4. Section 483.360 is amended by revising the introductory text to read as follows:

§ 483.360 Consultation with treatment team physician.

If a physician or other licensed practitioner permitted by the state and the facility to order restraint or seclusion orders the use of restraint or seclusion, that person must contact the resident's treatment team physician, unless the ordering physician is in fact the resident's treatment team physician. The person ordering the use of restraint or seclusion must—

* * * * *

5. Section 483.362 is amended by revising paragraphs (b) and (c) to read as follows:

§ 483.362 Monitoring of the resident in and immediately after restraint

* * * * *

(b) If the emergency safety situation continues beyond the time limit of the order for the use of restraint, a registered nurse or other licensed staff, such as a licensed practical nurse, must immediately contact the ordering physician or other licensed practitioner permitted by the state and the facility to order restraint or seclusion to receive further instructions.

(c) A physician, or other licensed practitioner permitted by the state and the facility to evaluate the resident's well-being and trained in the use of emergency safety interventions, must evaluate the resident's well-being immediately after the restraint is removed.

6. Amending section 483.364 by revising paragraphs (c) and (d) to read as follows:

§ 483.364 Monitoring of the resident in and immediately after seclusion

* * * * *

(c) If the emergency safety situation continues beyond the time limit of the order for the use of seclusion, a registered nurse or other licensed staff, such as a licensed practical nurse, must immediately contact the ordering physician or other licensed practitioner permitted by the state and the facility to order restraint or seclusion to receive further instructions.

(d) A physician, or other licensed practitioner permitted by the state and the facility to evaluate the resident's well-being and trained in the use of emergency safety interventions, must evaluate the resident's well-being immediately after the resident is removed from seclusion.

7. Section 483.374 is amended by adding paragraph (c) to read as follows:

§ 483.374 Facility reporting.

* * * * *

(c) *Reporting of deaths.* In addition to the reporting requirements contained in paragraph (b) of this section, facilities must report the death of any resident to the Health Care Financing Administration (HCFA) regional office.

(1) Staff must report the death of any resident to the HCFA regional office by no later than close of business the next business day after the resident's death.

(2) Staff must document in the resident's record that the death was reported to the HCFA regional office.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: May 17, 2001.

Michael McMullan,

Acting Deputy Administrator, Health Care Financing Administration.

Dated: May 17, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–13041 Filed 5–21–01; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket Nos. 00–257 and 94–129; FCC 01–153]

2000 Biennial Review—Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The streamlined procedures the Commission adopts here will replace the current, burdensome waiver process. The Commission's new procedures provide for an acquiring carrier to simply self-certify to the Commission, in advance of the transfer, that the carrier will follow the required procedures. This will protect the interests of the affected subscribers by giving them adequate advance notice of the carrier change and ensuring that the change will not cause them financial harm.

DATES: This document contains information collection requirements that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of this final rule.

FOR FURTHER INFORMATION CONTACT: Michele Walters, Associate Division Chief, or Dana Walton-Bradford, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order in CC Docket No. 00–257 and Fourth Report and Order in CC Docket No. 94–129 released on May 15, 2001. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

I. Introduction

1. As part of our biennial regulatory review effort, we are amending our carrier change rules to provide a streamlined process for compliance with section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act) in situations involving the carrier-to-carrier sale or transfer of subscriber bases. The streamlined procedures we adopt in this Order will replace the current, more burdensome waiver process. Our new procedures provide for an acquiring carrier to simply self-certify to the Commission, in advance of the transfer, that the carrier will follow the required procedures. This will protect the interests of the affected subscribers, consistent with section 258 and our rules, by giving them adequate advance notice of the carrier change and ensuring that the change will not cause them financial harm.

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

II. Discussion

A. Overview

9. A telecommunications carrier currently must file a request for waiver of our carrier change authorization and verification rules in order to acquire part or all of a subscriber base from another carrier without obtaining individual subscriber consent. We received 51 such requests for waiver in 2000, and we received 12 more in the first four months of 2001. The preparation of these waiver petitions imposes burdens both on carriers and the Commission. These burdens are not limited to the initial filing. Often carriers consult with Commission staff prior to their initial waiver request, and, on occasion, carriers supplement that filing, a time-consuming process. Moreover, carriers have no way of knowing when they will receive a ruling on their waiver requests. Although some carriers have received grants of emergency petitions in as little as one week, it is more typical for carriers to wait at least a month for a ruling because of the heavy volume of these filings, and several petitioners have experienced much longer delays. Incorporating a streamlined certification and notification process into the current rules will significantly reduce the burden on carrier and Commission resources while still protecting consumers' interests. Indeed, all commenters support our proposal to amend our rules to address the sale or transfer of subscriber bases. All commenters also endorse our stated goals: to reduce regulatory burdens, and thereby produce greater certainty in the marketplace, while providing adequate consumer protection consistent with section 258 and our carrier change rules. As discussed in greater detail, the streamlined process for the sale or transfer of subscriber bases adopted in this Order achieves both of these goals.

10. We amend § 64.1120 of our rules to establish a streamlined self-certification process for the carrier-to-carrier sale or transfer of subscriber bases, thereby eliminating the need to obtain a waiver of Commission rules prior to closing a transaction. This process is designed to ensure that the affected subscribers have adequate information about the carrier change in advance, that they are not financially harmed by the change, and that they will experience a seamless transition of service from their original carrier to the acquiring carrier. This process also will provide the Commission with information it needs to fulfill its consumer protection obligations. Under the revised rules, carriers need not obtain individual authorization and verification for carrier changes associated with the carrier-to-carrier sale or transfer of a subscriber base, provided that, not later than 30 days before the planned carrier change, the acquiring carrier notifies the Commission, in writing, of its intention to acquire the subscriber base and certifies that it will comply with the required procedures, including the provision of advance written notice to all affected subscribers.

B. Notice to the Commission

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

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

13. A telecommunications carrier must comply with this streamlined process whenever it acquires subscribers from another carrier through a sale or transfer. For example, if a carrier plans to acquire the subscriber base of another carrier owned by the same parent company, and if, after the transfer, the subscribers' preferred carrier will have a different name, contact number, billing address, and set of rates, terms, and conditions, the acquiring carrier must comply with the procedures adopted in this Order. However, we note that, when a carrier is simply undergoing a name change, it is not in fact acquiring customers through a sale or transfer, and therefore it need not comply with these procedures. As another example, a change in corporate structure that is invisible to the affected subscribers does not constitute a sale or transfer for purposes of section 258 that implicates this streamlined process.

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

C. Notice to the Affected Subscribers

15. We conclude that carriers acquiring subscribers should provide those subscribers with reasonable advance notice of a carrier change associated with a sale or transfer. We agree with those commenters that support our proposed 30-day advance notice period. We believe that, if an affected subscriber receives notice of the transaction at least 30 days before it occurs, the subscriber will be able to make an informed decision as to whether to accept the acquiring carrier as his or her preferred carrier. We are

not persuaded that a 30-day notice requirement will be burdensome and costly to the carriers involved. Based on our extensive experience with waiver petitions related to subscriber sales or transfers, we believe that 30 days is a reasonable notice period to provide subscribers with sufficient opportunity to make an informed decision without creating a burdensome delay for the carriers involved.

16. We conclude that the carrier acquiring a subscriber base should be responsible for notifying the affected subscribers. We note that, in the absence of a waiver or the streamlined process adopted in this Order, the acquiring carrier would be required by the Commission's carrier change authorization and verification rules, and by section 258, to obtain each subscriber's express authorization and verification for the carrier change. We do not agree with SBC that the acquiring carrier will lack access to the necessary subscriber list information. We believe that, in most cases, sufficient subscriber list information will be available to the acquiring carrier and that it is unlikely that a carrier would consummate a purchase of a subscriber base without having immediate access to the subscriber list upon the closing of the purchase agreement. We are confident that carriers can, through normal business negotiations, make arrangements for the acquiring carrier to obtain the necessary information.

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

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

19. Because section 255 and the Commission's existing rules impose disability accessibility requirements on carriers, we decline to impose additional requirements regarding advance subscriber notices sent to blind or visually-impaired consumers but will incorporate by reference the existing requirements in our amendment to § 64.1120. We believe that our existing rules are sufficient to ensure that the requirements of section 255 are met. We will monitor the situation and, if necessary, will take further action, as appropriate. We also believe that carriers should have the flexibility to meet the needs of the disabled community consistent with statutory and Commission requirements.

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

21. We have carefully evaluated the individual elements that comprise the advance subscriber notice under our streamlined process. We have determined that these requirements are necessary to ensure that the affected subscribers have adequate information about the carrier change, in advance, that they will not suffer financial harm from the involuntary change, and that they will experience a smooth transition to the new service provider. Not later than 30 days before the planned carrier change, the acquiring carrier must give each affected subscriber written notice of the date on which it will become the subscriber's new provider of telecommunications service and of other essential information. As discussed more fully, the advance subscriber notice must disclose: (1) The rates, terms, and conditions of the service(s) to be provided by the acquiring carrier; (2) the fact that the acquiring carrier will be responsible for any carrier change charges associated with the transaction; (3) the subscriber's right to select a different preferred carrier, if an alternative carrier is available; (4) a toll-free customer service telephone number for inquiries about the transfer; (5) the fact that all subscribers receiving the notice, including those who have arranged preferred carrier freezes through their local service providers, will be transferred to the new carrier if they do not select a different preferred carrier before the transfer date; and (6) whether the acquiring carrier will be responsible for resolving outstanding complaints against the selling or transferring carrier.

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

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

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

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

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

25. We conclude that it is appropriate, and consistent with section 258, to require the acquiring carrier to be responsible for any carrier change charges associated with the transaction. We believe that, because carrier changes associated with a carrier-to-carrier sale or transfer are involuntary, subscribers should not bear the burden of the cost of changing service providers. Moreover, we believe that the acquiring carrier is in the best position to cover carrier change charges because it has the billing relationship with the customer after the transfer. We modify slightly our proposal in the *Third Further Notice,* 66 FR 8093, January 29, 2001, to require the advance subscriber notice to state that no carrier charges will be imposed as a result of the transaction because we recognize that some acquiring carriers may not be able to prevent the assessment of a carrier change charge. We recognize that acquiring carriers may need the flexibility to credit or reimburse affected subscribers for such charges, if such charges are imposed outside of the acquiring carrier's control. Our amended rules require the acquiring carrier to take responsibility for any carrier change charges associated with the transaction and to make this fact clear in the advance subscriber notice.

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

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

4. Toll-Free Customer Service Telephone Number

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

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

28. We will require the acquiring carrier to make clear in the advance subscriber notice that all subscribers receiving the notice, including those who have arranged preferred carrier freezes through their local service providers on the service(s) involved in the transfer, will be transferred to the new carrier if they do not select a different preferred carrier before the transfer date. We will also require the acquiring carrier to inform subscribers that existing preferred carrier freezes on the service(s) involved in the transfer will be lifted and that, if they would like to have freeze protection after the transfer, they must contact their local service providers to obtain this service. Section 64.1190 of our rules permits local service providers to offer their subscribers the option of requesting a preferred carrier freeze, an additional measure of protection against unauthorized carrier changes that is consistent with section 258. With such a freeze in place, the subscriber is assured that his or her preferred carrier will not be changed without the subscriber's express consent. Under the circumstances involved in the sale or transfer of a subscriber base, however, a subscriber with a freeze could be left without presubscribed service when the selling or transferring carrier ceases to provide service, if that customer failed to give consent and was not automatically switched to the acquiring carrier. We believe that, under such circumstances, it is preferable, and more consistent with section 258, to permit the transfer of such a subscriber to the acquiring carrier, after adequate advance notice, rather than risk having the subscriber lose presubscribed service altogether. In our experience, there has occasionally been some confusion regarding the status of ''frozen'' subscribers who are part of a subscriber base being acquired by another carrier pursuant to a sale or transfer. We believe that it is appropriate to ensure that subscribers with preferred carrier freezes in place do not lose presubscribed service even if they fail to respond to notice of an impending carrier change. Under the procedures adopted in this Order, ''frozen'' subscribers who prefer not to receive service from the acquiring carrier will have sufficient notice of their ability to select another provider, in a manner consistent with section 258. In addition, ''frozen'' subscribers will have notice of the need to contact their local service providers if they wish to continue to have preferred carrier freeze protection for the service(s) involved in the transfer after the transfer occurs.

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

29. Finally, we conclude that the acquiring carrier must include in the advance subscriber notice whether it will be assuming responsibility for handling the outstanding complaints that the affected subscribers may have against the selling or transferring carrier. As part of the transaction, an acquiring carrier may agree to assume

responsibility for outstanding complaints against the selling or transferring carrier. In order to provide maximum information to affected subscribers, we believe it is appropriate to require the acquiring carrier to provide information about complaint administration to the affected subscribers if the acquiring carrier is assuming responsibility for such complaints.

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

IV. Procedural Matters

A. Final Regulatory Flexibility Analysis

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

1. Need for and Objectives of This Action

32. Section 258 of the Act makes it unlawful for any telecommunications carrier ''to submit or execute a change in a subscriber's selection of a provider of telephone exchange services or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.'' In the *Section 258 Order,* 64 FR 7763, February 16, 1999, the Commission established a comprehensive framework of rules to implement section 258 and strengthen its existing anti-slamming rules. Since the release of the *Section 258 Order,* the Commission has received many requests for waiver of its carrier change and authorization rules as a result of carriers selling or transferring their subscriber bases to other carriers, and the carriers desire not to get authorization from each affected subscriber in order to transition in a seamless, efficient manner. The objectives of the modified rules adopted in this Order are to address these types of transactions and provide for a streamlined approach that would meet the consumer protection goals of section 258 and also permit carriers to efficiently transfer customers without the need for Commission approval of a waiver petition.

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

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

34. *Difference in Advance Notice to Affected Subscribers Based on Types of Service Provided and/or Size of Carrier.* The Commission specifically sought comment on whether the subscriber advance notice requirement should differ in some manner based on the type of service being provided, such as local, intraLATA toll, or interLATA toll service, or upon the size of the carrier(s) involved. All commenters on this issue agree that the advance notice requirement should be the same for all carriers. The Commission determined that, because a change in presubscribed service provider affects all subscribers similarly, regardless of the service type or the size of the original or acquiring carrier, there is no basis for varying the notice requirements.

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

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

36. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' is defined as a ''small business concern'' under section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 governmental entities in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities. According to SBA reporting data, there were 4.44 million small business firms nationwide in 1992. We further describe and estimate the number of small entity licensees and regulatees that may be affected by the rules.

37. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the

number of commercial wireless entities, appears to be data the Commission publishes in its *Trends in Telephone Service* report. In a recent news release, the Commission indicated that there are 4,822 interstate carriers. These carriers include, *inter alia,* local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

38. The SBA has defined establishments engaged in providing ''Radiotelephone Communications'' and ''Telephone Communications, Except Radiotelephone'' to be small businesses when they have no more than 1,500 employees. We discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

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

40. *Total Number of Telephone Companies Affected.* The U.S. Bureau of the Census (''Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that 3,497 or fewer telephone service firms are small entity telephone service firms that may be affected by the new rules.

41. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that 2,295 or fewer small telephone communications companies other than radiotelephone companies are small entities that may be affected by the new rules.

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

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

44. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Trends in Telephone Service* data, 349 CAP/CLECs carriers and 60 other LECs reported that they were engaged in the provision of competitive local exchange services. We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 349 or fewer small entity CAPs and 60 other LECs that may be affected by the new rules.

45. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Trends in Telephone Service* data, 21 carriers reported that they were engaged in the provision of operator services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at

this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 21 or fewer small entity operator service providers that may be affected by the new rules.

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

47. *Resellers (including debit card providers).* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies. According to the most recent *Trends in Telephone Service* data, 454 toll and 87 local entities reported that they were engaged in the resale of telephone service. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 454 or fewer small toll entity resellers and 87 small local entity resellers that may be affected by the new rules.

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

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

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

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

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

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

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

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

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

55. *Rates, Terms, and Conditions of the New Service Provider.* The Commission has considered whether to require the acquiring carrier to continue to charge affected subscribers the same rates as those charged by the selling or transferring carrier for a specified period after the transfer. The Commission has determined that such a requirement is not necessary because the information the affected subscribers will receive in the 30-day advance subscriber notice about the acquiring carrier's rates, terms, and conditions for the telecommunications services at issue will enable them to make an informed decision about the rates they pay for these services.

6. Report to Congress

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

B. Paperwork Reduction Act

57. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. This document contains information collection requirements that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of that section.

VI. Ordering Clauses

58. Pursuant to sections 1, 4, 201–205, 255, and 258 of the Communications Act of 1934, as amended, the policies, rules, and requirements set forth herein are adopted. Part 64 is amended as set forth.

59. This document contains information collection requirements that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of that section.

60. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Amended

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 201, 202, 205, 218–220, and 332 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

1. Section 64.1120 is amended by adding paragraph (e) to read as follows:

§ 64.1120 Verification of orders for telecommunications service.

* * * * *

(e) A telecommunications carrier may acquire, through a sale or transfer, either part or all of another telecommunications carrier's subscriber base without obtaining each subscriber's authorization and verification in accordance with § 64.1120(c), provided that the acquiring carrier complies with the following streamlined procedures. A telecommunications carrier may not use these streamlined procedures for any fraudulent purpose, including any attempt to avoid liability for violations under part 64, subpart K of the Commission rules.

(1) No later than 30 days before the planned transfer of the affected subscribers from the selling or transferring carrier to the acquiring carrier, the acquiring carrier shall file with the Commission's Office of the Secretary a letter notification in CC Docket No. 00–257 providing the names of the parties to the transaction, the types of telecommunications services to be provided to the affected subscribers, and the date of the transfer of the subscriber base to the acquiring carrier. In the letter notification, the acquiring carrier also shall certify compliance with the requirement to provide advance subscriber notice in accordance with § 64.1120(e)(3), with the obligations specified in that notice, and with other statutory and Commission requirements that apply to this streamlined process. In addition, the acquiring carrier shall attach a copy of the notice sent to the affected subscribers.

(2) If, subsequent to the filing of the letter notification with the Commission required by § 64.1120(e)(1), any material changes to the required information should develop, the acquiring carrier shall file written notification of these changes with the Commission no more than 10 days after the transfer date announced in the prior notification. The Commission reserves the right to require the acquiring carrier to send an additional notice to the affected subscribers regarding such material changes.

(3) Not later than 30 days before the transfer of the affected subscribers from the selling or transferring carrier to the acquiring carrier, the acquiring carrier shall provide written notice to each affected subscriber of the information

specified. The acquiring carrier is required to fulfill the obligations set forth in the advance subscriber notice. The advance subscriber notice shall be provided in a manner consistent with 47 U.S.C. 255 and the Commission's rules regarding accessibility to blind and visually-impaired consumers, 47 CFR 6.3, 6.5 of this chapter. The following information must be included in the advance subscriber notice:

(i) The date on which the acquiring carrier will become the subscriber's new provider of telecommunications service,

(ii) The rates, terms, and conditions of the service(s) to be provided by the acquiring carrier upon the subscriber's transfer to the acquiring carrier, and the means by which the acquiring carrier will notify the subscriber of any change(s) to these rates, terms, and conditions.

(iii) The acquiring carrier will be responsible for any carrier change charges associated with the transfer,

(iv) The subscriber's right to select a different preferred carrier for the telecommunications service(s) at issue, if an alternative carrier is available,

(v) All subscribers receiving the notice, even those who have arranged preferred carrier freezes through their local service providers on the service(s) involved in the transfer, will be transferred to the acquiring carrier, unless they have selected a different carrier before the transfer date; existing preferred carrier freezes on the service(s) involved in the transfer will be lifted; and the subscribers must contact their local service providers to arrange a new freeze.

(vi) Whether the acquiring carrier will be responsible for handling any complaints filed, or otherwise raised, prior to or during the transfer against the selling or transferring carrier, and

(vii) The toll-free customer service telephone number of the acquiring carrier.

[FR Doc. 01–12757 Filed 5–21–01; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AF30

Endangered and Threatened Wildlife and Plants; Final Special Regulations for the Preble's Meadow Jumping Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Preble's meadow jumping mouse (*Zapus hudsonius preblei*) was listed as a threatened species under the Endangered Species Act (Act) of 1973, as amended, on May 13, 1998 (63 FR 26517). At the time the Preble's was listed, a special rule for the conservation of the Preble's was not promulgated; therefore, virtually all of the restrictions under section 9 of the Act became applicable to the species. A proposed special rule was published in the **Federal Register** on December 3, 1998 (63 FR 66777). This special rule is finalized in a modified form that includes some but not all of the provisions previously proposed. The rule establishes protective regulations pursuant to section 9 of the Act. Its duration is 36 months, during which time more comprehensive recovery approaches will be pursued.

DATES: This rule is effective May 22, 2001 through May 22, 2004.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service's Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: In Colorado—contact LeRoy Carlson, at the above address or telephone 303/275–2370. In Wyoming—contact Mike Long, Field Supervisor, Cheyenne, Wyoming, at telephone 307/772–2374.

SUPPLEMENTARY INFORMATION:

Background

The Preble's meadow jumping mouse (*Zapus hudsonius preblei*), a subspecies of the meadow jumping mouse (*Zapus hudsonius*), occurs only along the Rocky Mountain-Great Plains Interface (the Front Range) of eastern Colorado and Southeastern Wyoming. The final rule listing the Preble's as a threatened species under the Act was published in the **Federal Register** on May 13, 1998 (63 FR 26517). Section 4(d) of the Act (16 U.S.C. 1533 (d)) provides that, whenever a species is listed as a threatened species, the Secretary of the Department of the Interior will issue regulations deemed necessary and advisable to provide for the conservation of the species. This is done in either of two ways.

First, the Act authorizes imposition of take prohibitions to endangered species. We, the Fish and Wildlife Service, have issued regulations (50 CFR 17.31) that generally apply to threatened wildlife virtually all the prohibitions that section 9 of the Act (16 U.S.C. 1538) establishes with respect to endangered wildlife. These universal prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to ''take'' any listed wildlife species, i.e., to harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect any threatened or endangered species or to attempt to engage in any such conduct (16 U.S.C. 1532 (19)).

Second, our regulations for threatened wildlife also provide that a ''special rule'' under section 4(d) of the Act can be tailored for a particular threatened species. In that case the general regulations applying most section 9 prohibitions do not apply to that species, and the special rule contains the prohibitions (and exemptions) necessary and appropriate to conserve that species.

At the time the Preble's was listed, we did not promulgate a special section 4(d) rule; therefore, the section 9 prohibitions, including the take prohibitions, became applicable to the species. On December 3, 1998, a proposed special rule identifying specific circumstances under which section 9 prohibitions would not apply to the Preble's was published in the **Federal Register** (63 FR 66777). This proposal initiated a 60-day public comment period, which closed February 1, 1999. The public comment period was extended for an additional 45 days through March 5, 1999 (64 FR 4607), and was reopened from March 16 through April 30, 1999 (64 FR 12924).

Briefly, the proposed special rule provided exemptions from section 9 prohibitions for—(1) all activities outside of specified Mouse Protection Areas (areas where Preble's had been documented) and Potential Mouse Protection Areas (areas judged to have high potential to support Preble's); (2) rodent control, ongoing agriculture, maintenance and replacement of existing landscaping, and existing uses of water anywhere within the Preble's range; and (3) under specified standards, alteration of up to 4 percent of Mouse Protection Areas and Potential Mouse Protection Areas as approved by State or local government. After review of comments received, this proposed special rule has been finalized in a modified form, adopting only the second exemption listed above for rodent control, ongoing agriculture, maintenance and replacement of existing landscaping, and existing uses of water anywhere within the Preble's range.

We anticipate that this rule will prohibit actions that threaten the Preble's to the extent necessary to provide for the conservation of the