AS 42.05.371-.381, but must comply with procedural safeguards stated therein (i.e., conduct a show-cause hearing). However, Staff believes that those additional state remedies should only be considered when a utility repeatedly violates slamming regulations.

⁵¹If the subscriber has paid charges to the unauthorized carrier, the authorized carrier must refund to the subscriber 50 % of all charges paid to the unauthorized carrier. 47 C.F.R. §§ 64.1140(a), 64.1170(b). See also First Reconsideration Order, 15 FCC Rcd. at 8165-68, ¶¶ 15-21. Where the slammed subscriber has not paid the unauthorized carrier, the subscriber does not have to pay for calls made up to 30 days after the slam. 47 C.F.R. § 64.1140(b)(1); 64.1160(b), (d). See also First Reconsideration Order, 15 FCC Rcd. at 8161-65, ¶¶ 7-14.

⁵²See 47 C.F.R. §§ 64.1160(a), (e)(1); 1170(b)(1), (c), (f). See also Second Reconsideration Order, FCC 00-255, ¶ 84.

⁵³The Commission's Consumer Protection Section estimates that it has received less than ten slamming allegations since 1996. Staff has been unable to verify figures regarding slamming complaints concerning Alaska filed with the FCC.

⁵⁴47 C.F.R. § 64.1110(b) provides procedures for a state commission file notification of its intent to discontinue administering the FCC's unauthorized carrier change (slamming) rules and regulations. The state commission's discontinuance becomes effective 60 days after the FCC receives the notification of discontinuance. See also First Reconsideration Order, 15 FCC Rcd. at 8173, ¶ 30.

Accordingly, Staff recommends that the Commission consider repealing the existing state slamming regulations (3 AAC 52.334(b), (d); 3 AAC 53.260(a), (b)) and adopt by reference the current version of federal slamming regulations. This will allow the Commission to resolve slamming allegations involving interstate and international toll service as well as local exchange and intrastate toll service. While this approach requires the Commission to revise its regulation each time that federal slamming rules are amended,⁵⁵ it allows the Commission to administer the federal slamming regulatory scheme without having to wait for state legislation authorizing an “as-amended” adoption.⁵⁶

Should the Commission concur with Staff’s recommendation, it must file a notification of the Commission’s intent to administer the FCC’s slamming rules and remedies in accordance with the procedures stated at 47 C.F.R. § 64.1110(a).⁵⁷ That notification should be filed as soon as the regulations adopting the federal slamming rules become effective.

Staff also recommends the retention of 3 AAC 52.334(a), which deals with obligations imposed on local exchange carriers after a presubscription ballot and does not concern procedures for change a subscriber’s selected carrier.⁵⁸ Staff further recommends revising 3 AAC 52.334(c) in a manner

⁵⁵The regulation adopting the federal slamming regulations should clarify that in the event the federal regulations are subsequently amended, carriers may comply with the amended federal slamming regulations pending the related amendment of state slamming regulations. In that circumstance, any penalties will be waived for carriers who violate existing state slamming regulations by complying with the current federal slamming regulations. The Department of Law’s regulatory department recommended this approach during discussions with the Commission’s program coordinator.

⁵⁶Staff has reservations regarding seeking legislative authority to adopt the federal slamming regulations on an “as-amended” basis. Should the number of slamming allegations in Alaska (and the administrative burden associated with administering federal slamming rules) increase dramatically, the Commission may desire to “opt out” of administering federal slamming rules. Unless the legislative authorization to adopt future revisions of federal slamming regulations were appropriately drafted, the Commission would be precluded from opting out of administering the federal program without further legislative action.

⁵⁷FCC regulations require that the notification explain how consumers may file complaints (including where the complaint is to be filed, what if any filing fees a consumer must pay, and what documentation a consumer must provide in its complaint), any and all deadlines that parties must adhere to that are shorter than those explicitly stated in the FCC’s rules, what safeguards exist to ensure procedural fairness to consumers and carriers, and what rights the parties have to appeal the initial decision. 47 C.F.R. § 64.1110(a). *See also* First Reconsideration Order, 15 FCC Rcd. at 8172-73, ¶ 29.

⁵⁸The provisions of 3 AAC 52.334(a) provide:

For a period of three years after a local exchange telephone utility initially provides 2-PIC dialing, that utility must annually include in a periodic billing or in a separate mailing a notice to customers listing available intrastate interexchange carriers and explaining the actions that must be taken to change carriers and the cost of making the change.

consistent with the federal slamming regulation. Subsection (c) prohibits intrastate interexchange carriers from soliciting carrier change requests prior to certification as an intrastate interexchange carrier, and also precludes local exchange carriers from accepting letters of authorization from uncertificated carriers. Staff believes that under federal slamming regulations, the local exchange carrier as the executing carrier cannot question the validity of the carrier change request. Accordingly, this regulation should be revised to restrict the submitting carriers from soliciting or presenting carrier change requests prior to certification. Staff recommends that this regulation be amended as follows (deletions are capitalized and bracketed; proposed amendments are in bold type and underlined):

An intrastate interexchange carrier that has not received a certificate of public convenience and necessity from the commission may not solicit, [OR] collect, **or submit** letters of authorization to reassign a [CUSTOMER'S] **subscriber's** access line or lines. [A LOCAL EXCHANGE UTILITY MAY NOT ACCEPT LETTERS OF AUTHORIZATION THAT ARE IN VIOLATION OF THIS SUBSECTION.]

In addition, Staff recommends that 3 AAC 52.334(c) be renumbered as 3 AAC 53.675(b) – a subsection of the regulation adopting the FCC's slamming rules and remedies.

While favoring the repeal of state slamming regulations, GCI opposed the repeal of 3 AAC 53.260(c). That subsection provides that carrier change rules stated at 3 AAC 53.260(a) and (b) do not apply where a LEC requests that another LEC change the underlying arrangement for providing service to the subscriber (e.g., changing service from resale to unbundled loop). Staff concurs with GCI that subsection (c) is not inconsistent with federal slamming rules, and believes that subsection should be retained to clarify the applicability of slamming rules in the local service context. Staff recommends that 3 AAC 53.260(c) be renumbered as 3 AAC 53.675(c) so that it will included as a subsection of the state regulation adopting federal slamming rules.

In addition, the Commission should amend 3 AAC 52.333(b) in a manner consistent with federal slamming regulations. 3 AAC 52.333(b) currently prohibits the local exchange carrier (the executing carrier) from changing a subscriber's interexchange carrier until after the local exchange carrier receives a written letter of authorization signed by the subscriber. (*See* Attachment RLG-2). Staff recommends that 3 AAC 52.333(b) be amended to relieve the executing carrier of the duty of obtaining verification of a subscriber's request to change intrastate interexchange carriers. Staff recommends that 3 AAC 52.333(b) be amended as follows:

If a local exchange telephone utility receives a bona fide request for interconnection in a location identified in 3 AAC 52.355(a)(1) in an exchange where interstate equal access is being provided at the time of the request, that utility shall provide 2_PIC dialing in that exchange within 90 days after receipt of that request. Upon implementation of 2-PIC dialing, the access line or lines of each customer will be presubscribed to the incumbent carrier until the local exchange telephone utility receives **a request from an interexchange carrier to change the customer's interexchange carrier.** [A WRITTEN LETTER OF AUTHORIZATION SIGNED BY THE CUSTOMER CHANGING PRESUBSCRIPTION OF AN ACCESS LINE OR

LINES TO ANOTHER CERTIFIED INTRASTATE INTEREXCHANGE
CARRIER.]

Finally, two existing regulations need to be amended to remove references to 3 AAC 52.334 and 3 AAC 53.260 those regulations. Specifically, 3 AAC 52.200(b) contains a reference to 3 AAC 52.334, and that reference should be replaced by a reference to 3 AAC 53.675. In addition, 3 AAC 53.290(d) contains a reference to 3 AAC 53.260, and that reference should be replaced by a reference to 3 AAC 53.675. The text of those regulations is set out in Attachment RLG-2.

Conclusion

Staff believes that the verification procedures and liability rules in the federal slamming regulations provides adequate protection for consumers at this time, are not overly burdensome on carriers, and sufficiently deter slamming. Accordingly, Staff recommends that the Commission repeal applicable state slamming regulations (3 AAC 52.334(b),(d); 3 AAC 53.260(a), (b)) and by regulation (designated as 3 AAC 53.675) adopt the current version of FCC's slamming rules and remedies, as enumerated in 47 C.F.R. §§ 64.1100-1190. Staff further recommends that once 3 AAC 53.675 is adopted, the Commission elect to administer the FCC's slamming rules and file a state notification of intention to administer the FCC's slamming rules in accordance with 47 C.F.R. § 64.1110(a).

In addition, Staff recommends that the Commission amend and renumber 3 AAC 52.334(c) and renumber 3 AAC 52.334(c) so that those regulations are subsections of 3 AAC 53.675, the state slamming regulations. Staff also recommends that the Commission amend 3 AAC 52.333(b) in a manner consistent with the FCC's unauthorized carrier change regulations. Finally, Staff recommends that the Commission amend 3 AAC 52.200(b) and 3 AAC 53.290(d) to remove references to 3 AAC 52.334 and 53.260, respectively, and to add references to 3 AAC 53.675, the new section addressing slamming.

3 AAC 52.200(b) is amended to read:

(b) The provisions of 3 AAC 52.200(d), 3 AAC 52.333, 3 AAC 52.334, [AND] 3 AAC 52.340, and 3 AAC 53.190 apply to all telephone utilities whether or not they are otherwise exempt from regulation by the commission under AS 42.05.711.

(Eff. 1/5/79, Register 69; am 6/29/84, Register 90; am 6/27/92, Register 122; am 9/20/96, Register 139; am / / , Register)

Authority:	AS 42.05.141	AS 42.05.311	AS 42.05.511
	AS 42.05.151	AS 42.05.321	AS 42.05.800
	AS 42.05.291	AS 42.05.331	AS 42.05.810

3 AAC 52.333(b) is amended to read:

(b) If a local exchange telephone utility receives a bona fide request for interconnection in a location identified in 3 AAC 52.355 (a)(1) in an exchange where interstate equal access is being provided at the time of the request, that utility shall implement 2-PIC dialing in that exchange within 90 days after receipt of that request. Upon implementation of 2-PIC dialing, the access line or lines of each customer will be presubscribed to the incumbent carrier until the local exchange telephone utility receives a request from an interexchange carrier to change the customer's interexchange carrier [A WRITTEN LETTER OF AUTHORIZATION SIGNED BY THE CUSTOMER CHANGING PRESUBSCRIPTION OF AN ACCESS LINE OR LINES TO ANOTHER CERTIFIED INTRASTATE INTEREXCHANGE CARRIER].

(Eff. 6/27/92, Register 122; am 10/29/94, Register 132; am / / , Register)

Authority:	AS 42.05.141	AS 42.05.311	AS 42.05.800
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AS 42.05.151 AS 42.05.321 AS 42.05.810

3 AAC 52.334(b), (c), and (d) are repealed:

(b) repealed / / .

(c) repealed / / .

(d) repealed / / . (Eff. 6/27/92, Register 122; am 7/8/93, Register 127;
am / / , Register)

Authority: AS 42.05.141 AS 42.05.321 AS 42.05.800
 AS 42.05.151 AS 42.05.311 AS 42.05.810

3 AAC 53.260 is repealed:

3 AAC 53.260. CHANGES IN LOCAL EXCHANGE CARRIER. Repealed. (Eff.
6/21/98, Register 146; repealed / / , Register)

Authority: AS 42.05.141 AS 42.05.321 AS42.05.311
 AS 42.05.151

3 AAC 53.290(d) is amended to read:

(d) The provisions of **3 AAC 53.190** [3 AAC 53.260] govern the reassignment of
a subscriber's access line or lines to a different local exchange carrier.

(Eff. 6/21/98, Register 146; am / / , Register)

Authority: AS 42.05.141 AS 42.05.221 AS 42.05.711
 AS 42.05.151 AS 42.05.241 AS 42.05.990

Publisher: Renumber existing Articles 2 – 9 as 3 – 10, respectively, in 3 AAC 53. Insert the following as a new Article 2: “2. PROCEDURES FOR CHANGING AN AUTHORIZED TELECOMMUNICATIONS CARRIER (3 AAC 53.190)”

3 AAC 53 is amended by adding a new section to read:

Article 2. PROCEDURES FOR CHANGING AUTHORIZED CARRIERS

Section

190. Procedures for changing authorized carriers

199. Definitions

3 AAC 53.190. PROCEDURES FOR CHANGING AN AUTHORIZED TELECOMMUNICATIONS CARRIER. (a) The provisions of 47 C.F.R. 64.1100 – 1195, revised as of February 22, 2001, are adopted by reference and set out the procedures for changing a subscriber’s authorized intrastate, local exchange, or interstate telecommunications carrier in Alaska as provided for under 47 C.F.R. 64.1110. The procedures adopted by this section also apply to an interstate telecommunications carrier providing international telecommunications service in Alaska.

(b) Notwithstanding the provisions of (a) of this section, an intrastate interexchange or local exchange carrier that has not received a certificate of public convenience and necessity from the commission may not solicit, collect, or submit letters of authorization to reassign a subscriber’s access line or lines. A carrier may not accept letters of authorization that are in violation of this subsection.

(c) The requirements of (a) and (b) of this section do not apply when a local exchange carrier requests another local exchange carrier to modify the underlying arrangement by which the requesting local exchange carrier provides services to its own existing customers, such as changing service from resale to unbundled loop.

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(d) The commission will waive the assessment of penalties or other punitive action against a telecommunications carrier for complying with carrier-change rules of the Federal Communications Commission that are more recent than those adopted under (a) of this section.

(e) A local exchange, intrastate interexchange, or interstate telecommunications carrier that provides service in Alaska and files a report with the Federal Communications Commission under 47 C.F.R. 64.1180 shall file a copy of that report with the commission at the commission's address set out in 3 AAC 48.010. (Eff. __/__/__, Register ___)

Authority:	AS 42.05.141	AS 42.05.221	AS 42.05.711
	AS 42.05.151	AS 42.05.241	AS 42.05.990

3 AAC 53.199. Definitions. Terms used in 3 AAC 53.190 have the meanings given in 3 AAC 48.820, 3 AAC 52.340, 3 AAC 52.399, and 3 AAC 53.299. (Eff. __/__/__, Register ___)

Authority:	AS 42.05.141	AS 42.05.311	AS 42.05.800
	AS 42.05.151	AS 42.05.321	AS 42.05.810

Editor's note: A copy of 47 C.F.R. 64.1100 – 1195 referred to in 3 AAC 53.190(a) is available for inspection at the Regulatory Commission of Alaska whose address is set out at 3 AAC 48.010(a). A copy of 47 C.F.R. 64.1190 – 1195 may also be obtained from the Federal Communications Commission, 445 12th Street S.W., Washington, D.C. 20554.

**Part 64 of the Rules of the Federal Communications Commission
Chapter 1, Title 47 of the Code of Federal Regulations, Part 64, Subpart K**

Section

- .1100 Definitions.
- .1110 State Notification of Election To Administer FCC Rules.
- .1120 Verification of Orders for Telecommunications Service.
- .1130 Letter of Agency Form and Content.
- .1140 Carrier Liability for Slamming.
- .1150 Procedures for Resolution of Unauthorized Changes in Preferred Carrier.
- .1160 Absolution Procedures Where the Subscriber Has Not Paid Charges.
- .1170 Reimbursement Procedures Where the Subscriber Has Paid Charges.
- .1180 Reporting Requirement.
- .1190 Preferred Carrier Freezes.
- .1195 Registration Requirement.

47 C.F.R. § 64.1100. Definitions. (a) The term *submitting carrier* is generally any telecommunications carrier that requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed, and seeks to provide retail services to the end user subscriber. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

(b) The term *executing carrier* is generally any telecommunications carrier that effects a request that a subscriber's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

(c) The term *authorized carrier* is generally any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service with the subscriber's authorization verified in accordance with the procedures specified in this part.

(d) The term *unauthorized carrier* is generally any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service but fails to obtain the subscriber's authorization verified in accordance with the procedures specified in this part.

(e) The term *unauthorized change* is a change in a subscriber's selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures specified in this part.

(f) The term *state commission* shall include any state entity with the state-designated authority to resolve the complaints of such state's residents arising out of an allegation that an unauthorized change of a telecommunication service provider has occurred that has elected, in accordance with the requirements of Sec. 64.1110(a) of this part, to administer the Federal Communications Commission's slamming rules and remedies, as enumerated in Secs. 64-1100-1190.

(g) The term *relevant governmental agency* shall be the state commission if the complainant files a complaint with the state commission or if the complaint is forwarded to the state commission by the Federal Communications Commission, and the Federal Communications Commission if the complainant files a complaint with the Federal

Communications Commission, and the complaint is not forwarded to a state commission.

(h) The term *subscriber* is any one of the following:

(1) the party identified in the account records of a common carrier as responsible for payment of the telephone bill;

(2) any adult person authorized by such party to change telecommunications services or to charge services to the account; or

(3) any person contractually or otherwise lawfully authorized to represent such party.

47 C.F.R. § 64.1110. State Notification of Election To Administer FCC Rules. (a) *Initial Notification.* State notification of an intention to administer the Federal Communications Commission's unauthorized carrier change rules and remedies, as enumerated in Secs. 64.1100-1190, shall be filed with the Commission Secretary in CC Docket No. 94-129 with a copy of such notification provided to the Consumer Information Bureau Chief. Such notification shall contain, at a minimum, information on where consumers should file complaints, the type of documentation, if any, that must accompany a complaint, and the procedures the state will use to adjudicate complaints.

(b) *Withdrawal of Notification.* State notification of an intention to discontinue administering the Federal Communications Commission's unauthorized carrier change rules and remedies, as enumerated in Secs. 64.1100-1190, shall be filed with the Commission Secretary in CC Docket No. 94-129 with a copy of such amended notification.

tion provided to the Consumer Information Bureau Chief. Such discontinuance shall become effective 60 days after the Commission's receipt of the state's letter.

47 C.F.R. § 64.1120. Verification of Orders for Telecommunications Service. (a) No telecommunications carrier shall submit or execute a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service except in accordance with the procedures prescribed in this part. Nothing in this section shall preclude any State commission from enforcing these procedures with respect to intrastate services.

(1) No submitting carrier shall submit a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service prior to obtaining:

(i) Authorization from the subscriber, and

(ii) Verification of that authorization in accordance with the procedures prescribed in this section. The submitting carrier shall maintain and preserve records of verification of subscriber authorization for a minimum period of two years after obtaining such verification.

(2) An executing carrier shall not verify the submission of a change in a subscriber's selection of a provider of telecommunications service received from a submitting carrier. For an executing carrier, compliance with the procedures described in this part shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting carrier.

(3) Commercial mobile radio services (CMRS) providers shall be excluded from the verification requirements of this part as long as they are not required to provide equal access to common carriers for the provision of telephone toll services, in accordance with 47 U.S.C. § 332(c)(8).

(b) Where a telecommunications carrier is selling more than one type of telecommunications service (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) that carrier must obtain separate authorization from the subscriber for each service sold, although the authorizations may be made within the same solicitation. Each authorization must be verified separately from any other authorizations obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in this part.

(c) No telecommunications carrier shall submit a preferred carrier change order unless and until the order has been confirmed in accordance with one of the following procedures:

(1) The telecommunications carrier has obtained the subscriber's written or electronically signed authorization in a form that meets the requirements of Sec. 64.1130; or

(2) The telecommunications carrier has obtained the subscriber's electronic authorization to submit the preferred carrier change order. Such authorization must be placed from the telephone number(s) on which the preferred carrier is to be changed and must confirm the information in paragraph (1) of this subsection. Telecommunications carriers electing to confirm sales electronically shall establish one or

more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism, that records the required information regarding the preferred carrier change, including automatically recording the originating automatic number identification; or

(3) An appropriately qualified independent third party has obtained, in accordance with the procedures set forth in sections (i)-(iv) of this subsection, 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). The independent third party must not be owned, managed, controlled, or directed by the carrier or the carrier's marketing agent; must not have any financial incentive to confirm preferred carrier change orders for the carrier or the carrier's marketing agent; and must operate in a location physically separate from the carrier or the carrier's marketing agent.

(i) *Methods of Third Party Verification.* Automated third party verification systems and three-way conference calls may be used for verification purposes so long as the requirements of sections (ii)-(iv) of this subsection are satisfied.

(ii) *Carrier Initiation of Third Party Verification.* A carrier or a carrier's sales representative initiating a three-way conference call or a call through an automated verification system must drop off the call once the three-way connection has been established.

(iii) *Requirements for Content and Format of Third Party Verification.* All third party verification methods shall elicit, at a minimum, 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; the names of the carriers affected by the change; the telephone numbers to be switched; and the types of service involved. Third party verifiers may not market the carrier's services by providing additional information, including information regarding preferred carrier freeze procedures.

(iv) *Other Requirements for Third Party Verification.* All third party verifications shall be conducted in the same language that was used in the underlying sales transaction and shall be recorded in their entirety. In accordance with the procedures set forth in Sec. 64.1120(a)(1)(ii), submitting carriers shall maintain and preserve audio records of verification of subscriber authorization for a minimum period of two years after obtaining such verification. Automated systems must provide consumers with an option to speak with a live person at any time during the call.

(4) Any State-enacted verification procedures applicable to intrastate preferred carrier change orders only.

(d) Telecommunications carriers must provide subscribers the option of using one of the authorization and verification procedures specified in Sec. 64.1120(c) in

addition to an electronically signed authorization and verification procedure under Sec. 64.1120(c)(1).

47 C.F.R. § 64.1130. Letter of Agency Form and Content. (a) A telecommunications carrier may use a written or electronically signed letter of agency to obtain authorization and/or verification of a subscriber's request to change his or her preferred carrier selection. A letter of agency that does not conform with this section is invalid for purposes of this part.

(b) The letter of agency shall be a separate document (or an easily separable document) or located on a separate screen or webpage containing only the authorizing language described in paragraph (e) of this section having the sole purpose of authorizing a telecommunications carrier to initiate a preferred carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the preferred carrier change.

(c) The letter of agency shall not be combined on the same document, screen, or webpage with inducements of any kind.

(d) Notwithstanding paragraphs (b) and (c) of this section, the letter of agency may be combined with checks that contain only the required letter of agency language as prescribed in paragraph (e) of this section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain in easily readable, bold-face type on the front of the check, a notice that the subscriber is authorizing a

preferred carrier change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

(e) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

(1) The subscriber's billing name and address and each telephone number to be covered by the preferred carrier change order;

(2) The decision to change the preferred carrier from the current telecommunications carrier to the soliciting telecommunications carrier;

(3) That the subscriber designates [name of submitting carrier] to act as the subscriber's agent for the preferred carrier change;

(4) That the subscriber understands that only one telecommunications carrier may be designated as the subscriber's interstate or interLATA preferred interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional preferred carriers (e.g., local exchange, intra-LATA/intrastate toll, interLATA/interstate 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) That the subscriber may consult with the carrier as to whether a fee will apply to the change in the subscriber's preferred carrier.

(f) Any carrier designated in a letter of agency as a preferred carrier must be the carrier directly setting the rates for the subscriber.

(g) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current telecommunications carrier.

(h) If any portion of a letter of agency is translated into another language then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

(i) Letters of agency submitted with an electronically signed authorization must include the consumer disclosures required by Sec. 101(c) of the *Electronic Signatures in Global and National Commerce Act*.

(j) A telecommunications carrier shall submit a preferred carrier change order on behalf of a subscriber within no more than 60 days of obtaining a written or electronically signed letter of agency.

47 C.F.R. § 64.1140. Carrier Liability for Slamming. (a) *Carrier Liability for Charges.* Any submitting telecommunications carrier that fails to comply with the procedures prescribed in this part shall be liable to the subscriber's properly authorized carrier in an amount equal to 150% of all charges paid to the submitting telecommunications carrier by such subscriber after such violation, as well as for additional amounts as prescribed in Sec. 64.1170 of this part. The remedies provided in this part are in addition to any other remedies available by law.

(b) *Subscriber Liability for Charges.* Any subscriber whose selection of telecommunications services provider is changed without authorization verified in accordance with the procedures set for in this part is liable for charges as follows:

(1) If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. Upon being informed by a subscriber that an unauthorized change has occurred, the authorized carrier, the unauthorized carrier, or the executing carrier shall inform the subscriber of this 30-day absolution period. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change in accordance with the provisions of Sec. 64.1160(e) of this part.

(2) If the subscriber has already paid charges to the unauthorized carrier, and the authorized carrier receives payment from the unauthorized carrier as provided for in paragraph (a) of this section, the authorized carrier shall refund or credit to the subscriber any amounts determined in accordance with the provisions of Sec. 64.1170(c) of this part.

(3) If the subscriber has been absolved of liability as prescribed by this section, the unauthorized carrier shall also be liable to the subscriber for any charge required to return the subscriber to his or her properly authorized carrier, if applicable.

47 C.F.R. § 64.1150. Procedures for Resolution of Unauthorized Changes in Preferred Carrier. (a) *Notification of Alleged Unauthorized Carrier Change.* Executing carriers who are informed of an unauthorized carrier change by a subscriber must

immediately notify both the authorized and allegedly unauthorized carrier of the incident. This notification must include the identity of both carriers.

(b) *Referral of Complaint.* Any carrier, executing, authorized, or allegedly unauthorized, that is informed by a subscriber or an executing carrier of an unauthorized carrier change shall direct that subscriber either to the state commission or, where the state commission has not opted to administer these rules, to the Federal Communications Commission's Consumer Information Bureau, for resolution of the complaint.

(c) *Notification of Receipt of Complaint.* Upon receipt of an unauthorized carrier change complaint, the relevant governmental agency will notify the allegedly unauthorized carrier of the complaint and order that the carrier remove all unpaid charges for the first 30 days after the slam from the subscriber's bill pending a determination of whether an unauthorized change, as defined by Sec. 64.1100(e) of this part, has occurred, if it has not already done so.

(d) *Proof of Verification.* Not more than 30 days after notification of the complaint, or such lesser time as is required by the state commission if a matter is brought before a state commission, the alleged unauthorized carrier shall provide to the relevant government agency a copy of any valid proof of verification of the carrier change. This proof of verification must contain clear and convincing evidence of a valid authorized carrier change, as that term is defined in Secs. 64.1150-1160 of this part. The relevant governmental agency will determine whether an unauthorized change, as defined by Sec. 64.1100(e) of this part, has occurred using such proof and any evidence supplied

by the subscriber. Failure by the carrier to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation.

(e) *Election of Forum.* The Federal Communications Commission will not adjudicate a complaint filed pursuant to Sec. 1.719 or Secs. 1.720-1.736, involving an alleged unauthorized change, as defined by Sec. 64.1100(e) of this part, while a complaint based on the same set of facts is pending with a state commission.

47 C.F.R. § 64.1160. Absolution Procedures Where the Subscriber Has Not Paid Charges. (a) This section shall only apply after a subscriber has determined that an unauthorized change, as defined by Sec. 64.1100(e) of this part, has occurred and the subscriber has not paid charges to the allegedly unauthorized carrier for service provided for 30 days, or a portion thereof, after the unauthorized change occurred.

(b) An allegedly unauthorized carrier shall remove all charges incurred for service provided during the first 30 days after the alleged unauthorized change occurred, as defined by Sec. 64.1100(e) of this part, from a subscriber's bill upon notification that such unauthorized change is alleged to have occurred.

(c) An allegedly unauthorized carrier may challenge a subscriber's allegation that an unauthorized change, as defined by Sec. 64.1100(e) of this part, occurred. An allegedly unauthorized carrier choosing to challenge such allegation *shall* immediately notify the complaining subscriber that: (1) the complaining subscriber must file a complaint with a state commission that has opted to administer the FCC's rules, pursuant to Sec. 64.1110 of this part, or the FCC within 30 days of either (i) the date of removal of charges from the complaining subscriber's bill in accordance with paragraph (b) of this

section or (ii) the date the allegedly unauthorized carrier notifies the complaining subscriber of the requirements of this paragraph, whichever is later; and (2) 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's will only be entitled to remedies for the alleged unauthorized change other than those provided for in Sec. 64.1140(b)(1) of this part. No allegedly unauthorized carrier shall reinstate charges to a subscriber's bill pursuant to the provisions of this paragraph without first providing such subscriber with a reasonable opportunity to demonstrate that the requisite complaint was timely filed within the 30-day period described in this paragraph.

(d) If the relevant governmental agency determines after reasonable investigation that an unauthorized change, as defined by Sec. 64.1100(e) of this part, has occurred, an order shall be issued providing that the subscriber is entitled to absolution from the charges incurred during the first 30 days after the unauthorized carrier change occurred, and neither the authorized or unauthorized carrier may pursue any collection against the subscriber for those charges.

(e) If the subscriber has incurred charges for more than 30 days after the unauthorized carrier change, the unauthorized carrier must forward the billing information for such services to the authorized carrier, which may bill the subscriber for such services using either of the following means:

(1) The amount of the charge may be determined by a re-rating of the services provided based on what the authorized carrier would have charged the sub-

subscriber for the same services had an unauthorized change, as described in Sec. 64.1100(e), not occurred; or

(2) The amount of the charge may be determined using a 50% Proxy Rate as follows: Upon receipt of billing information from the unauthorized carrier, the authorized carrier may bill the subscriber for 50% of the rate the unauthorized carrier would have charged the subscriber for the services provided. However, the subscriber shall have the right to reject use of this 50% proxy method and require that the authorized carrier perform a re-rating of the services provided, as described in paragraph (e)(1) of this section.

(f) If the unauthorized carrier received payment from the subscriber for services provided after the first 30 days after the unauthorized change occurred, the obligations for payments and refunds provided for in Sec. 64.1170 of this part shall apply to those payments.

(g) If the relevant governmental agency determines after reasonable investigation that the carrier change was authorized, the carrier may re-bill the subscriber for charges incurred.

47 C.F.R. § 64.1170. Reimbursement Procedures Where the Subscriber Has Paid Charges. (a) The procedures in this subsection shall only apply after a subscriber has determined that an unauthorized change, as defined by Sec. 64.1100(e) of this part, has occurred and the subscriber has paid charges to an allegedly unauthorized carrier.

(b) If the relevant governmental agency determines after reasonable investigation that an unauthorized change, as defined by Sec. 64.1100(e) of this part, has occurred, it

shall issue an order directing the unauthorized carrier to forward to the authorized carrier the following, in addition to any appropriate state remedies:

(1) An amount equal to 150% of all charges paid by the subscriber to the unauthorized carrier; and

(2) Copies of any telephone bills issued from the unauthorized carrier to the subscriber.

This order shall be sent to the subscriber, the unauthorized carrier, and the authorized carrier.

(c) Within ten days of receipt of the amount provided for in paragraph (b)(1) of this section, the authorized carrier shall provide a refund or credit to the subscriber in the amount of 50% of all charges paid by the subscriber to the unauthorized carrier. The subscriber has the option of asking the authorized carrier to re-rate the unauthorized carrier's charges based on the rates of the authorized carrier and, on behalf of the subscriber, seek an additional refund from the unauthorized carrier, to the extent that the re-rated amount exceeds the 50% of all charges paid by the subscriber to the unauthorized carrier. The authorized carrier shall also send notice to the relevant governmental agency that it has given a refund or credit to the subscriber.

(d) If an authorized carrier incurs billing and collection expenses in collecting charges from the unauthorized carrier, the unauthorized carrier shall reimburse the authorized carrier for reasonable expenses.

(e) If the authorized carrier has not received payment from the unauthorized carrier as required by paragraph (c) of this section, the authorized carrier is not required to

provide any refund or credit to the subscriber. The authorized carrier must, within 45 days of receiving an order as described in paragraph (b) of this section, inform the subscriber and the relevant governmental agency that issued the order if the unauthorized carrier has failed to forward to it the appropriate charges, and also inform the subscriber of his or her right to pursue a claim against the unauthorized carrier for a refund of all charges paid to the unauthorized carrier.

(f) Where possible, the properly authorized carrier must reinstate the subscriber in any premium program in which that subscriber was enrolled prior to the unauthorized change, if the subscriber's participation in that program was terminated because of the unauthorized change. If the subscriber has paid charges to the unauthorized carrier, the properly authorized carrier shall also provide or restore to the subscriber any premiums to which the subscriber would have been entitled had the unauthorized change not occurred. The authorized carrier must comply with the requirements of this section regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the subscriber.

47 C.F.R. § 64.1180. Reporting Requirement. (a) *Applicability.* Each provider of telephone exchange and/or telephone toll service shall submit to the Commission via e-mail (slamming478@fcc.gov), U.S. Mail, or facsimile a slamming complaint report form identifying the number of slamming complaints received during the reporting period and other information as specified in subsection (b) of this section.

(b) *Contents of Report.* The report shall contain the following information:

(1) the information specified in subsection (a) of this section;

(2) the number of slamming complaints received during the reporting period that the carrier has investigated and found to be valid.

(3) the number of slamming complaints received during the reporting period, investigated or not, that the carrier has directly resolved with consumers;

(4) if the reporting carrier is a wireline or fixed wireless local exchange carrier providing service to end user subscribers, the name of each entity against which the slamming complaints received during the reporting period were directed;

(5) if the reporting carrier is a wireline or fixed wireless local exchange carrier providing service to end user subscribers, the number of slamming complaints received during the reporting period that were lodged against each entity identified in subsection (b)(4) of this section; and

(6) the total number of subscribers the reporting carrier is serving at the end of the relevant reporting period.

(c) *Semiannual Reporting Requirement.* Reporting shall commence on August 15, 2001, covering the effective date of this requirement, as announced in the Federal Register, through June 30, 2001. Reports filed on February 15, 2002 shall cover the period between July 1, 2001 and December 31, 2001. Thereafter, carriers subject to the reporting requirement pursuant to subsection (a) of this section shall submit semiannual slamming complaint reports on August 15 (covering January 1 through June 30) and on February 15 (covering July 1 through December 31).

47 C.F.R. § 64.1190. Preferred Carrier Freezes. (a) A preferred carrier freeze (or freeze) prevents a change in a subscriber's preferred carrier selection unless the

subscriber gives the carrier from whom the freeze was requested his or her express consent. All local exchange carriers who offer preferred carrier freezes must comply with the provisions of this section.

(b) All local exchange carriers who offer preferred carrier freezes shall offer freezes on a nondiscriminatory basis to all subscribers, regardless of the subscriber's carrier selections.

(c) Preferred carrier freeze procedures, including any solicitation, must clearly distinguish among telecommunications services (e.g., local exchange, intra-LATA/intrastate toll, interLATA/interstate toll, and international toll) subject to a preferred carrier freeze. The carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested.

(d) Solicitation and imposition of preferred carrier freezes.

(1) All carrier-provided solicitation and other materials regarding preferred carrier freezes must include:

(i) An explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a freeze;

(ii) A description of the specific procedures necessary to lift a preferred carrier freeze; an explanation that these steps are in addition to the Commission's verification rules in sections 64.1120 and 64.1130 for changing a subscriber's preferred carrier selections; and an explanation that the subscriber will be unable to make a change in carrier selection unless he or she lifts the freeze; and

(iii) An explanation of any charges associated with the preferred carrier freeze.

(2) No local exchange carrier shall implement a preferred carrier freeze unless the subscriber's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

(i) The local exchange carrier has obtained the subscriber's written or electronically signed authorization in a form that meets the requirements of Sec. 64.1190(d)(3); or

(ii) The local exchange carrier has obtained the subscriber's electronic authorization, placed from the telephone number(s) on which the preferred carrier freeze is to be imposed, to impose a preferred carrier freeze. The electronic authorization should confirm appropriate verification data (e.g., the subscriber's date of birth or social security number) and the information required in Sec. 64.1190(d)(3)(ii)(A)-(D). Telecommunications carriers electing to confirm preferred carrier freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier freeze request, including automatically recording the originating automatic numbering identification; or

(iii) An appropriately qualified independent third party has obtained the subscriber's oral authorization to submit the preferred carrier

freeze and confirmed the appropriate verification data (e.g., the subscriber's date of birth or social security number) and the information required in Sec. 64.1190(d)(3)(ii)(A)-(D). The independent third party must (1) not be owned, managed, or directly controlled by the carrier or the carrier's marketing agent; (2) must not have any financial incentive to confirm preferred carrier freeze requests for the carrier or the carrier's marketing agent; and (3) must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier freeze.

(3) Written authorization to impose a preferred carrier freeze. A local exchange carrier may accept a subscriber's written and signed authorization to impose a freeze on his or her preferred carrier selection. Written authorization that does not conform with this section is invalid and may not be used to impose a preferred carrier freeze.

(i) The written authorization shall comply with Sec. 64.1130(b), (c), and (h) of the Commission's rules concerning the form and content for letters of agency.

(ii) At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(A) The subscriber's billing name and address and the telephone number(s) to be covered by the preferred carrier freeze;

(B) The decision to place a preferred carrier freeze on the telephone number(s) and particular service(s). To the extent that a jurisdiction allows the imposition of preferred carrier freezes on additional preferred carrier selections (e.g., for local exchange, intraLATA/intrastate toll, interLATA/interstate toll service, and international toll), the authorization must contain separate statements regarding the particular selections to be frozen;

(C) That the subscriber understands that she or he will be unable to make a change in carrier selection unless she or he lifts the preferred carrier freeze; and

(D) That the subscriber understands that any preferred carrier freeze may involve a charge to the subscriber.

(e) Procedures for lifting preferred carrier freezes. All local exchange carriers who offer preferred carrier freezes must, at a minimum, offer subscribers the following procedures for lifting a preferred carrier freeze:

(1) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's written or electronically signed authorization stating her or his intent to lift a preferred carrier freeze; and

(2) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's oral authorization stating her or his intent to lift a preferred carrier freeze and must offer a mechanism that allows a submitting carrier to conduct a three-way conference call with the carrier administering the freeze and the subscriber in order to lift a freeze. When engaged in oral authorization to lift a preferred carrier freeze, the carrier administering the freeze shall confirm appropriate verification data (e.g., the subscriber's date of birth or social security number) and the subscriber's intent to lift the particular freeze.

47 C.F.R. § 64.1195. Registration Requirement. (a) *Applicability.* A telecommunications carrier that will provide interstate interexchange telecommunications service shall file the registration information described in subsection (b) of this section in accordance with the procedures described in subsections (c) and (g) of this section. Any telecommunications carrier already providing interstate interexchange telecommunications service on the effective date of these rules shall submit the relevant portion of its FCC Form 499-A in accordance with subsections (b) and (c).

(b) *Information Required for Purposes of Part 64.* A telecommunications carrier that is subject to the registration requirement pursuant to subsection (a) of this section shall provide the following information:

(1) the carrier's business name(s) and primary address;

(2) the names and business addresses of the carrier's chief executive officer, chairman, and president, or, in the event that a company does not have such executives, three similarly senior-level officials of the company;

(3) the carrier's regulatory contact and/or designated agent;

(4) all names that the carrier has used in the past; and

(5) the state(s) in which the carrier provides telecommunications service.

(c) *Submission of Registration.* A carrier that is subject to the registration requirement pursuant to subsection (a) of this section shall submit the information described in subsection (b) of this section in accordance with the Instructions to FCC Form 499-A. FCC Form 499-A must be submitted under oath and penalty of perjury.

(d) *Rejection of Registration.* The Commission may reject or suspend a carrier's registration for any of the reasons identified in subsections (e) or (f) of this section.

(e) *Revocation or Suspension of Operating Authority.* After notice and opportunity to respond, the Commission may revoke or suspend the authorization of a carrier to provide service if the carrier provides materially false or incomplete information in its FCC Form 499-A or otherwise fails to comply with subsections (a), (b), and (c) of this section.

(f) *Imposition of Fine.* After notice and opportunity to respond, the Commission may impose a fine on a carrier that is subject to the registration requirement pursuant to subsection (a) of this section if that carrier fails to submit an FCC Form 499-A in accordance with subsections (a), (b), and (c).

(g) *Changes in Information.* A carrier must notify the Commission of any changes to the information provided pursuant to subsection (b) of this section within no more than one week of the change. Carriers may satisfy this requirement by filing the relevant portion of FCC Form 499-A in accordance with the Instructions to such form.

(h) *Duty to Confirm Registration of Other Carriers.* The Commission shall make available to the public a comprehensive listing of registrants and the information that they have provided pursuant to subsection (b) of this section. A telecommunications carrier providing telecommunications service for resale shall have an affirmative duty to ascertain whether a potential carrier-customer (*i.e.*, reseller) that is subject to the registration requirement pursuant to subsection (a) of this section has filed an FCC Form 499-A with the Commission prior to offering telecommunications service to that carrier-customer. After notice and opportunity to respond, the Commission may impose a fine on a carrier for failure to confirm the registration status of a potential carrier-customer before providing that carrier-customer with service.

NOTE: While the rules set out above have been adopted by the Federal Communications Commission (FCC), they have not, to date, been officially published in the Code of Federal Regulations, which is a quarterly publication; nor has the FCC compiled a complete set of the rules in one document. For ease of reference, the text of the FCC's slamming rules has been assembled from the several FCC orders,

and errata, issued in this matter (CC Docket No. 94-129). Commentors are requested to notify the Commission if there are errors in this synthesis of the FCC's slamming rules.