

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 IXC's 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 IXC's 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 IXC's 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 IXC's 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 "IXC's 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 IXC's, 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