Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 23, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* *
Poly(phenylhexylurea), cross-linked; minimum average molecular weight 36,000.	.....	Encapsulating agent
* * *	* * *	* *

* * * * *

§ 180.1082 [Removed]

3. By removing § 180.1082 *Cross-linked polyurea-type encapsulating polymer (Alachlor); exemption from the requirement of a tolerance.*

[FR Doc. 95–16752 Filed 7–11–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 94–129; FCC 95–225]

Unauthorized Changes of Consumers' Long Distance Carriers—''Slamming''

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On June 13, 1995, the Commission adopted a Report and Order (R&O) in CC Docket No. 94–129 (released November 10, 1994; FCC 95–225) adopting rules to prescribe the form and content of letters of agency for changing long distance carriers. The new rules are intended to protect consumers from unauthorized changes of their long distance carriers through the use of deceptive and misleading letters of agency (LOAs). 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''). The Commission takes this action in response to the thousands of complaints received regarding unauthorized changes of consumers' PICs, a practice commonly known as ''slamming.'' The Commission also takes this action in response to the tens of thousands of additional complaints received annually by local exchange carriers (LECs) and state regulatory bodies. These rules 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, the Commission has balanced the industry's need for flexibility in marketing services to consumers and the need to protect consumers from deceptive marketing practices.

EFFECTIVE DATE: September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Wilbert E. Nixon, Jr., Enforcement Division, Common Carrier Bureau, (202) 418–0960.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order CC Docket No. 94–129 [FCC 95–225], adopted June 13, 1995 and released June 14, 1995. The full text of the Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554. The full text of this Report and Order may also be purchased from the Commission's duplicating contractor, International Transcription Services, 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

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Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this

collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Record Management Branch, Paperwork Reduction Project, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Summary of Report and Order

1. Specifically, the Commission adopts 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, the Commission prescribes the minimum contents of the LOA and require that the LOA be written in clear and unambiguous language. Furthermore, the Commission prohibits all ''negative option'' LOAs and requires that LOAs contain complete translations if they employ more than one language. Finally, the Commission excepts 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 the Commission's LOA requirements.

Background

2. Despite the adoption of consumer safeguards set forth in earlier orders, the Commission 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, for example, have complained that the ''LOA'' forms were ''disguised'' as contest entry forms, prize claim forms, or solicitations for charitable contributions. The Commission has also received complaints against IXCs because of ''negative option LOA'' forms. These forms typically offer prizes to consumers if they return the forms and may ''require'' consumers to check a box at the end of the form if they do *not* want to change their long distance service. 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. Consumers asserted that when they entered the contests, claimed the prizes, or responded to the charity solicitations, they did not intend to switch their long distance carriers.

3. Consequently, the Commission, on its own motion, initiated this rule making proceeding. 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.

Discussion

4. 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, the Commission's experience in balancing consumer protection concerns and IXC marketing flexibility has evolved. The Commission's initial decision not to require written LOAs prior to a PIC change indicated to the industry its willingness to allow IXCs to police their own marketing activities. Although it still believes self-policing to be an integral consumer protection mechanism, the Commission 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.

5. 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, the Commission finds it necessary to prescribe rules that it believes 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.

A. The Minimum Requirements for LOAs

6. The Commission received nearly unanimous support for its proposed rule prescribing the general form and minimum content for an LOA. As proposed in § 64.1150(e), the Commission will require that the LOA contain: (1) The subscriber's 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 carrier; (3) a statement that the subscriber designates the interchange 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. As stated in the Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Notice of Proposed Rule Making, 59 FR 63750 (December 9, 1994), 9 FCC Rcd 6885 (1994) (*NPRM*), these provisions organize and restate the LOA requirements of *Investigation of Access and Divestiture Related Tariffs*, 50 FR 25982 (June 24, 1985), 101 FCC 2d 911 (1985) (*Allocation Order*) and *Policies and Rules Concerning Changing Long Distance Carriers*, 57 FR 4740 (February 7, 1992), 7 FCC Rcd 1038 (1992) (*PIC Verification Order*) into one standard rule. This simplified restatement of current Commission requirements regarding LOAs was met with general acceptance by the commenters and thus was adopted as proposed. The Commission refrains from prescribing specific LOA language at this time. The Commission agrees with some of the commenters that differing state requirements and differences in the target market for individual promotional campaigns indicates that IXCs may be better able to tailor the specific language in a way that clearly informs the consumer of the impending choice. The Commission believes that IXCs can

police themselves in this matter given clear guidance, and it believes that these rules give that guidance. Also, the Commission agrees with Sprint Communications Co. (Sprint) that this new rule and the existing telemarketing rules (§ 64.1100) should be consistent. The Commission therefore amends § 64.1100(a) to read as follows: ''The IXC has obtained the customer's written authorization in a form that meets the requirements of § 64.1150, below.''

7. Nearly every entity choosing to comment on the matter supported the Commission's proposed prohibition of ''negative option'' LOAs. This type of LOA requires a consumer to take some action to *avoid* a PIC change. Because the Commission finds that such LOAs impose an unreasonable burden on consumers who do not wish to change their PICs, the Commission adopts the proposed prohibition. Further, the Commission agrees with the comments of Allnet that the proposed section might be construed as somewhat vague. The Commission therefore adopts some of Allnet's suggested language and modifies 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.''

8. 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.'' Although it adopts these general guidelines, the Commission refrains 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. Therefore, the Commission will allow IXCs the flexibility to design the LOA in a manner that is complimentary to their associated promotional material. However, the Commission 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.

B. The LOA as a Separate or Severable Document

9. The Commission's proposal to separate the LOA physically from all promotional materials has drawn both comments favoring it and comments questioning it. Specifically, the Commission proposed that ''[t]he letter of agency shall be a separate document whose sole purpose is to authorize an interchange 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.'' The opponents of the Commission's proposal such as MCI Telecommunications Corporation (MCI) argue that this proposed rule ''may'' be found unconstitutional and that it ''goes farther than is necessary'' to protect consumers from slamming. Proponents of the Commission's 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. In fact, some commenters contend the Commission does not go far enough to protect consumers. In response to these comments, the Commission first addresses whether the First Amendment to the Constitution would permit us to require the LOA to be a separate document. Then, the Commission addresses whether it is in the public interest for us to adopt this requirement.

1. First Amendment Considerations

10. Notwithstanding MCI's First Amendment arguments, the rules the Commission has 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 the Commission's 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. The regulations that the Commission is 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.

11. 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). The Commission has tried to narrowly design its regulations to eliminate deception and yet still permit the free flow of information.

12. 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 the Commission adopts here are restrictions in the manner of delivery and meet all of the requirements set out by the Supreme Court. Specifically, the Commission is 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. The Commission 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 the Commission has received demonstrates that there are still some flaws in the system it has 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, the Commission is not prescribing specific language either in the LOA or in any promotional materials; rather the Commission is specifying the minimum information that an LOA must include and have placed no restrictions on any promotional materials.

13. Finally, as indicated above, the Commission has chosen the method of

regulation that least impinges on the carriers' free choices of how to promote their services. The Commission *is not* proposing to restrict IXCs' use of their promotional materials, but merely is 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 the Commission is requiring is that they comply with its 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. The Commission's goal is to minimize deceptive promotional practices and still permit the consumer to be informed about her or his choices.

2. Public Interest Considerations

14. Based on its investigation of consumer complaints concerning LOAs, the Commission found 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 the Commission has described above, consumers have complained that the ''LOA'' forms were ''disguised'' as content 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.

15. The Commission believes 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. The Commission's 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 it thinks that a consumer may reasonably choose to change long distance telephone services because of a carrier's inducements, the Commission is troubled by the number of consumers nationwide who are not given the opportunity to make that informed choice because they are deceived by an LOA that is disguised as a contest entry, prize claim form, or charitable solicitation. The Commission believes 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. 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.

16. Although this rule may require some IXCs to change certain details in their use of such promotional tools, the Commission does not believe that its 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 the Commission's rules are followed and the LOA is properly captioned, consumers should be clearly informed as to the actions they are being asked to take. In light of this discussion, the Commission believes that the benefits gained by better informed consumers outweigh the possibilities of slightly deceased marketing flexibility that some IXCs might experience.

17. MCI mistakenly construes the Commission's 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.'' Contrary to MCI's assertions, the Commission is in no way prohibiting the use of marketing campaigns that include contest or sweepstakes entries, charitable solicitations, or checks. The Commission is merely taking the limited, necessary step of separating the Commission-prescribed authorizing document from the commercial inducements. The Commission takes 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.

18. The Commission does, 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, the Commission recognizes that other IXCs use checks in their marketing campaigns in an appropriate and non-misleading manner, which have resulted in minimal consumer compliant. 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 the Commission's ''separate document'' LOA proposal.

19. The Commission is persuaded by the arguments of AT&T and MCI, notwithstanding its negative experience with some IXCs that deceptively use checks to market their services. In an effort to narrowly tailor its requirements, the Commission finds that the checks that some carriers, such as AT&T and MCI use as LOAs can be excepted from its ''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, the Commission thinks 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 the Commission has received reveals that these checks are seldom the source of actual unauthorized conversions. To ensure that such checks do not mislead or confuse consumers, the Commission requires 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. The Commission requires carriers to continue to place the required LOA language near the signature line on the back of the check. In addition, the Commission requires 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. The Commission thinks that this additional safeguard, along with all other requirements applicable to LOAs, will ensure that consumers are not confused or misled when carriers use inducement checks as a marketing tool.

20. The Commission wants 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. The Commission sees 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. Such a result would, the Commission thinks, be much more intrusive than its new rule, which should remove most LOAs from the realm of dispute. Therefore, the Commission adopts 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 § 64.1150(e), printed with a type of sufficient size and readable type to be clearly legible with no inducements. The Commission believes 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.

C. Other Unauthorized Conversion Issues

1. The Carrier Named on the LOA

21. In the *NPRM*, the Commission sought comment on whether LOAs should contain only the name of the carrier that directly provides the interexchange service to the consumer. The Commission recognizes 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.

22. 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, the Commission concludes 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 the Commission's 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, the Commission will only permit the name of the rate-setting IXC on the LOA.

23. 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 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.'' 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.

24. The Commission recognizes 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. The Commission expects all IXCs that do not have a CIC to explain to their new customers that another IXC's name may appear on the customer's bill. The IXC may also describe any relationship it has with the IXC named on the bill. Further, the Commission urges LECs such as BellSouth to develop a coding system to assign and maintain pseudo-CICs for non-facility-based IXCs. The Commission defers a full examination of this issue to another proceeding.

25. Finally, certain commenters have informed the Commission that the jurisdictions they operate in either allow for two primary interexchange carriers (''2 PICs'') or will likely allow ''2 PICs'' in the near future. Typically, these jurisdictions allow for a separate inter-state IXC and an intra-state IXC. Consumers may choose an IXC to provide them with either inter-state service, intra-state service, or both. The Commission's proposed § 64.1150(e)(4) does not contemplate such a scenario and therefore it 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 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 * * *.

The Commission notes 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.

2. Business vs. Residential Presubscription

26. The Commission sought comment on whether business and residential customers should be treated differently with respect to its 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.'' 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).

Further, some suggest that a line be included on both the residential and the business LOA that indicates that the person signing the LOA is the person authorized to order service.

27. The Commission is persuaded that there should be no distinction between business and residential customers with respect to its new LOA rules. Further, the Commission does 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

28. In the *NPRM,* the Commission asked whether any adjustments to long distance telephone charges should be made for consumers who are the victims of unauthorized PIC changes. Specifically, the Commission 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. The Commission 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.

29. 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. In addition, the Illinois Congressional Delegation has expressed its concern ''that many long-distance customers that have experienced this unauthorized switch in their service are forced to pay for services they did not order or knowingly approve.'' It has asked the Commission to ''examine the possibility of proposing a rule that will allow victims of 'slamming' to forfeit responsibility for charges billed by the long-distance company which switched their service without proper authorization.'' 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.'' 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.''

30. Despite the compelling arguments of those favoring total absolution of all toll charges from unauthorized IXCs, the Commission is not convinced that it 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. 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. The Commission recognizes, 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. The Commission will investigate future slamming cases with the question of consumer liability in mind. At this time, the Commission believes 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. The Commission expects all unauthorized IXCs to cooperate with consumers in the proper settlement of these charges. Failing this, through the complaint process, the Commission will prohibit unauthorized IXCs from collecting more than the original IXC's rates. However, the Commission recognizes that if ''slamming'' continues unabated—perhaps through abuses in areas other than the use of the LOA—it may have to revisit this question at a later date.

31. The Commission also asked the public to comment on the effect that unauthorized PIC changes have on optional calling plans and the 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. 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. Several commenters contend that the original carrier should bill the offending carrier for the lost revenue. Some commenters suggest that however it decides to handle consumer liability issues, the Commission should not expect LECs to resolve consumer/IXC disputes.

32. The Commission agrees 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, the Commission 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 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

33. 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. The Commission sought public comment on whether it should adopt rules to govern bilingual or non-English language LOAs. Specifically, the Commission asked whether it should require *all* parts of an LOA translated if *any* parts were translated. The overwhelming majority of commenters stated that the Commission should adopt such a rule. The Commission agrees that such a requirement is necessary to ensure that all consumers can make informed choices. Therefore, the Commission requires all IXCs that choose to translate any part of the LOA to translate all parts of the LOA and consequently, it adopts § 64.1150(f).

5. LOA Title

34. 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. For example, comments 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 it will not prescribe a particular title for the LOA, the Commission agrees with these commenters and strongly suggest that all IXCs use a clear, easily understandable title.

6. Consumer-Initiated Calls

35. Finally, the Commission 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 advertisement, are just requesting general information about the IXC and do not intend to initiate a PIC change. The Commission is persuaded by some commenters, resellers, local telephone companies, and consumer groups who advocate extending the Commission's PIC 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 § 64.1100 of the Commission's rules should not apply. Those commenters fail to explain adequately why a consumer who initially placed 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. The Commission is not convinced there is enough of a difference between the two situations as to justify such vastly different treatment. The Commission agrees 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.'' The Commission also agrees that upon adoption of its rules, some ''IXCs may switch from mailing inducement-laden LOAs to mailing marketing pieces in which a consumer is urged to call a business number in order to receive a promised inducement'' where ''[a]n unauthorized conversion could easily take place on such a call.'' Therefore, the Commission will extend PIC verification procedures to consumer-initiated calls to IXC business numbers.

7. Preemption of State Law

36. Although the Commission did not seek comment on the matter, some of the resellers urged the Commission to preempt inconsistent state law with regard to ''slamming.'' 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.'' 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 the rules for consumer selection of interexchange carriers.'' Until and unless the Commission receives specific allegations of specific state statutes that warrant federal preemption, it cannot consider or act on these commenters' requests for federal preemption. The Commission notes that the record shows that state action regarding ''slamming'' appears to be consistent with its own. Therefore, the Commission declines at this time to preempt any state law regarding the unauthorized conversion of consumer's long distance service. The Commission will consider specific preemption questions on a case-by-case basis.

Regulatory Flexibility Act Final Analysis

37. *Need for Rules and Objective.* The Commission has 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.

38. *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.

39. *Alternatives that would lessen impact.* The Commission has 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, the Commission believes all IXCs, large and small, will have sufficient advance time to revise and print new LOAs.

Conclusion

40. In this Report and Order, the Commission has 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, the Commission's policy decisions should further clarify its position regarding other ''slamming'' issues. The Commission wishes to make clear that although its evolutionary approach to the ''slamming'' problem has generally been one of regulatory restraint, it will not tolerate continued abuses against consumers and may revisit this question if warranted.

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

Ordering Clauses

42. 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 CFR part 64 is amended as set forth below.

43. 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.

44. It is further ordered, that this Report and Order will be effective sixty (60) days after publication of a summary thereof in **Federal Register.**

List of Subjects in 47 CFR Part 64

Communications common carriers, Telephone.

Federal Communications Commission,

William F. Caton,

Acting Secretary.

Adopted Rules

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

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 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, unless otherwise noted.

2. Section 64.1100 is amended by revising paragraph (a) to read as follows:

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

* * * * *

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

* * * * *

3. Section 64.1150 is added to Subpart K to read as follows:

§ 64.1150 Letter of agency form and content.

(a) An interchange 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 in paragraph (e) of this section 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) of this section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain, in easily readable, bold-face type on the front of the check, a notice that the 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;

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

(3) That the subscriber designates the interexchange carrier to act as the subscriber's agent for the primary interexchange carrier change;

(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.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

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 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 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

[FR Doc. 95–16641 Filed 7–11–95; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 76

[MM Dockets Nos. 92–266 and 93–215; FCC 95–196]

Cable Act of 1992—Small Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Based on comments filed in response to the Further Notice of Proposed Rulemaking, 59 FR 51934 (October 13, 1994) and in order to implement the provisions of the Cable Television Consumer Protection and Competition Act of 1992, this Sixth Report and Order and Eleventh Order on Reconsideration amends the Commission's rules regarding rates for small cable systems in order to ease the burdens of rate regulation on small systems.

EFFECTIVE DATE: The requirements and regulations established in this decision shall become effective upon approval by OMB of the new information collection requirements adopted herein, but no sooner than August 11, 1995. The Commission will issue a notice indicating the effective date.

FOR FURTHER INFORMATION CONTACT: Tom Power or Meryl S. Icove, Cable Services Bureau, (202) 416–0800. Form 1230 information: Alex Byron, Cable Services Bureau, (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Sixth Report and Order and Eleventh Order on Reconsideration in MM Docket Nos. 92–266 and 93–215, FCC 95–196, adopted May 5, 1995, and released June 5, 1995. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (ITS), at 2100 M St., NW., Washington, DC 20037, (202) 857–3800.

I. Introduction

In this Sixth Report and Order and Eleventh Order on Reconsideration we amend our definitions of small cable entities to encompass a broader range of cable systems that will be eligible for special rate and administrative treatment. In addition to amending our definitions, we make available to this expanded category a new regulatory scheme that will be available immediately for use by certain small cable companies. This new form of regulation should provide both rate relief and reduced administrative burdens.

II. Summary

1. The Commission issued the Further Notice of Proposed Rulemaking, 59 FR 51934 (October 13, 1994), seeking to establish a more complete record for purposes of promulgating final rate rules applicable to small operators, independent small systems, and small systems owned by small MSOs by soliciting comment on possible alternative definitions that we could use for purposes of determining eligibility for special rate or administrative treatment. We sought comment on whether we should retain current definitions or use different definitions for purposes of establishing special rate or administrative treatment for small systems and small operators. We specifically sought comment on these issues in light of section 3(a) of the Small Business Act, and on whether we should employ the current SBA definition of a small cable company in our cable rules.

2. In amending our definitions and introducing a new, simplified form of small system rate relief in this Order, the Commission continues its ongoing efforts to offer small cable companies administrative relief from rate regulation in furtherance of congressional intent. In each of the orders that we have adopted in this rate proceeding, small cable companies have been afforded flexibility in how they can comply with rate regulations while reducing burdens on themselves and providing good service to subscribers. Through our actions today, the Commission expands the category of systems eligible for such opportunities to include approximately 66% of all cable systems in the nation serving approximately 12.1% of all cable subscribers.

3. Specifically, we amend our definitions so that systems serving 15,000 or fewer subscribers that are owned by small cable companies of 400,000 or fewer subscribers are eligible to elect small system cost-of-service relief, as well as certain other relief previously made available to small systems and operators. The new cost-of-service approach will involve a very simple, five element calculation based upon a system's costs. The calculation will produce a per channel rate for regulated services that will be presumed reasonable if it is no higher than $1.24 per channel. If the formula generates a higher rate, the operator still will be permitted to charge that rate if not challenged by the franchising authority or, upon being challenged, if the operator meets its burden of proving that the rate is reasonable. This new regulation will accord these small substantial flexibility in establishing the types of costs to be included and in allocating those costs among services. Our analysis of cost data, when combined with our understanding of the many unique challenges facing small cable companies, leads us to conclude that a simplified approach will best serve a segment of the cable industry that needs assistance in coping with rate regulation in order to serve subscribers better and to grow its business. In addition, this approach should facilitate regulation of cable rates by small local franchising authorities who wish to have a procedure for doing so that is simpler than existing forms of regulation.