

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 decreased 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 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 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