

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 IXC's 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