

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