Approved: 4-5-96
Date

MINUTES OF THE HOUSE SELECT COMMITTEE ON TELECOMMUNICATIONS.

The meeting was called to order by Chairperson Doug Lawrence at 1:30 p.m. on February 21, 1996 in Room 313-S of the Capitol.

All members were present except:

Committee staff present: Lynne Holt, Legislative Research Department
Bob Nugent, Revisor of Statutes
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Representative Carol Dawson

Representative Fred Gatlin

Bill Drexel, General Attorney - Southwestern Bell

Randy Debenham, Senior Telecommunications Analyst -KCC

Mike Reecht, Director of State Government Affairs - AT&T

Walker Hendrix, Citizens' Utility Ratepayer Board

Karen Flaming, Chief Telecommunications Analyst - KCC

Eva Powers, Local Counsel & Leg. Rep. - MCI

Others attending: See attached list

Chairman Doug Lawrence called the meeting to order at 1:30 p.m. He reminded the committee of the room change for tomorrow's meeting, which will be in Room 522-S and that **HB 3056** has been added to the agenda, the Franchise bill, a compromise involving Sprint and the League of Municipalities. Also **HB 5036** has been removed from the schedule and **SCR 1618** has been added, which is the Senate version of that bill. He called attention to a handout, for committee members, from Lynne Holt, Legislative Research, Telecommunications Issues - Access to the Internet. (See Attachment 1)

The Chairman asked Bob Nugent, Revisor of Statutes, to explain **HB 2963**.

The Chairman opened public hearing on **HB 2963**.

HB 2963: **An Act concerning telecommunications; relating to the practice of slamming.**

Chairman Lawrence welcomed Representative Carol Dawson to the committee. Rep. Dawson spoke in support of **HB 2963** because of concerns that had been voiced to her by constituents. She feels a signed document should be required to change telephone service. (See Attachment 2) Rep. Dawson shared a story with the committee of one of her constituents, it seems he received a phone call at his place of business on a very busy day, the caller asked if he was tired of having his long distance AT&T calls on a separate billing and he replied that he was. The caller then asked if he would like to have them all on one bill and he said he would. He failed to ask if he would keep his AT&T long distance, another carrier was never mentioned. He later found out that he had been "slammed". She went on to say that the constituent was her husband and he was not very happy.

The Chairman welcomed Representative Fred Gatlin. Rep. Gatlin testified in favor of **HB 2963.** He lives and owns a small business in Atwood, Kansas, and is very annoyed by telephone marketers interrupting his

work day, evenings and/or meals wanting him to change long distance carriers. He feels as we move toward competition within local exchanges it is important to regulate the unapproved changing of long distance and potentially local exchange carriers. (See Attachment 3)

The Chairman introduced Bill Drexel, General Attorney, SW Bell. Mr. Drexel testified in support of **HB 2963**, on behalf of Southwestern Bell. He feels this bill is an important safe guard as the market is opened up to competition, that the Federal legislation applies to the long distance side but this bill will apply to the local side as well. He feels the Commission should be allowed to address issues that may not be compatible between Federal and State rules.

The Chair recognized Randy Debenham, Senior Telecommunications Analyst, KCC. Mr Debenham testified that the KCC staff supports this bill but has a few recommendations which it detailed in the testimony. (See Attachment 4)

The Chair recognized Mike Reecht, Director of State Government Affairs, AT&T. Mr. Reecht testified against **HB 2963**, he states AT&T opposes the practice of slamming and are not opposed to reasonable rules and regulations to control these changes. However, it is AT&T's position that the FCC has adequately addressed the problem and the KCC already has the ability to enforce rules and regulations against slamming. (See Attachment 5) Mr. Reecht gave the committee members three documents from the FCC. (See Attachments 6, , 7 and 8)

Chairman Lawrence opened public hearing on **HB 3030.**

HB 3030: An Act concerning telecommunications services; relating to dial-up access to on-line or internet providers.

The Chairman asked Bob Nugent, Revisor of Statutes to explain **HB 3030.**

The Chair welcomed Walker Hendrix, Citizens' Utility Ratepayer Board. Mr. Hendrix spoke in favor of **HB 3030**, however, he testified that CURB supports a plan that offers rural consumers unlimited Internet use at more affordable rates than those proposed in **HB 3030** and promotes competition among local and long distance carriers. (See Attachment 9)

The Chair introduced Bill Drexel, General Attorney, SW Bell, Mr. Drexel addressed the committee in support of **HB 3030** in providing affordable Internet access to all Kansans and believes it is a step in the right direction in establishing a public policy in the state in that regard.

The Chairman welcomed Karen Flaming, KCC. Ms. Flaming testified on **HB 3030**, The Commission staff does not oppose this proposed legislation but does have an area of concern. (See Attachment 10)

Chairman Lawrence welcomed Eva Powers, MCI. She testified on behalf of MCI and believes **HB 3030** would allow the KCC to approve flat rated Internet access. MCI is sympathetic to the need for low cost Internet access for Internet users. (See Attachment 11)

The Chairman announced that due to some technical questions in **HB 3030**, that need some discussion, he is creating a subcommittee for next week. He appointed Representatives Carl Holmes, Carol Beggs and Laura McClure to sit on this subcommittee and have a report back by Monday, March 4. A reminder that tomorrow we are hearing **HB 2763**, relating to the franchising authority, also discussion on **SCR 1618**, the Senate version of the vision statement. Also a Fiscal Note for **HB 3030** was distributed, this bill would require the KCC to permit all local exchange carriers and long distance carriers to provide dial-up access to an on-line information or internet provider for a flat monthly fee.

The meeting adjourned at 3:10

The next meeting is scheduled for February 22, 1996.

HOUSE SELECT COMMITTEE ON TELECOMMUNICATIONS COMMITTEE GUEST LIST

DATE: 2-21-96

NAME	REPRESENTING
[illegible] Hinson	KASB
Randy Hildenbrand	KCC
[illegible] Fleming	KCC
Glenda Cafer	KCC
Eva Powers	MCI
Uwyna Starr	AT&T
Mike Rouse	AT+T
Bill Brackel	SWBT
BILL BLAST	SWBT
George Barbee	RTMC
JENNY KOCH	SW BELL
Debbie Snow	CWA
Dawn Beem-Hendricks	CWA
Susan DeMars	CWA
Henry Bluke	CWA
Debra Peterson	Sprint
Rob Hodges	KTA
John Reinhart	KTA
Cindi Gallagher	SWBT

HOUSE SELECT COMMITTEE ON TELECOMMUNICATIONS COMMITTEE GUEST LIST

DATE: 2-21-96

NAME	REPRESENTING
Doug Smith	SITA

House Sel. Comm. Telecomm.
2-21-1996
Attachment 1

TELECOMMUNICATIONS ISSUES – ACCESS TO THE INTERNET

Issue	AT&T (Multimedia Hyperion and MCI concur)	Sprint/United	Kansas Cable Television Association	Class Communications	Kansas Telecommunication Coalition
I. What is the problem? A. From the perspective of many rural consumers in Kansas, toll rates are too high to access the Internet.					
II. Do you agree with the statement of the problem? If you disagree, please provide alternative language.	No. The problem, if it is determined that one exists, is that there is not ready affordable access to the Internet for all Kansans. Using today's technology, accessing the Internet typically requires a personal computer (PC), a modem and a subscription to an Internet Service Provider (ISP). Consequently there are multiple obstacles for low-income Kansans, including urban and rural consumers. Focusing only on the toll charges paid by rural Kansans fails to address the fundamental problem.	Sprint/United does not agree with the statement of the problem. The issue is not the amount of the toll rates, but rather the volume of the toll charges that rural Internet users pay. Heavy Internet users may have very large toll bills. This does not necessarily mean that the toll rates are too high to access the Internet, but rather Internet users many times use the phone lines for an extended period of time, which if the call to access the Internet is a toll call, will dramatically increase the amount the customer pays in toll charges. **Alternative language could be:** From the perspective of many rural consumers in Kansas, toll services are not appropriate to access the Internet.	Because of the newness of Internet services, the cable television industry is not certain that a definable set of problems has yet surfaced. We think a laudable goal of the telecommunications industry in general would be to provide affordable Internet access to as many Kansas residences, businesses, schools and government offices as possible. This involves not only toll rates but provision of equipment to access the Internet and also payment of Internet provider charges of various kinds.		A more appropriate statement of the problem would be: "When Internet Service Providers are not located in rural communities, the cost to access the Internet, depending on usage, can be significant".

Issue	AT&T (Multimedia Hyperion and MCI concur)	Sprint/United	Kansas Cable Television Association	Class Communications	Kansas Telecommunication Coalition
III. What is the policy objective? A. Access to an Internet provider at a reasonable price for residential, business, governmental, and educational use throughout the state. (Taken from proposed vision statement of Telecommunications Strategic Planning Committee.)					
IV. Do you agree with stated policy objective? If you disagree, please provide alternative language.	The policy objective should be two-fold. First, there should be a determination whether access to the Internet has become such a fundamental need to society to warrant special attention at this time. If it is determined that it is, then the policy objective should be to maximize Internet access for all Kansans, not just for rural Kansans.	Sprint/United agrees with the stated policy objective.	The cable television industry agrees with the stated policy objective.		Yes.
V. What are the strategies?	The most effective way to ensure the provision of efficient and sufficient service to the Internet or	Take no action and allow Internet Service Providers to provide service locally throughout the state as	At the present time, the Kansas cable television industry recommends no formal action be taken.	The Legislature should direct the Kansas Corporation Commission (KCC) to develop a temporary	Local Exchange Companies (LECs) and Interexchange Carriers (IXCs) should be encour-

Issue	AT&T (Multimedia Hyperion and MCI concur)	Sprint/United	Kansas Cable Television Association	Class Communications	Kansas Telecommunication Coalition
	other forms of communications is the establishment of a fully competitive marketplace. The needs of all customers can best be met in an environment where multiple providers are striving to develop innovative, efficient services to meet their needs. Competition will drive prices of Internet access, as well, as other services, toward cost. The solution for the Internet problem is to reduce the price of access to the Internet to a cost basis. By reducing this access, long distance rates will greatly reduce, thus making the cost of Internet access affordable. Today, the cost of access approximates $.01 per minute. The rate charged by local exchange companies for access varies from $.10 per minute to more than $ .42 per minute. The Kansas Corporation Commission's (KCC's) competition order of May 5, 1995, provides a mechanism for the development of such pricing principles.	demand warrants. Or, on the other hand, allow local exchange carriers or interexchange carriers to propose flat-rate plans to access Internet Service Providers based on customer demand. This requires no regulatory or legislative action other than approval of the Carrier-proposed plans by the Commission.	We believe Internet access is an integral part of a modern telecommunications system. It can best be provided at reasonable and affordable rates in a competitive environment. Because of its newness and the fact that people are still learning about the Internet and deciding whether it is a service they might use, we think the only regulation needed at this time is to have the Kansas Corporation Commission monitor developments and make sure Internet access is developing in a competitively neutral way and in the best interests of the consuming public. The cable industry is aware of at least one situation wherein a telecommunications provider is intending to provide Internet access to schools and libraries at discounted prices and offer Internet access to residences and businesses for a flat monthly fee. The fee would provide local access to the Internet, no time limita-	toll discount plant that will provide residential and nonprofit public telecommunications users discounted toll rates: 1. These rates should be set at a flat fee of somewhere around $15 per month with the exact amount to be determined by the KCC. 2. The KCC should be directed to establish this fee structure within 6 months of passage of legislative action. 3. The Legislature should direct the KCC to encourage Cable TV operators to provide Internet service by allowing participation in the Kansas Universal Service Fund (KUSF). 4. The LECs should receive a flat fee from KUSF for each Internet subscriber served. The fee should be different for each class of	aged to provide competitive service plans. Southwestern Bell has proposed a plan available to all its Kansas toll customers (including those that reside in independent telephone company service areas) which allows unlimited calling to another number in the LATA for $15 a month. The plan will allow Kansas customers to meet their personal calling needs, including Internet usage. A growing number of independent local telephone companies in smaller communities, individually or in conjunction with KinNet, are offering local access to the Internet. Additionally, non-telephone company providers of Internet access are appearing in nonmetropolitan areas of the state. The smaller telephone companies support extension of reasonably priced Internet access in their service areas; however, due to the high minute usage typical to

Issue	AT&T (Multimedia Hyperion and MCI concur)	Sprint/United	Kansas Cable Television Association	Class Communications	Kansas Telecommunication Coalition
	However, if it is decided that widespread access to the Internet should be public policy now, then consideration should be given to a solution that provides sufficient public funding to community based institutions such as schools, libraries and community centers, so that these institutions can purchase Internet access and make it available to all who wish to use it. In this way, all Kansans would have access to the Internet without the expense of purchasing computer equipment, software, on-line access and potential toll charges.		tions or measurements for usage and no long distance tolls. We think that as time goes by we will see other innovative means to bring Internet services to the public and there needs to be time allowed for such experimentation and testing.	subscriber, *e.g.*, residential, school, library, etc.	the Internet and the comparatively small number of total company minutes of use, local Internet access has a disproportionate and negative effect on separations and telephone company revenues. Separate regulatory treatment of Internet access minutes, excluding those minutes from the separations process, would tend to alleviate the negative effect on small telephone companies resulting from expanded availability of reasonably priced Internet access.

STATE OF KANSAS

CAROL DAWSON
REPRESENTATIVE, 110TH DISTRICT
458 EAST THIRD
RUSSELL, KANSAS 67665

STATE CAPITOL
RM 171-W
TOPEKA, KANSAS 66612-1504
913-296-7637

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIRMAN: GOVERNMENTAL ORGANIZATION AND ELECTIONS
MEMBER: FINANCIAL INSTITUTIONS AND INSURANCE
TRANSPORTATION
JOINT COMMITTEE OF HOUSE AND SENATE: ADMINISTRATIVE RULES AND REGULATIONS

TO: Doug Lawrence, Chairman
Select Committee on Telecommunications
FROM: Rep. Carol Dawson
RE: HB 2963
DATE: February 21, 1996

Mr. Chairman, members of the committee;

Thank you for allowing me to speak in support of HB 2963. Because of concerns that have been voiced by my constituents this last week, I feel it is important to have a signed document. I have a story to relate to the committee.

Thank you for allowing me to testify today.

House sel/comm. Telecomm.
2-21-1996
Attachment 2

STATE OF KANSAS

FRED GATLIN
REPRESENTATIVE, 120TH DISTRICT
CHEYENNE, RAWLINS, DECATUR,
NORTON, WESTERN PHILLIPS
610 MAIN
ATWOOD, KANSAS 67730

TOPEKA

COMMITTEE ASSIGNMENTS
MEMBER: APPROPRIATIONS
SUBCOMMITTEES:
STATE HOSPITALS AND GENERAL GOVERNMENT
KPERS AND RETIREMENT ISSUES
K-12 SCHOOL FINANCE
HEALTH CARE REFORM
LEGISLATIVE OVERSIGHT
TELECOMMUNICATIONS STRATEGIC PLANNING

February 27,1996

Chairman Lawrence and members of the Special Committee on Telecommunications:

I appreciate the opportunity to appear in support of HB 2963.

As most of you know I own a small business in Atwood which I struggle to manage from 340 miles away during the legislative session. My business currently has one full time employee and one part time employee. My full time employee started two days before I left to come to Topeka for the beginning of the session. Consequently we talk by phone at least once a day. There is much to discuss to reinforce what we discussed in the two days of training and many issues that we did not have time to discuss before I left home.

One day in early February my employee asked if I had changed our long distance carrier again. She knew that I had changed from MCI to ATT when offered a plan I considered attractive and economically favorable. The day before she received a call from ATT asking why we had switched back to MCI. I told her that I had not changed.

My employee gave me the 800 numbers for MCI and Southwestern Bell. When I called MCI they told me the switch had been authorized by an employee of my business. The problem was the name they gave me was a former employee who had not worked at my business for 8 or 9 months.

I then called Southwestern Bell, my local exchange carrier. They informed me that they would switch me back if I had been switched without my knowledge and offered to send me a form which would instigate a block that would only allow switching of carriers if I submitted a written and signed form.

I have observed as all of you have the multitude of expensive TV commercials for long distance companies. We have had an evening and/or meal interrupted by telephone marketers wanting us to change long distance carriers. I often wonder how much lower my long distance charges would be without that advertising cost.

As we move toward competition within local exchanges, I think it is important to regulate the unapproved changing of long distance and potentially, local exchange carriers. **I ask your support of HB 2963.**

House Sel/comm. Telecomm
2-21-1996
Attachment 3

SELECT COMMITTEE ON TELECOMMUNICATIONS
Testimony presented by Randy Debenham, Senior Telecommunications Analyst
Kansas Corporation Commission
February 21, 1996
HB 2963

Mr. Chairman, Members of the Committee:

KCC staff thanks the Chairman for the opportunity to testify on this bill. KCC staff supports this bill, but has a few recommendations which it will detail during the testimony.

Slamming complaints to the KCC have increased from 36 in 1992, to 48 in 1993, to 60 in 1994, and to 107 in 1995. These might seem like relatively insignificant numbers out of approximately 1.4 million telephone customers in the state until you consider that these numbers are only those slamming complaints received by the Commission. The KCC staff has no idea how many customers are slammed, but do not call the Commission. The Commission currently fines slammers $250 for each slammed line on the first offense.

Under the recent federal telecommunications law, slammers will have to turn over the interstate revenues they have collected from a slammed customer to the slammed customer's original carrier. Similar language regarding intrastate charges would be an option to the language contained in this bill.

The Federal provisions and KCC fines serve as a slamming deterrent and the Federal provisions help hold the original carrier whole, but both have one weakness; they would not compensate the slammed customer for his or her time, trouble and feeling of being violated. HB 2963 would compensate the slammed customer.

One possible problem which could develop is that some customers may falsely accuse a company of slamming in an attempt to get free long distance calling. When some people are given a chance to get something for nothing, they can get very creative.

For example, if a husband accused a company of slamming and the company produced a signed letter of authorization from his wife, staff is not sure how this legislation would handle the matter. This may be cleared up by adding language to line 26 referring to "the customer or one of the customers responsible for paying charges on the account." Even then, there will be controversies when an unauthorized party (such as a roommate) signs a letter of authorization or calls a long distance carrier for service.

In order to protect itself from false charges, a long distance carrier will have to get signed letters of authorization from everyone to whom it markets and will need some way to verify that a customer contacted the company for service. Staff is unsure how a company will be able to positively verify that the person on the other end of the phone is responsible for paying charges on the account. Possibly, the long distance carrier can cover itself by including bill paying responsibility language into both its letter of authorization and its questions of customers requesting service.

This bill contains references to interstate long distance service on lines 16, 32 and 34. The state has no jurisdiction over interstate calls. These references should be deleted.

Again, thank you for the opportunity to testify on this bill.

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2-21-1996
Attachment 4

Mike Reecht
Kansas Director
State Government Affairs

800 S.W. Jackson, Suite 1000
Topeka, KS 66612
Phone (913) 232-2128
Fax (913) 232-9537

TESTIMONY ON BEHALF OF AT&T
BEFORE THE SELECT COMMITTEE ON TELECOMMUNICATIONS
HB 2963
FEBRUARY 21, 1996

Mr. Chairman and members of the Committee:

My name is Mike Reecht. I am Director of State Government Affairs for AT&T in Kansas.

I welcome the opportunity to appear before this Committee to discuss HB 2963.

This bill deals with the switching of a customer's long distance Primary Interexchange Carrier(PIC) without proper authorization. This problem has become known as slamming. Let me emphasize that AT&T has stated many times that we oppose the practice of slamming and we are not opposed to reasonable rules and regulations controlling PIC changes. However, it is AT&T's position that the FCC has adequately addressed the problem and the KCC already has the ability to enforce rules and regulations against slamming.

The FCC currently allows interexchange carriers, when initiating contact with a potential customer, four methods for verifying a customer's change request. Briefly these methods are 1) obtain the customer's written authorization by a letter of agency (LOA), 2) obtain the customer's electronic authorization by use of an 800 number, 3) have the customer's oral authorization verified by an independent third party, or 4) send the customer an information package with a mandatory 14 day waiting period before issuance of the change order. On June 14, 1995 the FCC issued an Order specifically addressing the general form and content of the letter of agency.

These methods are designed to control the unauthorized changing of a customer's long distance company while at the same time allowing the freedom of choice customer's have in a competitive market. In fact, the last numbers I saw showed that approximately 40,000 customers a day change their long distance carrier. This freedom of choice should not be stifled.

Two recent Orders illustrate the aggressive stance taken by the FCC in enforcing slamming requirements. In a March 31, 1995 Order the FCC fined Oncor Communications a total of $1,410,000. In an August 18, 1995 Order they fined Excel

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Attachment 5

Telecomm, Inc. $80,000. In addition, the KCC has levied fines against two IXCs and one docket is pending.

AT&T is concerned with HB 2963 in three specific areas. First, the current bill only allows a PIC change if the customer has signed a letter of authorization. This is different than the FCC rules and will cause innumerable problems and additional costs for IXCs, by requiring state specific marketing procedures. It is essential that the four methods provided for in those federal rules be allowed in Kansas.

Second, the bill does not allow a customer to change their carrier if the contact is initiated through sweepstakes, contests or similar marketing programs. These programs have proven to be very beneficial to consumers. Most of us are familiar with many instances where customers have received checks or other inducements to change carriers. The FCC has created rules in its June 14,1995 Order that insures that when a "check type" instrument is used as an inducement that

> **"it contains certain information clearly indicating that endorsement of the check authorizes a pic change..."**

The FCC outlawed negative selection and established rules that specify the letter of authorization be a separate or severable document from any promotional material and that the document clearly indicates its sole purpose is to change a primary long distance carrier.

Third, the bill requires carriers to reimburse customers for all intrastate and interstate long distance charges during the time that the consumer was slammed. This provision does not agree with the FCC requirements that allow the customer to be charged at a rate no higher than they would have paid if they stayed with their chosen carrier. The FCC, in its June 14, 1995 Order, at page 20, paragraph 37, recognized that customers are still receiving value and expect to pay at their previous carrier's rates. This bill as filed could in fact encourage customers to claim they were slammed and could incent them not to report it right away.

In summary, AT&T is opposed to slamming but does not feel that a state law is required at this time. The FCC has done a great deal of work on this problem and clearly has the authority, and will, to enforce its regulations. In addition, the KCC has the authority to take action, including fines, against those companies that engage in slamming.

I have copies of the FCC's June 14, 1995 Order as well as copies of the two FCC complaint cases that culminated in substantial fines. I would be happy to share those documents with the committee if you deem appropriate.

NOTICE

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NOTICE

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TRANSMITTED FOR FCC RECORD ONLY
$// N.A.L. for Forfeiture, Excel Telecomm., Inc., File No. ENF 95-15, DA 95-1833 //$
$/ 47 C.F.R. □ 64.1100 Verification of orders for long distance service generated by telemarketing /$

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

DA 95-1833

In the Matter of)
) File No. ENF-95-15
EXCEL TELECOMMUNICATIONS, INC.)
) NAL/Acct. No. 516EF0005
)
Apparent Liability for Forfeiture)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 18, 1995; Released: August 18, 1995

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2-21-1996
ATTACHMENT 6

the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. By this Notice of Apparent Liability for Forfeiture ("NAL"), we initiate enforcement action against Excel Telecommunications, Inc. ("Excel"). For the reason discussed below, we find that Excel willfully or repeatedly violated Commission rule orders by changing the primary interexchange carrier ("PIC") designated by Mr. Bruce Adelman ("Adelman") of Los Angeles, California and Mrs. Robert J. Blake ("Blake") of Altadena, California, without Adelman's or Blake's authorization. Based upon our re the facts and circumstances surrounding the violations, we find that Excel is appare for a forfeiture in the amount of eighty thousand dollars ($80,000).

II. BACKGROUND

2. In its Allocation Order and subsequent Reconsideration Order and Waiver Order, the Commission set forth rules and procedures for implementing equal access a customer presubscription to an interexchange carrier ("IXC"). The Commission's orig allocation plan required IXCs to have on file a letter of agency ("LOA") signed by t customer before submitting PIC change orders to the local exchange carrier ("LEC") o of the customer. After considering claims by certain IXCs that this requirement wou competition because consumers would not be inclined to execute the LOAs even though agreed to change their PIC, the Commission later modified the requirement to allow I initiate PIC changes if they had "instituted steps to obtain signed LOAs." In 1992, Commission again revised its rules because it continued to receive complaints about unauthorized PIC changes. Specifically, while the Commission recognized the benefit permitting a telephone-based industry to rely on telemarketing to solicit new busine required IXCs to institute one of the following four confirmation procedures before PIC change orders generated by telemarketing: (1) obtain the consumer's written authorization; (2) obtain the consumer's electronic authorization by use of an 800 n have the consumer's oral authorization verified by an independent third party; or (4 information package, including a prepaid, returnable postcard, within three days of consumer's request for a PIC change, and wait 14 days before submitting the consumer order to the LEC, so that the consumer has sufficient time to return the postcard de cancelling or confirming the change order. Hence, the Commission's rules and orders require that IXCs either obtain a signed LOA or, in the case of telemarketing solici complete one of the four telemarketing verification procedures before submitting PIC requests to LECs on behalf of consumers.

3. Because of its continued concern over unauthorized PIC changes, the Commission recently prescribed the general form and content of the LOA used to autho change in a customer's primary long distance carrier. The Commission's recent rules prohibit the potentially deceptive or confusing practice of combining the LOA with promotional materials in the same document. The rules also prescribe the minimum information required to be included in the LOA and require that the LOA be written i and unambiguous language. The rules prohibit all "negative option" LOAs and require LOAs and any accompanying promotional materials contain complete translations if the employ more than one language.

4. On March 13, 1995 and November 7, 1994, the Commission received written complaints from Adelman and Blake, respectively, alleging that Excel had converted Adelman's and Blake's prescribed long distance service provider from AT&T Corporatio ("AT&T") to Excel without either Adelman's or Blake's authorization. Both Adelman a Blake state that the "Residential Service Request Forms" ("authorization form") forw them by Excel as verification of their requests to have their long distance service Excel, bear forged signatures and fabricated social security numbers.

5. Subsequently, the Common Carrier Bureau's Enforcement Division (the "Division") sent a letter to Excel directing it to provide specific information rega allegations listed in both the Adelman and Blake complaints. In response to the com Excel explains that its marketing is based exclusively on obtaining a written LOA fr prospective customer, typically as the result of an in-person, one-on-one presentati of its independent marketing agents. Excel states that its practice is to review LO from prospective customers to ensure completeness and that it occasionally checks so

security numbers. Excel states that it is unable to ascertain whether these r w were implemented with regard to the Adelman and Blake LOAs or whether the signatures authentic. Excel concedes that it is possible that Adelman's and Blake's signatures social security numbers may have been forged by the independent marketing representa who submitted the forms at issue.

III. DISCUSSION

6. We have carefully evaluated the information submitted in connection with Adelman's and Blake's informal complaints and conclude that Excel is apparently liab forfeiture for willful or repeated violation of the Commission's rules and PIC chang requirements. We find Excel's apparent actions particularly egregious. It appears about August 22, 1994 and August 30, 1994, Excel submitted two PIC change requests t Pacific Bell, based on apparently forged LOAs, which resulted in the conversion of b Adelman's and Blake's telephone service from AT&T to Excel. The statements and information provided by Adelman, Blake, and Excel leave virtually no doubt that the were forged, the social security numbers falsified, and consequently, that Excel lac requisite authorization to request a PIC change to either Adelman's or Blake's long service. With respect to the Adelman complaint, there is no similarity between the on Adelman's complaint and his purported signature on the LOA form that Excel used a basis for the PIC change submitted to Pacific Bell. With respect to the Blake compl information obtained from the complainant indicates that neither Mr. or Mrs. Blake e with an Excel representative nor were they ever contacted by telephone regarding a s their long distance service. Further, the complainant confirmed that Mr. Blake's na misspelled, his signature is forged, and that the purported social security number a the form is not his. Under these circumstances, we conclude that Excel's apparent a were in willful or repeated violation of the Commission's PIC change rules and order that a substantial forfeiture penalty is appropriate.

7. Section 503(b)(2)(B) of the Communications Act authorizes the Commission assess a forfeiture of up to one hundred thousand dollars ($100,000) for each violat day of a continuing violation up to a statutory maximum of one million dollars ($1,0 for a single act or failure to act. In exercising such authority, the Commission is take into account "the nature, circumstances, extent, and gravity of the violation a respect to the violator, the degree of culpability, any history of prior offenses, a and such other matters as justice may require." For purposes of determining an appr forfeiture penalty in this case, we regard the conversion of Adelman's and Blake's t lines as two violations. After weighing the circumstances surrounding the violation that Excel is apparently liable for a forfeiture of forty thousand dollars ($40,000) the unauthorized conversions, resulting in a total forfeiture of eighty thousand dol ($80,000). Excel will have the opportunity to submit evidence and arguments in resp this NAL to show that no forfeiture should be imposed or that some lesser amount sho assessed. In this regard, we note that the Commission has previously held that a li gross revenues are the best indicator of its ability to pay a forfeiture and that us revenues to determine a party's ability to pay is reasonable, appropriate, and a use in helping to analyze a company's financial condition for forfeiture purposes. We w full consideration to any financial information provided by Excel before assessing a forfeiture amount.

IV. CONCLUSIONS AND ORDERING CLAUSES

8. We have carefully reviewed the information submitted in connection with Adelman's and Blake's informal complaints and conclude that on or about August 22, 1 and August 30, 1994, Excel apparently converted or caused a local exchange carrier t convert Adelman's and Blake's telephone lines without either Adelman's or Blake's authorization through the use of apparently forged LOAs. We further conclude that E thereby willfully or repeatedly violated Commission rules governing primary interexc carrier conversions, and that its conduct warrants a forfeiture in the amount of eig dollars ($80,000).

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of Communications Act of 1934, as amended, 47 U.S.C. □ 503(b), and Section 1.80 of the Commission's ru C.F.R. □ 1.80, that Excel Telecommunications, Inc. IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of eighty thousand dollars ($80,000) for its

peated violation of the Commission's PIC change rules and orders, 47 C.F.R. □ 6
C Change Order, 7 FCC Rcd 1038 (1992); Allocation Order, 101 FCC 2d 911 (1985);
Waiver Order, 101 FCC 2d 935 (1985).

10. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, 47 C.F.R. □ 1.80, that within thirty days of the release of this Notice, Exce Telecommunications, Inc. SHALL PAY the full amount of the proposed forfeiture OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.

11. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail to Kenny Troutt, Chairman, President Chief Executive Officer of Excel Telecommunications, Inc., 9101 LBJ Freeway, Suite 8 Dallas, Texas 75243.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen M.H. Wallman
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C.

In the matter of:

OPERATOR COMMUNICATIONS, INC. d/b/a ONCOR COMMUNICATIONS, INC. File No. ENF-95-04 Apparent Liability for Forfeiture

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 29, 1995; Released: March 31, 1995

By the Commission:

I. INTRODUCTION

1. By this Notice of Apparent Liability for Forfeiture ("NAL"), we initiate enforcement action against Operator Communications, Inc., d/b/a Oncor Communications, Inc. (hereinafter collectively, "Oncor").(n1) For the reasons discussed below, we find that Oncor has willfully and repeatedly violated Commission rules and orders(n2) by changing the primary interexchange carrier ("PIC") designated by the Metropolitan Transportation Authority of the State of New York ("MTA") for ninety-four (94) of its pay telephone lines without MTA's authorization.(n3) Based on our review of the facts and circumstances surrounding the violations, we find that Oncor is apparently liable for forfeiture in the amount of one million four hundred ten thousand dollars ($1,410,000).

II. BACKGROUND

2. In its *Allocation Order* and subsequent *Reconsideration Order* and *Waiver Order*,(n4) the Commission set forth rules and procedures forimplementing equal access(n5) and customer presubscription(n6) to an interexchange carrier ("IXC").(n7) The Commission's original allocation plan required IXCs to have on file a letter of agency ("LOA") signed by the customer before submitting PIC change orders to the local exchange carrier ("LEC") on behalf of the customer.(n8) After considering claims by certain IXCs that this requirement would stifle competition because consumers would not be inclined to execute the LOAs even though they agreed to change their PIC, the Commission later modified the requirement to allow IXCs to initiate PIC changes if they had "instituted steps to obtain signed LOAs."(n9) In 1992, we again revised our rules because the Commission continued to receive complaints about unauthorized PIC changes.(n10) Specifically, while we recognized the benefits of permitting a telephone-based industry to rely on telemarketing to solicit new business, we required IXCs to institute one of the following four confirmation procedures before submitting PIC change orders generated by telemarketing: (1) obtain the consumer's written authorization; (2) obtain the consumer's electronic authorization by use of an 800 number; (3) have the consumer's oral authorization verified by an independent third party; or (4) send an information package, including a prepaid, returnable postcard, within three days of the consumer's request for a PIC change, and wait 14 days before submitting the consumer's order to the LEC, so that the consumer has sufficient time to return the postcard denying, cancelling or confirming the change order.(n11) Hence, our rules and orders require that IXCs either

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electing or confirming the change order.(n11) Hence, our rules and orders require that IXCs obtain a signed LOA or complete oneof the four above-listed telemarketing verification procedures before submitting PIC change requests to LECs on behalf of consumers.

3. In April 1994, the New York Attorney General's office wrote to Oncor complaining that Oncor had "slammed" numerous pay telephones leased by MTA from New York Telephone Company ("NYT"). The letter alleged that Oncor had submitted to NYT unauthorized PIC change requests substituting Oncor as the operator service provider and PIC for hundreds of MTA's pay telephones.(n12)

4. The Attorney General's office forwarded to the Commission a copy of its letter to Oncor. Thereafter, the Common Carrier Bureau's Enforcement Division directed Oncor to investigate the alleged unauthorized PIC changes and submit its findings to the Commission.(n13) Oncor's initial response to the staff's request provided little indication that Oncor had investigated fully the MTA's allegations. Oncor provided only a cursory, general description of its agents' marketing practices, and stated that the agent could not provide documentation that MTA authorized the PIC changes.(n14) Accordingly, the staff sent a second letter to Oncor, directing the company to provide specific information regarding each MTA pay telephone line allegedly switched to Oncor.(n15)

5. In response to the staff's second request, Oncor reported that two independent Oncor distributors had electronically submitted to Oncor the MTA PIC change requests as part of Oncor's contractual agreement with the distributors to market Oncor's services to public pay-telephone site owners.(n16) According to Oncor, the distributors had obtained the PIC change requests from agents responsible for soliciting customers for Oncor.(n17) Although Oncor described several procedures it typically employs to solicit customers, it has not identified the specific procedures that Oncor or its agents used that led to MTA's PIC changes. For instance, in its response to the staff's first information request, Oncor stated that it utilizes "incentive based commission checks" thatserve as an LOA.(n18) While MTA acknowledged receiving such checks from Oncor, an MTA official has reported that it did not endorse or deposit the checks. Rather, MTA has reported that it returned them to Oncor with a clear statement that it would not accept checks as a method of converting the PIC for its pay telephone lines.(n19) Moreover, in its response to the staff's second information request, Oncor made no mention of the "commission checks" and instead described its customary telemarketing and on-site sales techniques. Thus, while Oncor described its typical sales and verification procedures, it has produced no evidence that it obtained any form of LOA from MTA or specified what, if any, steps it followed to verify telemarketing sales that resulted in the MTA PIC conversions.

III. DISCUSSION

6. We have carefully evaluated the information obtained as a result of our investigation, and, based on the foregoing, we conclude that Oncor is apparently liable for forfeiture for willful and repeated violations of the Commission's rules and PIC change requirements.

7. Our review of the MTA allegations as well as Oncor's response and supporting materials has uncovered that between at least November 1993 and at least April 1994, Oncor submitted PIC change requests to NYT that resulted in the conversion of over one hundred pay telephone lines from AT&T, MTA's presubscribed IXC, to Oncor.(n20) Our investigation has revealed that Oncor converted, or caused the conversion of, at least ninety-four (94) different MTA telephone lines on or about April 2, 1994.(n21) Thus, our action here is within the one year limitations period for forfeiture actions.(n22)

8. We find the violations particularly egregious in this case. Oncor has produced no arguments or evidence that counter MTA's claim that it did not authorize or approve any of the PIC changes. Oncor has not submitted evidence of an LOA or other written authorization, electronic authorization through

e of an 800 number, verification of oral authorization, or use of an acceptable information package including a cancellation option. Thus, it appears that Oncor failed to secure an LOA or utilize any of the four permissible telemarketing methods for converting a customer's PIC established by the Commission.(n23)

9. In an apparent attempt to explain the unauthorized conversions, Oncor has made the general claim that, through its agents, it sent "commission checks" that were designed to function as an LOA once cashed or deposited by MTA. Even if we condoned Oncor's practice of using commission checks as LOAs,(n24) Oncor has presented no evidence that MTA ever endorsed such checks in connection with the telephone lines at issue here, nor has it provided evidence that the commission checks were otherwise accepted or approved by the MTA. On the contrary, information obtained during the investigation indicates that MTA routinely returned the checks to Oncor with a letter explaining that MTA relies solely on a competitive bidding process to select a PIC for its pay telephones and did not recognize any relationship with Oncor.(n25) Oncor, however, continued to make unauthorized PIC changes to MTA's pay telephones.

10. Oncor's attempt to distance itself from the unlawful PIC changes by pointing to the culpability of its distributors, independent telemarketing agents, or "subagents" is unavailing.(n26) In this instance, the distributors' or agents' actions do not relieve Oncor of its independent obligation to ensure compliance with our rules, nor do they otherwise mitigate Oncor's role in the apparent violations. The Communications Act deems the acts or omissions of an agent or other person acting for a common carrier to be the acts or omissions of thecarrier itself.(n27) Hence, the Act expressly prohibits a carrier from evading the requirements of the Act or the Commission's rules or orders by hiring someone else to engage in conduct that contravenes these requirements.

11. Furthermore, the facts before us reveal that the unauthorized MTA PIC changes followed a consistent pattern (*e.g.*, periodic conversion of large batches of telephone numbers on the same date), and were repeated in the face of prior cancellations by the MTA. For example, of the ninety-four (94) MTA telephone lines that are the subject of this action, sixty-four (64) had been previously switched to Oncor and MTA had quickly thereafter cancelled Oncor's service. Moreover, MTA had also previously notified Oncor that it did not want Oncor service when it returned Oncor's so-called "commission checks." We therefore find no support for a determination that the unauthorized PIC changes were isolated incidents or the result of a "rogue" marketing agent. Based on the number and frequency of the unauthorized conversions and the circumstances surrounding them, we can reasonably conclude that Oncor apparently knew or should have known that MTA had not authorized Oncor to provide service for its pay telephones. Thus, it appears that the unauthorized PIC changes were the result of either deliberate misconduct by Oncor or its reckless disregard for the Commission's rules and orders. For these reasons we find that the facts support a determination that Oncor's apparent violations were willful and repeated.(n28)

12. Section 503(b)(2)(B) of the Communications Act authorizes the Commission to assess a forfeiture of up to one hundred thousand dollars ($100,000) for each violation or each day of a continuing violation up to a statutory maximum of one million dollars ($1,000,000) for a single act or failure to act.(n29) In exercising such authority, the Commission is required to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."(n30) For purposes of assessing an appropriate forfeiture penalty in this case, we regard the conversion of each of the ninety-four (94) MTA telephone lines(n31) as a separate violation. After weighing the circumstances surrounding the violations, we find Oncor to be apparently liable for a forfeiture of fifteen thousand dollars ($15,000) for each of the unauthorized conversions, resulting in a total forfeiture of one million

r hundred ten thousand dollars ($1,410,000) (94 x $15,000). Based on the information obtained during the investigation of this matter, we believe this amount is reasonable relative to Oncor's assets and revenues. Oncor, however, will have the opportunity to submit evidence and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesseramount should be assessed.(n32) In this regard, we note that we have previously held that a licensee's gross revenues are the best indicator of its ability to pay a forfeiture and that use of gross revenues to determine a party's ability to pay is reasonable, appropriate, and a useful yardstick in helping to analyze a company's financial condition for forfeiture purposes.(n33) In *PJB Communications*, we found that forfeitures of $5,000 and $3,000 assessed against two jointly owned and operated paging companies were not excessive because the total forfeiture amount ($8,000) represented approximately 2.02 percent of the companies' combined gross revenues of $395,469.(n34) We will give full consideration to any financial information provided by Oncor before assessing a final forfeiture amount.

IV. CONCLUSIONS AND ORDERING CLAUSES

13. We have carefully reviewed the information obtained through our investigation and conclude that on or about April 2, 1994, Oncor apparently converted or caused a local exchange carrier to convert ninety-four (94) MTA telephone lines without MTA's authorization. We further conclude that Oncor thereby willfully and repeatedly violated Commission rules governing changes in long distance carriers, and that its conduct warrants a forfeiture in the amount of one million four hundred ten thousand dollars ($1,410,000).

14. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, Oncor Communications, Inc. IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of one million four hundred ten thousand dollars ($1,410,000) for its willful and repeated violation of the Commission's PIC change rules and orders, 47 C.F.R. § 64.1100; *PIC Change Order*, 7 FCC Rcd 1038 (1992); *Allocation Order*, 101 FCC 2d 911 (1985); *Waiver Order*, 101 FCC 2d 935 (1985).

15. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that within thirty days of the release of this Notice, Oncor Communications, Inc. SHALL PAY the fullamount of the proposed forfeiture(n35) OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.

16. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail to Counsel for Oncor Communications, Inc., Mitchell F. Brecher, Esq., Donelan, Cleary, Wood & Maser, P.C. Suite 750, 1100 New York Avenue, N.W., Washington, D.C. 20005-3934.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Footnote 1 Oncor maintains corporate offices at 6707 Democracy Boulevard, Bethesda, Maryland 20817. Ronald L. Hoop is the owner, Chairman and Chief Executive Officer of Oncor.

517. Ronald J. Haan is the owner, Chairman and Chief Executive Officer of Oncor.

Footnote 2 *See* 47 C.F.R. § 64.1100; Policies and Rules Concerning Long Distance Carriers, 7 FCC Rcd 1038 (1992), *recon. denied*, 8 FCC Rcd 3215 (1993) (*PIC Change Order*); Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 911 (1985) (*Allocation Order*), *recon. denied*, 102 FCC 2d 503 (1985) (*Reconsideration Order*); Investigation of Access and Divestiture Related Tariffs, Phase I, 101 FCC 2d 935 (1985) (*Waiver Order*).

Footnote 3 The practice of changing a customer's PIC without the customer's authorization is commonly referred to as "slamming."

Footnote 4 *See supra*, note 2.

Footnote 5 Equal access for interexchange carriers ("IXCs") is that which is equal in type, quality and price to the access to local exchange facilities provided to AT&T and its affiliates. *United States v. American Tel. & Tel.*, 552 F. Supp. 131, 227 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983)(*Modification of Final Judgment* or "*MFJ*"). "Equal access allows end users to access facilities of a designated [IXC] by dialing '1' only." *Allocation Order*, 101 FCC 2d at 911.

Footnote 6 Presubscription is the process by which each customer selects one primary interexchange carrier ("PIC"), from among several available carriers, for the customer's phone line(s). *Allocation Order*, 101 FCC 2d at 911, 928. Thus, when a customer dials "1" only the customer accesses the primary IXC's services. An end user can also use other IXCs by dialing a five-digit access codes. *Id.* at 911.

Footnote 7 Pursuant to the *MFJ*, the Bell Operating Companies (BOCs) were ordered to provide equal access to their customers by September 1986, where technically feasible. *Id.*

Footnote 8 An LOA is a document, signed by the customer, which states that the customer has selected a particular carrier as that customer's primary long distance carrier. *Allocation Order*, 101 FCC 2d at 929.

Footnote 9 *Waiver Order*, 101 FCC 2d at 942.

Footnote 10 *PIC Change Order* 7 FCC Rcd at 1038-39.

Footnote 11 *See* 47 C.F.R. § 64.1100; *PIC Change Order*, 7 FCC Rcd at 1045.

Footnote 12 The copy of the letter, which staff deemed as an informal complaint (IC# 94-07922), also alleged that Oncor slammed the phones of Commack Union Free School District. For reasons discussed below, this forfeiture action is not based upon these alleged incidents.

Footnote 13 Letter from Kathie A. Kneff to ITI/Oncor and Bell Communications Research, Inc., dated July 28, 1994.

Footnote 14 Letter from Judith M. deGrandpre to Kathie Kneff, dated August 25, 1994.

Footnote 15 Letter from Kathie A. Kneff to ITI/Oncor and NYNEX-New York, dated December 6, 1994.

Footnote 16 Letter from Elisa Zafrani to Kathie Kneff, dated January 12, 1995.

Footnote 17 Oncor also stated that both "subagents" are companies operated by the same individual. The staff's investigation to date has not revealed whether the subagents have also solicited customers for carriers other than Oncor.

Footnote 18 Letter from Judith M. deGrandpre to Kathie Kneff, dated August 25, 1994.

Footnote 19 Letter from David J. Florio to Heather McDowell, dated February 27, 1995.

Footnote 20 Our authority to assess forfeitures for many of the unauthorized conversions is governed by the one year limitations period in Section 503(b) of the Communications Act. 47 U.S.C. § 503(b)(6)(B). This provision states in relevant part that, "No forfeiture penalty shall be determined or imposed against any person under this subsection if . . . the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability."

Footnote 21 Oncor identified the telephone lines converted, as well as the dates on which Oncor service began and ended, in its response to the staff's second information request. Letter from Elisa Zafrani to Kathie Kneff, dated January 12, 1995.

Footnote 22 47 U.S.C. § 503(b)(6)(B). We stress, however, that it appears that Oncor did not comply with the Commission's rules or orders in ordering PIC changes to any of the MTA telephones or a Commack Union Free School District telephone. Indeed, some of the earlier unauthorized changes to MTA telephones, albeit no longer actionable,are an added factor demonstrating that Oncor's violations were willful and repeated. Therefore, while forfeiture penalties based upon conversions that were corrected prior to April 1994 are time barred, we strongly admonish Oncor for its apparently unauthorized conversion of these telephone lines.

Footnote 23 47 C.F.R. § 64.1100; *PIC Change Order*, 7 FCC Rcd at 1045.

Footnote 24 This practice, as well as several other issues relating to unauthorized PIC changes, is under review in a pending rulemaking proceeding. *Policies and Rules Concening Unauthorized Changes of Consumers' Long Distance Carriers*, Notice of Proposed Rulemaking, 9 FCC Rcd. 6887 (1994), 59 Fed. R. 63750 (December 9, 1994).

Footnote 25 *See supra*, note 19.

Footnote 26 Oncor also seems to suggest that it should not be held liable for the unauthorized PIC changes because its distributor contract provisions and sales manuals require compliance with Commission statutes, rules, and policies. We find this argument similarly unpersuasive.

Footnote 27 47 U.S.C. § 217.

Footnote 28 *See id.* § 503(b)(1)(B).

Footnote 29 *Id.* § 503(b)(2)(B).

Footnote 30 *Id.* at § 503(b)(2)(D).

Footnote 31 *See supra* note 21.

ɪtnote 32 *See* 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

Footnote 33 *PJB Communications of Virginia*, 7 FCC Rcd 2088-89 (1992) (*PJB Communications*).

Footnote 34 *Id.* at 2089; *see also*, David L. Hollingsworth d/b/a Worland Services, 7 FCC Rcd 6640 (Com. Car. Bur. 1992) ($6,000 forfeiture representing approximately 1.21 percent of licensee's 1991 gross revenues and approximately 1.34 percent of projected 1992 gross revenues not found to be excessive); *Afton Communications Corp.*, 7 FCC Rcd 6741 (Com. Car. Bur. 1992) ($6,000 forfeiture representing approximately 3.91 percent of 1990 gross revenues and 2.75 percent of projected 1992 gross revenues not found to be excessive).

Footnote 35 The forfeiture amount should be paid by check or money order drawn to the order of the Federal Communications Commission, and should be mailed to Federal Communications Commission, P.O. Box. 73482, Chicago, Illinois 60673-7482.

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

FCC 95-225

In the Matter of	)	
	)	
Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers	)	CC Docket No. 94-129

REPORT AND ORDER

Adopted: June 13, 1995; Released: June 14, 1995

By the Commission:

I. INTRODUCTION

1. In this Report and Order, we prescribe the general form and content of the letter of agency (LOA) used to authorize a change in a consumer's primary long distance telephone company. An LOA is a document, signed by the customer, which states that a particular carrier has been selected as that customer's "primary interexchange carrier" ("PIC"). We take this action in response to the thousands of complaints we have received regarding unauthorized changes of consumers' PICs, a practice commonly known as "slamming."[1] We also take this action in response to the tens of thousands of additional complaints received annually by local exchange carriers (LECs) and state regulatory bodies.[2] These rules

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[1] "Slamming" means the unauthorized conversion of a customer's interexchange carrier by another interexchange carrier, an interexchange resale carrier, or a subcontracted telemarketer. Cherry Communications, Inc., Consent Decree, 9 FCC Rcd 2086, 2087 (1994).

[2] Pacific Bell and Nevada Bell state that on average, they "receive approximately 350,000 PIC changes from the interexchange carriers...each month. Two to three percent of those changes generate complaints...." Comments of Pacific Bell and Nevada Bell at 1-2. This represents 7,000 to 10,500 complaints per month received by Pacific Bell and Nevada Bell alone. See also Comments of GTE Service Corporation (GTE), NYNEX Telephone Companies (NYNEX), Southwestern Bell Telephone Company (Southwestern Bell), People of the State of California, et al. (California PUC), Missouri Public Service Commission, et al. (Missouri PSC), New York State Department of Public service (New York Public Service), Public Utility Commission of Texas (PUCT), Florida Public Service Commission (Florida PUC), and National Association of Attorneys General (NAAG).

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and policies prohibit certain deceptive or confusing marketing practices of some interexchange carriers (IXCs) and are intended to significantly reduce consumer confusion over the use and function of the LOA. In crafting these rules, we have balanced the industry's need for flexibility in marketing services to consumers and the need to protect consumers from deceptive marketing practices.

2. Specifically, we adopt rules that prohibit the potentially deceptive or confusing practice of combining the LOA with promotional materials in the same document. These rules require that the LOA be a separate or severable document whose sole purpose is to authorize a change in a consumer's primary long distance carrier. Among other things, we prescribe the minimum contents of the LOA and require that the LOA be written in clear and unambiguous language. Furthermore, we prohibit all "negative option" LOAs[1] and require that LOAs contain complete translations if they employ more than one language. Finally, we except from the "separate or severable" rule a check that serves as an LOA, so long as the check contains certain information clearly indicating that endorsement of the check authorizes a PIC change and otherwise complies with our LOA requirements.

II. BACKGROUND

3. The Commission began receiving slamming complaints after the entry of multiple competitors into the long distance telephone marketplace following the divestiture of American Telephone & Telegraph Company (AT&T).[2] At that time, IXCs began to compete for presubscription[3] agreements with potential customers as a result of the equal access[4] rules and the procedures the Commission and the

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[1] "Negative option" LOAs require consumers to take some action to avoid having their long distance telephone service changed.

[2] For a more detailed history of the actions the Commission has taken thus far regarding "slamming" and its related issues, see Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Notice of Proposed Rule Making, 9 FCC Rcd 6885, 6886 (1994) (NPRM).

[3] Presubscription is the process that enables each customer to select one primary IXC, from among several available carriers, for the customer's phone line(s). Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 911, 928 (1985) (Allocation Order). A customer accesses the primary IXC's services by dialing "1" only. Id. at 911.

[4] Equal access for IXCs is that which is equal in type, quality, and price to the access to local exchange facilities provided to AT&T and its affiliates. United States v. American Tel. & Tel., 552 F. Supp. 131, 227 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) (Modification of Final Judgment or

courts imposed on the interexchange telephone industry.[7]

4. The Commission's original allocation plan required IXCs to have on file an LOA signed by the consumer before submitting to the LEC an order to change a consumer's PIC.[8] The LOA provided evidence that the customer had selected that IXC as its long distance telephone company.[9] IXCs asserted, however, that this requirement would stifle competition because, as a practical matter, consumers frequently would not execute the LOAs even though they had agreed to change their PIC. In response to those objections, the Commission relaxed the requirement and allowed IXCs to initiate PIC changes if they had "instituted steps to obtain signed LOAs."[10] In addition, the Commission denied a petition filed by the Illinois Citizens Utility Board that sought the adoption of additional rules governing PIC changes.[11] In balancing the industry's need for flexibility in marketing its services to consumers and the need to protect consumers from deceptive marketing tactics, the Commission concluded that the rules in place at that time adequately protected consumers against "slamming."[12]

5. Despite the consumer protection mechanisms provided by the Commission's rules and policies, some carriers continued to engage in the practice of "slamming." In response to a petition

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"MFJ"). "Equal access allows end users to access facilities of a designated [IXC] by dialing '1' only." Allocation Order, 101 FCC 2d at 911 (end user also has the capability to use other IXCs by dialing access codes).

7 Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 911 (1985) (Allocation Order), recon. denied, 102 FCC 2d 503 (1985) (Reconsideration Order); Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 935 (1985) (Waiver Order).

8 A PIC change may be initiated when a consumer requests the change directly from the new IXC or when the IXC solicits the consumer through telemarketing or direct mail.

9 Allocation Order, 101 FCC 2d at 929.

10 Waiver Order, 101 FCC 2d at 942.

11 Illinois Citizens Utility Board Petition for Rule Making, 2 FCC Rcd 1726 (1987) (Illinois CUB Order).

12 The Commission emphasized in the Illinois CUB Order that consumers are not liable for the charges assessed by LECs for PIC changes that were not authorized by the consumers. Further, the Commission reiterated that LECs are not permitted to collect any charges from a consumer for changing the consumer's PIC if the consumer denies requesting the change and neither the LEC nor the IXC can produce sufficient evidence that the consumer requested the change. In most cases, that evidence would be the LOA. Illinois CUB Order, 2 FCC Rcd at 1728, 1729.

filed by AT&T and MCI Telecommunications Corporation (MCI) in accordance with a court settlement between them,[13] we adopted rules and procedures for verification of long distance service telemarketing sales. Specifically, we required IXCs to institute one of four confirmation procedures before submitting to LECs PIC change orders generated by telemarketing: (1) obtain the consumer's written authorization; (2) obtain the consumer's electronic authorization by use of an 800 number; (3) have the consumer's oral authorization verified by an independent third party; or (4) send an information package, including a prepaid, returnable postcard, within three days of the consumer's request for a PIC change, and wait 14 days before submitting the consumer's order to the LEC, so that the consumer has sufficient time to return the postcard denying, cancelling, or confirming the change order.

6. Even after the adoption of these additional consumer safeguards, we continued to receive complaints from consumers who allege that their PIC selections have been changed without their permission. Many of these complaints describe apparently deceptive marketing practices in which consumers are induced to sign a form document that does not clearly advise the consumers that they are authorizing a change in their PIC. Consumers have complained that the "LOA" forms were "disguised" as contest entry forms, prize claim forms or solicitations for charitable contributions.

7. Consequently, the Commission, on its own motion, initiated this rule making proceeding.[14] The Commission proposed rules to separate the LOA from all promotional inducements and make the LOA, which has been previously defined by the Commission, a separate document on a separate page, the sole purpose of which is to authorize a PIC change. The Commission also sought public comment on a number of related issues, including: (1) whether LOAs should contain only the name of the rate-setting carrier; (2) whether consumers should be liable for the long distance telephone charges billed by unauthorized carriers; (3) whether the Commission should adopt rules requiring that bilingual LOAs contain complete translations in both languages; and (4) whether the Commission should extend its PIC change verification procedures to consumer-initiated 800 calls.

III. DISCUSSION

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[13] See generally American Telephone and Telegraph Company, Petition for Rule Making, CC Docket No. 91-64, Notice of Proposed Rule Making, 6 FCC Rcd 1688 (1991) (PIC Change NPRM); Policies and Rules Concerning Changing Long Distance Carriers, CC Docket No. 91-64, Report and Order, 7 FCC Rcd 1038 (1992) (PIC Verification Order), recon. denied, 8 FCC Rcd 3215 (1993) (PIC Verification Reconsideration Order).

[14] NPRM, 9 FCC Rcd 6885 (1994).

8. After the AT&T divestiture, the Commission sought to encourage a competitive long distance telephone market. To that end, the Commission gave significant weight to the argument that the only way for non-dominant carriers to compete effectively with the dominant carrier was for all carriers to be allowed to market their services with significant flexibility. As competition in the long distance telephone market has emerged, our experience in balancing consumer protection concerns and IXC marketing flexibility has evolved. Our initial decision not to require written LOAs prior to a PIC change indicated to the industry our willingness to allow IXCs to police their own marketing activities. Although we still believe self-policing to be an integral consumer protection mechanism, we cannot ignore the very large number of slamming complaints that consumers continue to submit to their local phone companies, to their state regulatory bodies, and to this Commission.

9. For any competitive market to work efficiently, consumers must have information about their possible market choices and the opportunity to make their own choices about the products and services they buy. Slamming takes away those choices from consumers. Slamming also distorts the long distance competitive market because it rewards those companies who engage in deceptive and misleading marketing practices by unfairly increasing their customer base at the expense of those companies that market in a fair and informative manner. In light of the foregoing, we find it necessary to prescribe rules that we believe will serve as an informative and useful consumer protection mechanism and an important rule of fair competition for the long distance telephone industry, while recognizing the industry's need for flexibility in marketing services to consumers.[15]

A. The Minimum Requirements for LOAs

10. We received nearly unanimous support for our proposed rule prescribing the general form and minimum content for an LOA. As proposed in section 64.1150(e), we will require that the LOA contain: (1) the subscriber's[16] billing name and address and each telephone number to be covered by the PIC change order; (2) a line stating the subscriber's decision to change the PIC from the current interexchange carrier to the prospective interexchange

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[15] All comments and replies on all matters in this proceeding were considered. In our discussion of the proposed rules, however, we highlight those comments representative of particular arguments or positions relevant to our decisions.

[16] In this context, the term "subscriber" is used because the only individual qualified to authorize a PIC change is the telephone line subscriber.

carrier; (3) a statement that the subscriber designates the interexchange carrier to act as the subscriber's agent for the PIC change; and (4) a statement that the subscriber understands that any PIC selection chosen may involve a charge to the subscriber for changing the subscriber's PIC."[17] As stated in the NPRM, these provisions organize and restate the LOA requirements of the Allocation Order and the PIC Verification Order into one standard rule.[18] This simplified restatement of current Commission requirements regarding LOAs was met with general acceptance by the commenters and thus will be adopted as proposed. We refrain from prescribing specific LOA language at this time. We agree with some of the commenters that differing state requirements and differences in the target market for individual promotional campaigns indicate that IXCs may be better able to tailor the specific language in a way that clearly informs the consumer of the impending choice. We believe that IXCs can police themselves in this matter given clear guidance, and we believe that these rules give that guidance. Also, we agree with Sprint Communications Co. (Sprint) that this new rule and the existing telemarketing rules (Section 64.1100) should be consistent. We therefore amend Section 64.1100(a) to read as follows: "The IXC has obtained the customer's written authorization in a form that meets the requirements of Section 64.1150, below."

11. Nearly every entity choosing to comment on the matter supported our proposed prohibition of "negative option" LOAs.[19] As noted above, this type of LOA requires a consumer to take some action to avoid a PIC change. Because we find that such LOAs impose an unreasonable burden on consumers who do not wish to change their PICs, we adopt the proposed prohibition. Further, we

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[17] See Appendix B, Section 64.1150(e)(1)-(3), (5), infra. We will discuss proposed section 64.1150(e)(4) in paragraphs 25-27, infra. That proposed section provides that an LOA contain language that confirms "that the subscriber understands that only one interexchange carrier may be designated as the subscriber's primary interexchange carrier for any one telephone number and that selection of multiple carriers will invalidate all such selections." In light of comments and replies from entities including Allnet Communication Services, Inc. (Allnet), Ameritech Operating Companies (Ameritech), General Communication, Inc. (GCI), and GTE, we will modify section 64.1150(e) to allow for the possibility of multi-PIC jurisdictions.

[18] NPRM, 9 FCC Rcd 6885, 6887.

[19] The Public Utility Commission of Texas (PUCT) contends that if the language in section 64.1150(e) "is intended to proscribe the negative check-off that appears on some sweepstakes entries, the PUCT believes this language is unnecessary if the combination of a sweepstakes entry and LOA on the same form is prohibited." Even though we are adopting a "separate or severable" LOA rule, an IXC still might attempt to fashion a "negative option" LOA on a separate page. Therefore, we will adopt the prohibition as proposed.

agree with the comments of Allnet that the proposed section might be construed as somewhat vague. We therefore adopt some of Allnet's suggested language and modify the provision to read: "Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current interexchange carrier."[30]

12. Although many commenters oppose any Commission-prescribed LOA text, font, or type size, nearly all commenters agreed that "[a]t 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."[31] Although we adopt these general guidelines, we refrain from prescribing a specific font or type size. Long distance telephone companies' marketing campaigns take on many different forms. Their services may be advertised in myriad ways, and in myriad type sizes, depending on the advertising medium and target audience.[32] Therefore, we will allow IXCs the flexibility to design the LOA in a manner that is complimentary to their associated promotional material. However, we will require LOAs to be printed with type of sufficient size and readable type to be clearly legible to the consumer. This means that LOAs must generally be comparable in font and size to their associated promotional material.[33]

B. The LOA as a Separate or Severable Document

13. Our proposal to separate the LOA physically from all promotional materials has drawn both comments favoring it and comments questioning it. Specifically, we proposed that "[t]he letter of agency shall be a separate document whose sole purpose is to authorize an interexchange carrier to initiate a primary interexchange carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the primary interexchange carrier change. ... The letter of agency shall not be combined with inducements of any kind on the same document."[34] The opponents of our proposal argue that this proposed

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30 Section 64.1150(e).

31 Proposed section 64.1150(e).

32 IXCs may advertise their service offerings in magazines, newspapers, and on airline ticket jackets.

33 For example, the use of "fine print" in the drafting of LOAs will be prohibited.

34 Section 64.1150(b), (c).

rule "may" be found unconstitutional[35] and that it "goes farther than is necessary" to protect consumers from slamming.[36] Proponents of our proposed rule argue that separating the LOA from inducements is necessary to ensure that consumers will be clearly informed as to the actions they are being asked to make.[37] In fact, some commenters contend we do not go far enough to protect consumers.[38] In response to these comments, we first address whether the First Amendment to the Constitution[39] would permit us to require the LOA to be a separate document. Then, we address whether it is in the public interest for us to adopt this requirement.

1. First Amendment Considerations

a. Comments

14. Among the commenters on the First Amendment issue, MCI's argument is the most detailed. MCI argues that the proposed rule, as written, may be unconstitutional because "[w]here commercial speech is accurate -- i.e., not inherently misleading or deceptive -- the government's ability to regulate that speech is limited."[40] MCI contends that "[a]ny court reviewing the proposed rules would undoubtedly analyze their Constitutionality by applying a Commercial Free Speech analysis."[41] Under that analysis, MCI maintains that "a court would view the speech which the proposed

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[35] See Comments and Replies of AT&T, MCI and One Call Communications, Inc.(One Call).

[36] See Comments AT&T, MCI, ACC Corporation (ACC Corp.), and Lexicom, Inc. (Lexicom).

[37] See Comments of Sprint Communications Co. (Sprint), Competitive Telecommunications Association (CompTel), and Missouri PSC.

[38] See Letter from Illinois Congressional Delegation, note 77, infra (Commission should consider absolving consumers of all toll charges accessed by unauthorized carriers), and Comments of Southwestern Bell and NYNEX (Commission should prescribe specific language for LOA). NAAG (Commission should require that all change orders be followed by written confirmation), and Pacific Bell and Nevada Bell (monetary penalty should be imposed on IXCs whose complaints evidence a pattern of abuse).

[39] U.S.C.A. Const. Amend. 1.

[40] MCI Comments at 10.

[41] Id. at 9 (citing Central Hudson Gas & Electric Corp. v. Public Serv. Comm'n of N.Y., 447 U.S. 557, 561 (1980)(Central Hudson)(Supreme Court generally considers commercial speech to be "expression related solely to the economic interests of the speaker and its audience"); Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976)(Virginia Bd. of Pharmacy); Edenfield v. Fane, 113 S. Ct. 1792 (1993)).

rules intended to regulate as not inherently misleading"[33] because "any attendant advertising or marketing [attached to an LOA] can be presented in a way which is not misleading."[34] Therefore, MCI argues, the combined LOA/inducement cannot be inherently misleading. Further, MCI contends that the heart of the Commission's concern is directed not at eliminating inherently misleading speech but, rather, at eliminating potential confusion regarding the effect of the LOA form.[35] Finally, MCI maintains that "the Commission would have difficulty showing that the regulation is no more restrictive than necessary to meet the governmental objective"[36] of eliminating customer "confusion."

b. Decision

15. Notwithstanding MCI's First Amendment arguments, the rules we have adopted in this proceeding meet the tests set out by the Supreme Court for permissible government regulation of commercial speech under the First Amendment. First of all, the rules adopted in this proceeding do not prohibit any speech, commercial or otherwise. They merely require that the carriers' method of delivery of that speech not confuse or mislead the consumer. The record in this proceeding is replete with comments supporting our conclusion that the present practices of many carriers have confused and misled thousands of consumers into thinking they were participating in some type of activity other than switching their long distance carrier, when, in reality, they were doing exactly that.[37] The regulations that we are adopting are designed to minimize this confusion by requiring that the language of the LOA be clear and unconfusing, contain specific information that will assure that the signer of the LOA can understand exactly what he or she is signing, and separate the LOA from any promotional materials so that the consumer is more likely to be able to differentiate commercial incentives offered by the carriers from the actual commitment to changing his or her primary interexchange carrier.

16. The Supreme Court has held that the government may ban forms of communication more likely to deceive the public than to inform it. Central Hudson Gas & Electric Corp. v. Public Service Comm'n of N.Y., 447 U.S. 557, 561 (1980). We have tried to narrowly design our regulations to eliminate deception and yet still permit

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[33] Id.

[34] Id.

[35] Id. at 10 (citing NPRM at 5).

[36] Id. at 11.

[37] This is evidenced by the large volume of complaints received by this Commission, LECs and state regulatory bodies. See note 2, infra.

the free flow of information.

17. The Supreme Court also has held that it is permissible to use some restrictions on the time, place, and manner of commercial speech provided that they are justified without reference to the content of the regulated speech, that they serve a significant government interest, and that in so doing they leave open ample alternative channels for the communication of the information. Virginia Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 771 (1976). The rules we adopt here are restrictions in the manner of delivery and meet all of the requirements set out by the Supreme Court. Specifically, we are restricting only the manner in which the material is presented; it must be clear and not confusing, it must include enough information to permit the customer to know what he or she is doing by signing the document and who his or her long distance carrier will be, and it must be separate or severable from other commercial incentives. As for a significant governmental interest, the very process of designating a primary long distance carrier has been established by this Commission as part of the process of providing options to consumers in choosing their interexchange services. We created the LOA as a method for assuring that the consumer's choice was honored and to protect the consumer from unauthorized changes. The sheer volume of complaints that we and the states have received demonstrates that there are still some flaws in the system we have designed and that there is need for refinements to provide protection to the consumers from the present practices that have led to so many unauthorized conversions. Second, we are not prescribing specific language either in the LOA or in any promotional materials; rather we are specifying the minimum information that an LOA must include and have placed no restrictions on any promotional materials.[37]

18. Finally, as indicated above, we have chosen the method of regulation that least impinges on the carriers' free choices of how to promote their services. We are not proposing to restrict IXCs' use of their promotional materials, but merely are specifying that they be separate or severable from the actual document that authorizes a PIC change. Carriers are free to use whatever promotional materials they choose, and whatever avenues for distribution of those promotional materials that they choose. All we are requiring is that they comply with our minimal requirement that the actual document authorizing a PIC change be separate or severable from the promotional materials so that it is clear to the consumer that signing that document will do just that. Our goal is to minimize deceptive promotional practices and still permit the consumer to be informed about her or his choices.

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[37] See para. 10, supra, and paras. 18 and 24, infra.

2. Public Interest Considerations

a. Comments

19. Generally, consumer groups, state regulatory bodies, local telephone companies, some IXCs, and some interexchange resellers support our proposal to separate the LOA from promotional material,[38] while most facility-based IXCs and some resellers oppose this measure.[39] The proponents stress that this provision, above all others, will ensure that consumers will be fully and clearly informed as to the action they must take to effect a PIC change. Sprint contends that "combining the LOA with promotional inducements, such as a vacation contest, the endorsement portion of a check that can be cashed by the consumer, etc., has the potential for outright deception, or at the very least for leading to misunderstandings between consumers and carriers."[40] LDDS states that "the LOA should not be used for any purpose other than to designate the end user's choice of PIC."[41] LDDS further asserts that "[a]ny ancillary marketing activities should be handled via documents physically separate from the LOA"[42] and that "this should eliminate customer confusion about the purpose of the LOA document itself."[43] Consumer Action "strongly agree[s] that the LOA needs to be on a separate piece of paper that is independent of any inducements such as a check or contest entry form."[44] Consumer Action asserts that "[a] consumer's focus needs to be on the LOA and its implications"[45] and that "[c]ombining it with inducements does nothing but confuse and mislead."[46]

20. Other commenters take a contrary view, however, arguing that this proposal is overbroad. AT&T argues that "[t]he proposed rule absolutely barring combined LOA/inducements goes far beyond what is necessary to protect telephone subscribers from abuses or

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38 For example, Consumer Action, NY Public Service, Sprint, NYNEX, and LDDS Communications, Inc. (LDDS) all supported this provision.

39 For example, AT&T, MCI, and Touch 1 Inc. & Touch 1 Communications, Inc. (Touch 1) opposed this provision.

40 Sprint Comments at 5.

41 LDDS Comments at 5.

42 Id.

43 Id.

44 Consumer Action Comments at 2.

45 Id.

46 Id.

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deception, and would impose serious hardships on both consumers and IXCs."[47] AT&T further contends that these problems would be cured by the Commission's "companion proposals in this docket requiring that LOAs clearly and unambiguously set forth in a legible typeface all of the Commission's prescribed disclosures."[48] MCI argues that "[t]hese proposals go far beyond the elimination of sharp practices because they would unfairly impact the legitimate marketing practices of many carriers."[49] America's Carriers Telecommunications Association (ACTA) asserts that "promotions are a useful marketing tool that are favored by both large and small carriers. However, it is the smaller carriers that will be most impacted by the required separation, for such carriers do not have available to them the alternatives of massive advertising campaigns on radio and nationwide television."[50]

b. Decision

21. Based on our investigation of consumer complaints concerning LOAs, we find that abuses have occurred and continue to occur at an increasing rate. Much of the abuse, misrepresentation, and consumer confusion occurs when an inducement and an LOA are combined in the same document in a deceptive or misleading manner. These complaints generally describe apparently deceptive marketing practices in which consumers are induced to sign a form document that does not clearly advise the consumers that they are authorizing a change in their PIC. As we have described above, consumers have complained that the "LOA" forms were "disguised" as contest entry forms, prize claim forms, or solicitations for charitable contributions. The characteristic common to all of these marketing practices is that the inducement is combined with the LOA and the inducement language is prominently displayed on the inducement/LOA form while the PIC change language is not, thus leading to consumer confusion.

22. We believe that consumers and industry alike should be clearly informed as to what will be expected to authorize a change of a consumer's long distance telephone service. Our experience indicates that for fair competition to continue, consumers must have clear and unambiguous information about the actions and the choices they are being asked to make. Although we think that a consumer may reasonably choose to change long distance telephone services because of a carrier's inducements, we are troubled by the number of consumers nationwide who are not given the opportunity to

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[47] AT&T Comments at 12.

[48] Id. at 13.

[49] MCI Comments at 3-4.

[50] ACTA Comments at i.

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make that informed choice because they are deceived by an LOA that is disguised as a contest entry, prize claim form, or charitable solicitation. We believe that the only way to ensure that the consumer can always make a truly informed choice from now on is to require that the LOA be a separate or severable document.[31] The LOA must therefore be a separate document or must be severable -- for example, attached by perforations that, when torn out, contains only authorizing language. Under this requirement, no IXC will be able to mix its promotional materials with the LOA in a deceptive or confusing manner.

23. Although this rule may require some IXCs to change certain details in their use of such promotional tools, we do not believe that our rule will seriously affect the basic effect and function of the IXCs' marketing campaigns. With regard to charitable solicitations, or contest and sweepstakes entries, IXCs can simply use their promotional materials to encourage consumers to sign the LOA. For example, it is conceivable that an LOA might be in the form of a postage-paid postcard attached along the "inner spine" of a magazine facing the IXCs' advertisement touting its service and inducements. It is also conceivable that an IXC might use a postage-paid postcard LOA that is initially attached to an airline ticket jacket by a perforated edge. The promotional materials and inducements would be relegated to the "jacket" portion of the airline ticket jacket and the LOA, a separate and distinct form, could be torn from the "jacket" portion and mailed separately. Finally, those IXCs using "one-page" promotional materials could employ a variation of this approach. They could use a single sheet with the IXC's promotional inducements on the top portion of the sheet and a separable postcard LOA on the bottom, initially attached to the sheet by perforations, but ultimately detached from the sheet and mailed. If our rules are followed and the LOA is properly captioned, consumers should be clearly informed as to the action they are being asked to take. In light of this discussion, we believe that the benefits gained by better informed consumers outweigh the possibilities of slightly decreased marketing flexibility that some IXCs might experience.

24. MCI mistakenly construes our proposal as unreasonably restricting the use of their promotional materials. MCI argues that "[w]ithout defining impermissible 'inducements,' it is impossible to distinguish between legitimate commercial incentives, as distinct from deceptive practices that ought to be prohibited. If the Commission is seeking to foreclose all promotional materials or advertisements used with LOAs, its proposal is too sweeping."[32]

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[31] As discussed in paragraphs 25 and 26, infra., we make a limited exception to this general "separate or severable document" rule in our handling of "PIC change" checks.

[32] MCI Comments at 5.

Contrary to MCI's assertions, we are in no way prohibiting the use of marketing campaigns that include contest or sweepstakes entries, charitable solicitations, or checks. We are merely taking the limited, necessary step of separating the Commission-prescribed authorizing document from the commercial inducements.[53] We take this action because thousands of consumers have complained to us and tens of thousands more have complained to their LECs and state regulatory bodies that when they enter the contests, claim the prizes, or respond to the charity solicitations employed by some IXCs, they did not intend to switch their long distance carriers.

25. We do, however, believe a limited exception should be made for PIC change checks. Although some IXCs have used checks to mislead and deceive consumers to change their PICs, we recognize that other IXCs use checks in their marketing campaigns in an appropriate and non-misleading manner, which have resulted in minimal consumer complaint. AT&T and MCI assert that their "PIC change" checks are clear and unambiguous and clearly inform the consumer that signing such a check will result in a PIC change. Both companies claim that their marketing material accompanying the check also informs the consumer that signing the check will result in a PIC change. Both companies also cite the absence of consumer complaints against their respective check marketing strategy as evidence that this form of marketing should not be prohibited by our "separate document" LOA proposal.[54]

26. We are persuaded by the arguments of AT&T and MCI, notwithstanding our negative experience with some IXCs that deceptively use checks to market their services. In an effort to narrowly tailor our requirements, we find that the checks that some carriers, such as AT&T and MCI use as LOAs can be excepted from our "separate or severable document" requirement. Generally, such checks contain only the required LOA language and the necessary information to make them negotiable instruments (bank account number, payee's name, amount, etc.). When an "inducement" check does not contain additional promotional information, we think that it is unlikely that consumers will be unable to discern that the primary purpose of the check is to authorize a PIC change. Typically, a "PIC change" check from these IXCs contains a banner title that reads "Endorse Check to Switch to ..." or "Endorsement of this Check Switches Your Long Distance Service to ...." Indeed, a survey of the consumer complaints that we have received reveals that these checks are seldom the source of actual unauthorized

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[53] This action is a far less restrictive alternative than requiring the LOA and promotional material to be in separate envelopes. See Comments of Southwestern Bell.

[54] See Comments of AT&T and MCI.

conversions.[65] To ensure that such checks do not mislead or confuse consumers, we shall require that a valid LOA/inducement check contain only the required LOA language and the necessary information to make it a negotiable instrument, and shall not contain any promotional language or material. We require carriers to continue to place the required LOA language near the signature line on the back of the check. In addition, we shall require that carriers print, in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a PIC change by signing the check. We think that this additional safeguard, along with all other requirements applicable to LOAs,[66] will ensure that consumers are not confused or misled when carriers use inducement checks as a marketing tool.[67]

27. We want to emphasize that this provision should reduce complaints against most IXCs because consumers should be on clear notice that they are changing their long distance telephone service. Further, consumers and this Commission should, under this requirement, be better able to identify intentionally misleading practices. IXCs should easily be able to fashion LOAs that will be unlikely to engender complaints and thereby come under Commission scrutiny. We see serious problems with less specific LOA requirements that, under the guise of permitting more marketing "flexibility," would effectively require us to scrutinize many, perhaps most, LOAs in response to consumer complaints, as is now the case.[68] Such a result would, we think, be much more intrusive than our new rule, which should remove most LOAs from the realm of dispute. Therefore, we adopt the rule to require the LOA to consist of a separate or severable document -- that is, a document containing the minimum language required to authorize a PIC change as described in Section 64.1150(e), printed with a type of sufficient size and readable type to be clearly legible with no

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[65] However, we have received several informal complaints objecting to the use of checks for this purpose, even though no unauthorized conversion has actually taken place.

[66] In other words, checks that are used as LOAs must satisfy all requirements applicable to LOAs.

[67] We will exercise our discretion in making any further exceptions to our "separate or severable document" rule.

[68] We encourage entities such as LECs to take additional steps that might help reduce slamming in their service areas. The California PUC states, and AT&T acknowledges, that Pacific Bell has "an option for their customers known as a (PIC) freeze. Under this option the customer must contact his local exchange carrier in order to change his long distance carrier. IXCs are not allowed to act as agents.... [Pacific Bell] usually mention[s] this option to customers once they have been slammed. One idea is to have LECs provide customers with this option before they have been slammed." California PUC Comments at 4-5.

inducements. We believe that this requirement will prevent certain current deceptive or confusing marketing practices, while recognizing the need of the industry for flexibility to market services to consumers.[59]

C. Other Unauthorized Conversion Issues

1. The Carrier Named on the LOA

28. In the NPRM, we sought comment on whether LOAs should contain only the name of the carrier that directly provides the interexchange service to the consumer. We recognize that there may be more than one carrier technically involved in the provision of long distance service to a consumer. For example, there may be an underlying carrier whose facilities provide the long distance capacity and a resale carrier that actually sets the rates charged to the end user consumer. In some cases, there also may be a carrier that acts as a billing and collection or marketing agent.

29. Most commenters agreed that only the name of the IXC setting the consumer's rates should appear on the LOA. Some resellers opposing this requirement claim that some consumers will not give them their business because the consumers want their telephone service handled by a large carrier. These commenters argue that allowing the small IXC reseller to use the name of the larger underlying carrier is not confusing to consumers and is necessary to bolster consumer confidence. Based on numerous consumer complaints, we conclude that it is in fact confusing to consumers for an LOA to contain the name of an IXC that is not providing service directly to the consumer. Because our rules only affect the LOA and not promotional materials, small IXCs may choose to use those materials to promote their affiliations with larger carriers in order to gain greater consumer acceptance. The LOA may not be used for such a purpose, however. Therefore, we will only permit the name of the rate-setting IXC on the LOA.[60]

30. In a related matter, several LECs have informed the Commission, that in some cases where the reseller sets the rates, consumers may be confused because the name of the underlying, facilities-based IXC may appear on the consumer's bill. BellSouth Telecommunications, Inc. (BellSouth) states that "currently the provider of interexchange service named on a customer's telephone bill rendered by BellSouth is determined by the carrier

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[59] The rule adopted here would, for example, prohibit the use of forms that combine LOAs with the language of contest entries, prize claims and charitable solicitations.

[60] We modify the proposed Section 64.1150(e)(4) to accommodate this and the multiple PIC issue, paragraph 32, infra.

identification code (CIC). CICs are issued by Bellcore to facility-based IXCs. Thus, BellSouth has no present capability for bill identification of companies which market to end users but do not own transmission facilities and do not have a CIC. Such capability could be achieved through the creation of a coding system to assign and maintain pseudo-CICs for non-facility-based IXCs."[41] Although BellSouth states that it might be able to institute such a system within a year, BellSouth asserts that a national system of code administration and maintenance is preferred.

31. We recognize that consumers may be confused if after they agree to switch their long distance service, the name of some other IXC appears on their bill. We expect all IXCs that do not have a CIC to explain to their new customers that another IXC's name may appear [illegible] and maintain pseudo-CICs for non-facility-based IXCs. We defer a full examination of this issue to another proceeding.

32. Finally, certain commenters have informed the Commission that the jurisdictions they operate in either allow for two primary interexchange carriers ("2 PICs")[42] or will likely allow "2 PICs" in the near future.[43] Typically, these jurisdictions allow for a separate inter-state IXC and an intra-state IXC.[44] Consumers may choose an IXC to provide them with either inter-state service, intra-state service, or both. Our proposed Section 64.1150(e) (4)[45] does not contemplate such a scenario and therefore we will modify the rule provision to accommodate 2-PIC jurisdictions as follows:

> [The LOA must state] that the subscriber understands that only one interexchange carrier may be designated as the subscriber's interstate primary interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional primary

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41 Comments of BellSouth at 2.

42 See Comments and Replies of Allnet, Ameritech, OCI and GTE.

43 See Reply Comments of Ameritech at 2,

44 In the case of GTE Hawaiian Telephone Company Incorporated (GTE Hawaiian), the choices entail an international carrier and a interstate (mainland United States) carrier. GTE Comments at 1

45 The proposed Section 64.1150(e)(4) states "...that the subscriber understands that only one interexchange carrier may be designated as the subscriber's primary interexchange carrier for any one telephone number and that selection of multiple carriers will invalidate all such selections...."

> interexchange carriers (e.g., for intrastate or international calling), the letter of agency must contain separate statements regarding those choices. Any carrier designated as a primary interexchange carrier must be the carrier directly setting the rates for the subscriber. One interexchange carrier can be both a subscriber's interstate primary interexchange carrier and a subscriber's intrastate primary interexchange carrier....
> [66]

We note that the rule provision will, in effect, continue as originally proposed in those jurisdictions that do not recognize 2-PIC, which at the adoption of these rules represents the vast majority of the jurisdictions in the United States. This rule provision should, however, be flexible enough to accommodate any new 2-PIC jurisdictions in the future.[67]

2. Business vs. Residential Presubscription

33. The Commission sought comment on whether business and residential customers should be treated differently with respect to our LOA requirements. Unlike the situation with many residential customers, LOA forms sent to businesses may not be received and processed by the person authorized to order long distance service for the business. In such a situation, even an LOA that is signed may result in an unauthorized change because the person who signed the LOA had no authority to do so. Most commenters contend that business and residential customers should be treated the same, "as long as the requirements are reasonable for both types of customer."[68] One of these commenters contends that

> if an LOA is clear and legible, it should not be subject to different rules based on the type of service provided. Carriers may have legitimate business reasons to combine marketing campaigns for different kinds of services, and may not even be able to distinguish between business and residence lines (e.g., where a business operates from the home).[69]

Further, some suggest that a line be included on both the residential and the business LOA that indicates that the person

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[66] Section 64.1150(e)(4).

[67] We will allow the inclusion of both the inter-state PIC and the intra-state PIC on the same LOA. Each PIC named must be the rate-setting IXC for its service area.

[68] Comments of ACC Corp. at 6.

[69] Id.

signing the LOA is the person authorized to order service.[70]

34. We are persuaded that there should be no distinction between business and residential customers with respect to our new LOA rules. Further, we do not believe it necessary at this time to require a line on the LOA indicating who is qualified to authorize a PIC change. This may be an addition that a prudent IXC may include on an LOA, because it remains the responsibility of the IXC to determine the responsible party in such a contractual arrangement. The validity of an LOA will continue to depend on it having been signed by a person authorized to make the presubscription decision.

3. Consumer Liability Issues

35. In the NPRM, we asked whether any adjustments to long distance telephone charges should be made for consumers who are the victims of unauthorized PIC changes. Specifically; we asked whether consumers should be liable for the long distance telephone charges billed to them by the unauthorized IXC and if so, to what extent. We sought comment on whether consumers should be liable for: (a) the total billed amount from the unauthorized IXC; (b) the amount the consumer would have paid if the PIC had never been changed; or (c) nothing at all.

36. The majority of commenters support option (b), the "making whole" approach. These commenters contend that consumers should be liable to the unauthorized carrier for the amount they would have paid if the PIC had never been changed. Consumer groups, some state regulatory bodies, and some local telephone companies argue that the only way to stop slamming is to deny the "slammer" revenue and the only way to do that is to absolve consumers of all billed toll charges from unauthorized IXCs.[71] In addition, the Illinois Congressional Delegation has expressed its concern "that many long-distance customers that have experianced this unauthorized switch in their service are forced to pay for services they did not order or knowingly approve."[72] It has asked the Commission to "examine the possibility of proposing a rule that

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70 Comments of NAAG at 8.

71 See Comments of Consumer Action, New York Public Service and Southwestern Bell.

72 Letter from Senator Carol Moseley-Braun, Senator Paul Simon, Representative Glenn Poshard, Representative Cardiss Collins, Representative Jerry Costello, Representative Richard Durbin, Representative Lane Evans, Representative Luis Gutierrez, Representative Mel Reynolds, Representative William Lipinski, Representative Dennis Hastert, and Representative Sidney Yates to Reed E. Hundt, Chairman, Federal Communications Commission, January 12, 1995.

will allow victims of 'slamming' to forfeit responsibility for charges billed by the long-distance company which switched their service without proper authorization."[73] Opponents of forgiving all charges argue that such a policy would lead to consumer fraud in that it "would provide the unscrupulous with an incentive to claim wrongful conversion in order to avoid payment of legitimate long distance charges."[74] They claim that such a policy "would also impose undue penalties on carriers that had converted a consumer to their service in good faith only to find that the spouse or a relative from whom they had received authority for the PIC change was not actually empowered to grant that authority."[75]

37. Despite the compelling arguments of those favoring total absolution of all toll charges from unauthorized IXCs, we are not convinced that we should, as a policy matter, adopt that option at this time. The "slammed" consumer does receive a service, even though the service is being provided by an unauthorized entity. The consumer expects to pay the original rate to the original IXC for the service.[76] Except for the time and inconvenience spent in obtaining the original PIC, consumers are not injured if their liability is limited to paying the toll charges they would have paid to the original IXC. We recognize, however, that this may not be the best deterrent against slamming. Some IXCs engaging in slamming may not be deterred unless all revenue gained through slamming is denied them. We will investigate future slamming cases with the question of consumer liability in mind. At this time, we believe that the equities tend to favor the "make whole" remedy and therefore support the policy of allowing unauthorized IXCs to collect from the consumer the amount of toll charges the consumer would have paid if the PIC had never been changed. We expect all unauthorized IXCs to cooperate with consumers in the proper settlement of these charges. Failing this, through the complaint process, we will prohibit unauthorized IXCs from collecting more than the original IXC's rates. However, we recognize that if "slamming" continues unabated -- perhaps through abuses in areas other than the use of the LOA -- we may have to revisit this question at a later date.

38. We also asked the public to comment on the effect that unauthorized PIC changes have on optional calling plans and the

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[73] Id.

[74] See Comments of MIDCOM Communications Inc. (MIDCOM) at 12.

[75] Id.

[76] Of course, this assumes that the telephone service is comparable in all relevant aspects. A slammed consumer may have a cause of action through the Commission's complaint process to reduce the amount paid to the unauthorized IXC if the service of the unauthorized IXC is demonstrably inferior to that of the original IXC.

consumers enrolled in them. In cases of unauthorized PIC changes, the consumer may not be aware of the change for at least one billing cycle. Often, these consumers continue to pay a flat, minimum monthly charge to their previous carrier for a discount calling plan despite the fact that they are no longer presubscribed to that carrier.[77] Most commenters agree that consumers should not be liable for optional calling plans if they are no longer connected to their original carrier, but several differ on exactly how the consumer should recoup their loss. Most commenters contend that the consumer should simply be absolved of all calling plan liability from the moment the consumer is slammed.[78] Several commenters contend that the original carrier should bill the offending carrier for the lost revenue.[79] Some commenters suggest that however it decides to handle consumer liability issues, the Commission should not expect LECs to resolve consumer/IXC disputes.[80]

39. We agree with the majority of commenters that the equities strongly favor absolving slammed consumers from liability for optional calling plan payments. It is reasonable that consumers should not have to pay for services they cannot enjoy in the manner they had contemplated. For example, consumers that only receive discounts on their residential telephone service as a benefit in return for optional calling plan premiums should not have to continue to pay those premiums if their residential telephone service is slammed. However, there may be cases where consumers receive benefits in addition to their presubscribed telephone service discounts, such as the use of a domestic or international "calling card," not associated with a presubscribed telephone number. In such cases, consumers should be liable for some calling plan payment even if the presubscribed service has been changed, as long as those consumers are clearly informed upon initiation of the optional calling plan. Consequently, we will not allow IXCs to collect optional calling plan premiums for slammed consumers, unless the IXC has stated clearly in its tariff that its presubscribed customers are liable for calling plan premiums in compensation for benefits in addition to the customer's presubscribed service, even if the presubscribed service is

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[77] These consumers may still access the previous IXC's long distance service by using an access code or through the use of any "calling cards" issued by the IXC to the consumer, but it is unlikely that many consumers intend to use an optional calling plan only in this manner.

[78] See Comments of Southwestern Bell, New York Public Service and Hertz Technologies, Inc. (Hertz Technologies).

[79] See Comments of MIDCOM, Telecommunications Resellers Association and Touch 1.

[80] See Comments of Pacific Bell and Nevada Bell and GTE.

changed. The IXC will be required to give prior notice to its customers regarding its additional benefits and its compensation expectations through its tariff and its customer service material.

4. Fully Translated LOAs

40. The non-English speaking population represents a growing market in this country that IXCs are targeting for their domestic and international business. Some of these consumers have alleged that the non-English versions of the LOA do not contain all of the text of the English versions of the LOA. As a result, material portions of the LOA are in only one language, typically English, which the non-English speaking consumers may not fully understand. We sought public comment on whether we should adopt rules to govern bilingual or non-English language LOAs.[81] Specifically, we asked whether we should require all parts of an LOA translated if any parts were translated. The overwhelming majority of commenters stated that we should adopt such a rule. We agree that such a requirement is necessary to ensure that all consumers can make informed choices. Therefore, we require all IXCs that choose to translate any part of the LOA to translate all parts of the LOA and consequently, we adopt Section 64.1150(f).[82]

5. LOA Title

41. Consumer groups, state regulatory bodies, and resellers contend that a consumer may be less confused and more informed if the LOA is titled in a more understandable style.[83] For example, commenters suggest titling the LOA document: "An Order to Change My Long Distance Telephone Service Provider," "Application to Change My Long Distance Company," or "Order Form to Change My Long Distance Telephone Service." Although we will not prescribe a particular title for the LOA, we agree with these commenters and strongly suggest that all IXCs use a clear, easily understandable title.

6. Consumer-Initiated Calls

42. Finally, we asked the public how consumers have been affected by the IXC marketing practice of "encouraging" consumers to authorize a PIC change when they call an IXC's business number for other reasons. Typically, the consumers, in response to an

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[81] We intend that all of our rules and policies adopted in this proceeding apply to bilingual or non-English LOAs as well as English-language LOAs.

[82] 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.

[83] See Comments of Consumer Action, New York Public Service and ACTA.

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advertisement, are just requesting general information about the IXC and do not intend to initiate a PIC change. We are persuaded by some commenters, resellers and local exchange carriers, that verification procedures to consumer-initiated calls. Some commenters, however, argue that because the IXC does not initiate the call, the PIC order is not generated by telemarketing and, thus, the order verification protections in Section 64.1100 of our rules should not apply.[85] Those commenters fail to explain adequately why a consumer who initially places a call to an IXC's business number, presumably searching for information, should benefit less from rules designed to curb deceptive practices than the consumer receiving a call from a telemarketer. We are not convinced there is enough of a difference between the two situations as to justify such vastly different treatment. We agree with Consumer Action that consumers "responding to a 30-second television ad ... calling to get answers to questions ... are as subject to unauthorized conversion as a consumer who was called at home."[86] We also agree that upon adoption of our rules, some "IXCs may switch from mailing inducement-laden LOAs to mailing marketing pieces in which a consumer is urged to call an business number in order to receive a promised inducement"[87] where "(a)n unauthorized conversion could easily take place on such a call."[88] Therefore, we will extend PIC verification procedures to consumer-initiated calls to IXC business numbers.

7. **Preemption of State Law**

43. Although we did not seek comment on the matter, some of the resellers urged the Commission to preempt inconsistent state law with regard to "slamming."[89] These commenters generally argue that "[t]he Commission's LOA requirements should be applied nationwide and the individual states should not be allowed to impose their own LOA requirements in addition to those of the Commission."[90] None of these commenters, however, cites specific state regulations that warrant federal preemption. At most, ACTA asserts that "two state public utility commissions, Florida and South Carolina, ... currently have on-going proceedings concerning

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[85] See Comments of Touch 1, GTE and Consumer Action.

[86] See Comments of AT&T at 22 and MCI at 14.

[87] See Comments of Consumer Action at 3-4.

[88] Id.

[89] Id.

[90] See Comments of ACC Corp., ACTA and One Call.

[91] Comments of One Call at 5, n.12.

the rules for consumer selection of interexchange carriers."[91] Until and unless we receive specific allegations of specific state statutes that warrant federal preemption, we cannot consider or act on these commenters' requests for federal preemption. We note that the record shows that state action regarding "slamming" appears to be consistent with our own. Therefore, we decline at this time to preempt any state law regarding the unauthorized conversion of consumer's long distance service. We will consider specific preemption questions on a case-by-case basis.

IV. REGULATORY FLEXIBILITY ACT FINAL ANALYSIS

44. **Need for Rules and Objective.** We have adopted rules designed to protect consumers from unauthorized switching of their long distance carriers and to ensure that consumers are fully in control of their long distance service choices.

45. **Issues Raised by the Public in Response to the Initial Regulatory Flexibility Analysis.** No comments were received specifically in response to the Initial Regulatory Flexibility Analysis.

46. **Alternatives that would lessen impact.** We have considered alternatives suggested in the record and have found that they would not be comparably effective. Small entities may feel some economic impact in additional printing costs because of these new letter of agency requirements. Because the rules will not take effect for sixty (60) days, we believe all IXCs, large and small, will have sufficient advance time to revise and print new LOAs.

V. CONCLUSION

47. In this Report and Order, we have adopted rules clearly delineating what must be included in an LOA document and, equally important, what may not be included in an LOA document. These rules are intended to limit the contents of an LOA document so that its sole purpose and effect are to authorize a PIC change. The proposed restrictions should eliminate consumer confusion about the intent and function of the LOA. Further, our policy decisions should further clarify our position regarding other "slamming" issues. We wish to make clear that although our evolutionary approach to the "slamming" problem has generally been one of regulatory restraint, we will not tolerate continued abuses against consumers and may revisit this question if warranted.

48. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose

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[91] Comments of ACTA at 11.

new and modified third party reporting requirements on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

VI. ORDERING CLAUSES

49. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), 201-205, 218, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 151, 154(i), 154(j), 201-205, 218, 303(r), that 47 C.F.R. Part 64 is amended as set forth in the Appendix B.

50. IT IS FURTHER ORDERED, that the Chief of the Common Carrier Bureau is delegated authority to act upon matters pertaining to implementation of the policies, rules, and requirements set forth herein.

51. IT IS FURTHER ORDERED, that this Report and Order will be effective sixty (60) days after publication of a summary thereof in Federal Register.

FEDERAL COMMUNICATION COMMISSION

William F. Caton
Acting Secretary

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APPENDIX A

Comments Filed

ACC Corporation
Allnet Communication Services, Inc.
America's Carriers Telecommunications Association
AT&T Corp.
Communications Telesystems International
Competitive Telecommunications Association
Consumer Action
Florida Public Service Commission
Frontier Communications International Inc.
General Communication, Inc.
GTE Service Corporation
Hertz Technologies, Inc.
Hi-Rim Communications, Inc.
Home Owners Long Distance, Inc.
L.D. Services, Inc.
LDDS Communications, Inc.
Lexicom, Inc.
MCI Telecommunications Communications Corporation
MIDCOM Communications Inc.
Missouri Public Service Commission, et al.
National Association of Attorneys General, et al.
New York Department of Public Service
NYNEX Telephone Companies
One Call Communications, Inc.
Operator Service Company
Pacific Bell and Nevada Bell
People of the State of California, et al.
Public Utility Commission of Texas
Southwestern Bell Telephone Company
Sprint Communications Co.
State of Michigan, Attorney General
State of Wisconsin, Attorney General
State of New York, Attorney General
Telecommunications Company of the Americas, Inc.
Telecommunications Resellers Association
Touch 1, Inc. and Touch 1 Communications, Inc.
William Malone

Reply Comments Filed

ACC Corporation
Alabama Public Service Commission
Allnet Communication Services, Inc.
Ameritech Operating Companies
AT&T Corp.
Bell Atlantic Telephone Companies
BellSouth Telecommunications, Inc.

Commonwealth Long Distance
Communications Telesystems International
Competitive Telecommunications Association
Custom Telecommunications Network of Arizona, Inc.
General Communication, Inc.
GTE Service Corporation
Hi-Rim Communications, Inc.
L.D. Services, Inc.
LDDS Communications, Inc.
Local Area Telecommunications, Inc.
MCI Telecommunications Communications Corporation
National Association of Regulatory Utility Commissioners
Oncor Communications, Inc.
One Call Communications, Inc.
Operator Service Company
Pennsylvania Public Utility Commission
Pacific Bell and Nevada Bell
Southwestern Bell Telephone Company
Sprint Communications Co.
Telecommunications Resellers Association

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APPENDIX B

Part 64 of the Commission's Rules and Regulations, Chapter I of Title 47 of the Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 64 continues to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228, unless otherwise noted.

2. Part 64, Subpart K, is amended by amending Section 64.1100(a) to read as follows:

§ 64.1100 Verification of orders for long distance service generated by telemarketing.

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(a) The IXC has obtained the customer's written authorization in a form that meets the requirements of Section 64.1150, below.

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3. Part 64, Subpart K, is amended by adding Section 64.1150 to read as follows:

§ 64.1150 Letter of Agency Form and Content

(a) An interexchange carrier shall obtain any necessary written authorization from a subscriber for a primary interexchange carrier change by using a letter of agency as specified in this section. Any letter of agency that does not conform with this section is invalid.

(b) The letter of agency shall be a separate document (an easily separable document containing only the authorizing language described below) whose sole purpose is to authorize an interexchange carrier to initiate a primary interexchange carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the primary interexchange carrier change.

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

(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 prescribed in paragraph (e) below 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 consumer is authorizing a primary interexchange carrier change by signing the check. The letter of agency language also 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 primary interexchange carrier change order; and

2) the decision to change the primary interexchange carrier from the current interexchange carrier to the prospective interexchange carrier; and

3) that the subscriber designates the interexchange carrier to act as the subscriber's agent for the primary interexchange carrier change; and,

4) that the subscriber understands that only one interexchange carrier may be designated as the subscriber's interstate primary interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional primary interexchange carriers (e.g., for intrastate or international calling), the letter of agency must contain separate statements regarding those choices. Any carrier designated as a primary interexchange carrier must be the carrier directly setting the rates for the subscriber. One interexchange carrier can be both a subscriber's interstate primary interexchange carrier and a subscriber's intrastate primary interexchange carrier; and

5) that the subscriber understands that any primary interexchange carrier selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's primary interexchange carrier.

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

(g) 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.

TESTIMONY OF THE CITIZENS' UTILITY RATEPAYER BOARD

before the

SELECT COMMITTEE ON TELECOMMUNICATIONS

The Honorable Doug Lawrence, Chairman

February 21, 1996

H.B. 3030 addresses the need to provide rural Kansans affordable access to Internet services. H.B. 3030 permits all local exchange and long distance carriers to provide residential customers, public educational institutions, and public libraries, dial-up access to one on-line information or Internet provider within the calling customer's LATA for a flat monthly fee. For off-peak use, a flat monthly fee of $15.00 per line is proposed. For unlimited use, a flat monthly fee of $30.00 per line is proposed. Additional dial-up access to on-line information or Internet providers within a calling customer's LATA may be added for an additional flat fee.

H.B. 3030 is a step in the right direction. Presently, rural Kansans pay a flat monthly fee plus long distance charges to access the Internet. They pay long distance charges to access Internet Service Providers often located in urban areas. CURB believes rural Kansans deserve access to the Internet equal to that enjoyed by urban dwellers.

CURB commends the Committee for addressing the issue of access to the Internet. The Committee, however, should consider a more affordable and flexible plan than that offered by H.B. 3030. For example, SWBT's 1+Saver Direct plan, presently being considered by the KCC, offers one-way unlimited

calling for $15.00 (and $10.00 for each additional number) regardless of time period called. SWBT's plan provides consumers more flexibility at more affordable rates. CURB proposes an even more affordable flat-rate of $7.00 to $12.00 per month to a designated Internet number.

The Committee should also consider that neither H.B. 3030 nor SWBT's 1+Saver Direct encourages competition. Access charges long distance carriers pay LECs will preclude them from being able to compete in this growing market. CURB supports a plan that promotes competition and allows customers to select their carrier of choice between LECs or IXCs.

CURB supports a plan that offers rural consumers unlimited Internet use at more affordable rates than those proposed in H.B. 3030 and promotes competition among local and long distance carriers.

THE COMMERCENET/NIELSEN INTERNET DEMOGRAPHICS SURVEY

Executive Summary

Released: October 30, 1995

Preface

The Internet revolution is sweeping the globe with such swiftness that companies are desperately trying to understand what is occurring, what it all means, where it is going, and how to leverage this new opportunity. Countless organizations are exploring how they can best use the Internet, in particular the World-Wide Web (WWW), for business applications such as marketing, supply chain management, public relations, customer support, product sales, and electronic data interchange. Internet-based commerce has limitless possibilities, but it has left companies with many more questions than answers. For example,

- What are the legal ramifications of conducting business on-line?
- How will my company's marketing programs be impacted by a presence on the Internet?
- When will purchasing on the Internet be as easy as paying with a credit card at my local department store?

To guide the evolution of Internet commerce and to help businesses understand the opportunities, sound information is of critical importance. Understanding the demographics, attitudes and interests of Internet users -- and how they differ from those of non-users -- is essential to move the industry forward. The CommerceNet/Nielsen Internet Demographics Survey directly addresses this need by:

- Identifying Users of interactive services (i.e., the Internet and commercial on-line services) as well as their demographic profile.
- Defining Usage, including how much time is spent with various services, where people are accessing services, and how access is provided.
- Examining the Utility of assessing interactive services via WWW site or on-line surveys.

This research is a key milestone in the measurement of the Internet and WWW usage. For the first time, users of the Internet, the World-Wide Web, and the on-line services have been scientifically surveyed about their interactive usage, interests, and on-line activities. Albert Einstein once said, "The whole of science is nothing more than a refinement of everyday thinking." By conducting this survey and broadly distributing its results, CommerceNet and Nielsen Media Research are redefining and clarifying individuals', businesses', and organizations' understanding of the use and possibilities of the Internet. The result is benchmark research that provides nationally projectable information that will serve as both a means to plan Internet business activities and a baseline against which to compare future studies.

1. Introduction

The CommerceNet consortium was formed to address all issues related to Internet-based electronic commerce. A non-profit organization of over 130 electronics, computer, financial service, and

information service companies, CommerceNet is working to accelerate the use of the Internet for business applications.

As part of its efforts, CommerceNet is examining the large number of questions that have to be answered before the Internet is generally accepted by individuals, companies, and organizations as a key means for conducting business. Answering the question of "Who are the users of the Internet and what are they doing on it?" is what CommerceNet, in partnership with Nielsen Media Research, chose to tackle when it initiated this Internet Demographics Survey.

1.1 Why an Internet Demographics Survey?

The lack of information about Internet user demographics is a major obstacle prohibiting the Internet from moving from trial activities to mainstream business applications. CommerceNet and Nielsen are working together to eliminate this hurdle -- first by conducting an Internet study that will accurately profile Internet users, and then by making the survey results readily available to the industry as a whole.

While the CommerceNet/Nielsen Internet Demographics Study is not the first one ever conducted, it is the first Internet survey whose results represent the population as a whole. Academics and market research companies have previously completed a number of Internet studies. While these studies have proven valuable in promoting Internet-based commerce, they have been inherently biased, limited in scope, or both. For instance, numerous surveys have relied on the Internet itself to obtain baseline data. This introduces bias, because only people on the Internet who find the questionnaire can complete it, and only those who want to fill out the survey provide the requested information. Other Internet surveys have used more traditional market research techniques (such as telephone-based surveys using a random digital dial methodology) attempting to remove these biases. These surveys to date, however, have only focused on Internet users -- excluding commercial on-line users and people who aren't connected to either the Internet or an on-line service. In addition, these research programs have typically been proprietary which limited the release of survey results and disclosure of the accompanying methodology to the companies sponsoring the study.

1.2 The Study's Impact on Business

Because this Internet Demographics Survey is the most rigorous Internet study completed to date, it is expected to have a significant impact on how companies conduct business on the Internet. The results seem to indicate that -- while a number of Internet obstacles need to be eliminated and various questions require answers -- the Internet business applications are limitless. For example, the survey has shown:

- There is widespread access to the Internet within the US and Canada.
- The Internet user is an extremely attractive target (educated, professional, and upscale)
- An Internet marketplace has already emerged (e.g., more than 2.5 million people have purchased products and services over the WWW)

The study's results will certainly change companies' perspective on the opportunity that the Internet provides, and many businesses will likely use these results as the foundation for their next Internet business planning cycle.

1.3 Availability of the Results

To promote widespread knowledge of this medium, CommerceNet and Nielsen are pleased to make this study -- both the Executive Summary and the Final Report -- available to the industry as a whole. The Executive Summary is being distributed for free via the Internet on CommerceNet's (www.commerce.net) and Nielsen Media Research's (www.nielsenmedia.com) WWW servers. The Final Report is available for purchase from CommerceNet (phone: 415-617-8790; e-mail: survey@commerce.net) and Nielsen Media Research (phone: 813-738-3125; e-mail:

would be asked a portion of the 40 questions.

The interview started with questions to select a random person in the home 16 years or older. If the selected member of the household was temporarily living elsewhere, such as a college dormitory, the interviewer asked for the phone number to contact them at the temporary residence.

The first detailed questions of the survey involved the Internet, starting with locations of access, speed of access, and monthly fees paid. It then branched to questions that focused on the respondent's most-recent use of the Internet. Prior to these questions, the respondent was clearly asked if his or her most-recent use was within the previous 24 hours or prior to that.

The interviewer asked several questions about the interviewee's most-recent usage such as location of access (home, work, or school), duration of session, and activities used on the Internet. The questionnaire then transitioned to a series of general Internet questions based on the overall experience. Respondents were asked to describe their overall level of usage of various Internet services such as: their frequency of use of e-mail, the features they would most like to see, the location of most-frequent use (home, work or school), and the purpose they most frequently used the Internet for (e.g., personal, business, academic), among other questions.

If they indicated that they used the World-Wide Web, the respondents were asked a series of WWW questions such as the last sites they visited, the methods they use to navigate the WWW and find information, their willingness to pay for various services, their skill level, and their general purchasing behavior. People who indicated that they used the WWW for business were asked a number of business-specific questions -- for instance, their typical business use, their occupation, and the size of their company.

The respondents who fell into Cell 2 who exclusively used on-line services were asked the same questions but tailored to their use of the on-line service only. People in Cell 2 who used the Internet were asked about both their Internet use and their on-line service use, separate from the Internet.

Respondents who were categorized into Cell 3 (non-users) were asked if they had heard of the Internet, the WWW, and various on-line services, in both unaided and aided questions. They were asked about their intentions to subscribe to either the Internet or on-line services in the near future.

All respondents were asked about ownership of PCs, modems, faxes, CD-ROMS, intent to purchase computers, and access to computers outside the home. In addition, all respondents were asked demographic questions such as education, age, income, occupation, and whether or not there were children in the home.

3. Results

3.1 Survey Highlights

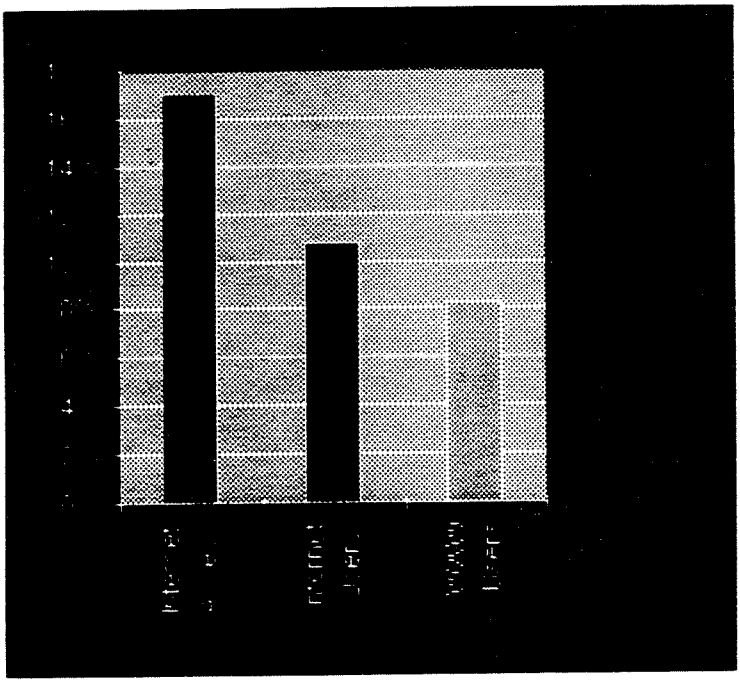
The results of the CommerceNet/Nielsen Internet Demographics Survey provide the most definitive answers to date about the Internet. Some of the key findings are:

- 17% (37 million) of total persons aged 16 and above in the US and Canada have access to the Internet.
- 11% (24 million) of total persons aged 16 and above in the US and Canada have used the Internet in the past three months.
- Approximately 8% (18 million) of total persons aged 16 and above in the US and Canada have used the WWW in the past three months.
- Internet users average 5 hours and 28 minutes per week on the Internet.

- Total Internet usage in the US and Canada is equivalent to the total playback of rented video tapes
- Males represent 66% of Internet users and account for 77% of Internet usage.
- On average, WWW users are upscale (25% have income over $80K), professional (50% are professional or managerial), and educated (64% have at least college degrees).
- Approximately 14% (2.5 million) of WWW users have purchased products or services over the Internet.

3.2 Survey Details

Analysis of the Internet Demographics data uncovered numerous results relevant to the promotion and acceleration of Internet-based electronic commerce. This section discusses some of the key results of the survey.



3.2.1 INTERNET ACCESS AND USAGE

Regarding Internet access and usage, the CommerceNet/Nielsen study found that:

- 17% of the total population of the US and Canada 16 years of age or older report that they have access to the Internet.
- 11% have used the Internet in the past three months. (Throughout this summary we will refer to these individuals as users.)

The 17% incidence indicates that approximately 37 million people (16 years of age or older) in US and Canada have access to the Internet. The 11% incidence yields a current base of Internet users (16 and older) of approximately 24 million. This demonstrates that there is an additional peripheral market of 13 million persons with access (37 million - 24 million) who can potentially be reached with an Internet delivered service.

Attachment C - Comparative Long Distance Rates for Kansas

If a customer does not qualify for or subscribe to a special calling plan of a LEC or an IXC they are charged the rates in the table below for long distance calling and for Internet usage. In total there are 12 mileage bands, and a person is charged the per minute rate based on the distance to the city they are calling. The rate decreases respectively, as to a day call, evening call and night/weekend call. The information shown below is for day calls only, or the maximum rate per current tariffs on file with the KCC.

Mileage Band	**Per Minute Rate SWBT (a)**	**"" AT&T**	**"" MCI**
1 - 12	$.09	$.10	$.089
13 - 16	.13	.1385	.1285
17 - 20	.17	.1680	.1390
21 - 25	.20	.1975	.1420
26 - 30	.23	.2275	.1500
31 - 40	.25	.2475	.1800
41 - 55	.27	.2675	.2000
56 - 70	.28	.2775	.2100
71 - 85	.29	.2875	.2390
86 - 105	.30	.2970	.2490
106 - 170	.33	.3275	.2590
171 - over	.34	.3375	.2890

(a) - These long distance rates for SWBT have not changed since March 1990

SELECT COMMITTEE ON TELECOMMUNICATIONS

Testimony presented by Karen Flaming, Chief Telecommunications Analyst
Kansas Corporation Commission
February 21, 1996
HB 3030

Mr. Chairman, Members of the Committee:

Good Afternoon. I will be testifying on the Internet Access bill. The Commission staff does not oppose this proposed legislation, but there is an area of concern that we would like to point out to the committee.

There is language in the proposed legislation which would deregulate those services which provide access to the Internet and other on-line services, if those services are priced below the $15.00 and $30.00 threshold.

While there is an understandable desire to provide incentives to the telecommunications providers to offer low-cost access to Internet, this provides a loop-hole to deregulate a large number of services. For example, an increasing number of local telephone companies are making on-line access a part of local service. Since there is no charge for this, local service rates could conceivably be deregulated. Any and all long distance services that could be used for on-line service access would be deregulated.

I believe it would be preferable for the bill to require that the access plan be limited to one discount plan and be priced at no more than the $15.00 and $30.00 maximums. This would allow the rates to be reduced, where possible, without exposing a large number of services to deregulation.

House Sel/Comm. Telecomm.
2-21-1996
Attachment 10

MCI Telecommunications
Corporation

MCI

TESTIMONY BEFORE HOUSE SELECT COMMITTEE ON TELECOMMUNICATIONS

H.B. 3030

EVA POWERS
February 21, 1996

I am Eva Powers testifying on behalf of MCI Telecommunications Corporation. This bill would allow the KCC to approve flat rated Internet access. MCI is sympathetic to the need for low cost Internet access for Internet users. It is important that rural Internet users have access to the Internet at a cost similar to that paid by urban users. It appears from testimony provided at an earlier time by, for example KINNET, that low cost availability of Internet access in the rural areas of the state is spreading. This bill is permissive and would not require companies to provide access to the Internet at the rates set out in this bill.

You all are aware that access charges paid by interexchange companies are on a per minute basis and thus would preclude interexchange companies such as MCI from providing this type of flat rated service. The flat monthly fee of not more than $15 per line per month would, assuming an average per minute access charge of $0.12, which in many instances is low, only allow an interexchange carrier to provide two hours of toll services before having to subsidize those access charges with revenues from other services.

A reduction in access charges to cost would permit interexchange carriers to compete in the provision of this service. That cost is approximately $0.01 per minute. Disregarding IXC's costs other than access, usage would need to be 25 hours before access charges would exceed $15.00. Of course, IXC other costs

House Sel/comm. Telecomm.
2-21-1996
Attachment 11

cannot just be disregarded, but a flat rated service within the price ranges of this bill would become a possibility. MCI believes that it is in the best interest of the consumers in this state to have a choice of providers and not be locked in to only one provider. A remedy would be to require that local exchange companies reduce access charges to cost for other providers exclusively for the provision of access to an Internet provider.

(c:\wp51\docu\mci\testimy.221)

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