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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of | ) | |
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| Policies and Rules Concerning | ) | CC Docket No. 94-129 |
| Unauthorized Changes of | ) | |
| Consumers' Long Distance | ) | |
| Carriers | ) | |

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AT&T COMMENTS

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## SUMMARY

Despite two prior rounds of rulemaking by the Commission, "slamming" continues to be a serious problem for large numbers of business and residence customers. Many of these abuses -- in particular, violations of the Commission's telemarketing rules and outright misappropriations of customers by some IXCs -- are not addressed in the instant proceeding. The only effective means to curb such misconduct is for the Commission vigorously to enforce its existing regulations prohibiting slamming.

The NPRM is correct, however, in proposing that the mandatory disclosures for LOAs already prescribed by Commission must be stated clearly, unambiguously and legibly to assure that these warnings are understood by customers. There is no need for the Commission to prescribe the precise wording of these disclosures in LOAs, although a uniform caption identifying the purpose of the LOA may be appropriate.

Additionally, LOAs in a foreign language should be completely translated into that language, to avoid misleading non-English speaking customers about the nature of these documents. "Negative option" LOAs that require some action to avoid a change in IXC distort customers' actual carrier choices and should be prohibited.

It is unnecessary, however, to bar combining LOAs with "inducements" such as checks. The companion proposal for a prominent and unambiguous disclosure that these documents will change the customer's presubscribed IXC is sufficient to eliminate customer confusion about these solicitations, which AT&T's experience with its check program shows are already well understood by subscribers.

The Commission should require LOAs to list only the IXC that sets the rates charged to end users. This will eliminate the confusion that has arisen, primarily involving resellers, as to the identity of the carrier offering service. Additionally, residential (but not business) subscribers to domestic OCPs should be absolved from monthly charges when they are switched without authorization, to assure that those customers are not charged for services they are no longer able to use. All slammed customers should also receive for up to two billing cycles an adjustment (such as 20 percent for domestic calls and 40 percent for international calls) from the IXC that erroneously changed their carrier. Finally, in view of the fundamental differences between inbound and outbound telemarketing, there is no need for the Commission to extend its telemarketing rules to cover calls to 800 numbers.

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AT&T COMMENTS

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") submits these comments on the NPRM in this proceeding, which proposes revisions to the Commission's rules concerning unauthorized changes of customers' long distance carriers (commonly known as "slamming").[1]

As the NPRM correctly points out, although the Commission in prior rulemakings has already prescribed detailed procedures for implementing customers' selection of a primary interexchange carrier ("PIC"), slamming continues to be a serious problem for telephone subscribers and their designated interexchange carriers ("IXCs"). Prescribing additional rules, however, will do nothing to stem the intentional misrepresentation of

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1 Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Notice of Proposed Rulemaking, FCC 94-292, released November 10, 1994 ("NPRM").

customers' choices that AT&T believes accounts for a significant portion of slamming incidents. Such intentional conduct can best be controlled by vigorous enforcement by the Commission and other agencies of the existing rules against slamming.

Nevertheless, AT&T concurs that additional remedial measures could be warranted to the extent that the current slamming problems are attributable to customer confusion caused by misleading or deceptive letters of authorization ("LOAs"). However, the Commission's proposal to prohibit combining LOAs with other inducements, such as checks or other promotions, goes beyond what is necessary to achieve that objective, and would only inconvenience the vast majority of customers who have found these programs easy to understand, while also depriving IXCs of marketing tools that the Commission acknowledges to be beneficial and pro-competitive.

## FACTUAL BACKGROUND

The Commission has already prescribed presubcription procedures for IXCs twice in the past decade: initially in 1985 in the Allocation Order and related rulings specifying the disclosures required in LOAs,[2] and again just three years ago in the PIC

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[2] See Investigation of Access and Divestiture Related Tariffs, 101 F.C.C.2d 911 (1985)("Allocation Order"),

(footnote continued on following page)

Verification Order, requiring IXCs to implement methods for verifying PIC change orders obtained through telemarketing.[3] The Commission revisited this issue at that time because, with the decline in new equal access cutovers and increased post-cutover marketing by IXCs, the frequency of slamming had also grown dramatically. Indeed, telephone subscribers often complained that they had been switched from their designated PIC to a different IXC without having authorized the change, or even having been solicited by those entities.[4]

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(footnote continued from previous page)

recon., 102 F.C.C.2d 503 (1985)("Reconsideration Order"); Investigation of Access and Divestiture Related Tariffs, 101 F.C.C.2d 935 (1985)("Waiver Order"). Under these decisions, carriers were permitted to submit PIC changes to local exchange carriers ("LECs") if the IXCs certify that they had such LOAs on file, or had taken reasonable steps to obtain those documents after obtaining PIC change commitments through telemarketing. See Waiver Order, 101 F.C.C.2d at 942.

[3] See Policies and Rules Concerning Changing Long Distance Carriers, 7 FCC Rcd 1038 (1992)("PIC Verification Order"), recon., 8 FCC Rcd 3215 ("PIC Verification Reconsideration Order").

[4] For example, surveys conducted by AT&T during February through November 1989 showed that slamming accounted for over 10 percent (and possibly 15 percent or more) of the conversions of its residential customers to competing carriers. These customers either had never been contacted by the IXC submitting the PIC change on their behalf, or had expressly declined that IXC's PIC change solicitation. See AT&T Petition to Amend Equal Access Rules, filed January 10, 1990.

The Commission acknowledged then that "a large number of customers appear to have been switched to long distance carriers they did not select," and that the existing procedures were contributing to this problem.[5] It therefore adopted regulations requiring IXCs to confirm PIC change orders obtained through telemarketing, using methods such as verification of those orders by an independent third party. The Commission also expressed its belief that these measures "will serve to reduce to a minimal level the number of unauthorized switches in customers' long distance service."[6]

However, the Commission's expectations have not been fully realized, because slamming continues to be a significant problem for customers and their properly designated IXCs. A study commissioned by AT&T which surveyed customers who changed long distance carriers from April through September, 1994 has revealed that over 7 percent of AT&T's residential customers who "converted" to other carriers had not even been contacted by the IXCs to whom their service was changed, nor had any other member of their households authorized such a change. Indeed, in many cases the customers were unaware even

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[5] See AT&T (Petition for Rulemaking), 6 FCC Rcd 1689, 1691 (1991)(¶ 17).

[6] Id. at 1691 (¶ 21).

that they had been slammed. These data clearly demonstrate that slamming remains a widespread practice.[7] The survey also indicates an even greater incidence of slamming among non-English speaking residential subscribers; in this market segment, up to 18 percent of customers reported that they had never been contacted to authorize PIC changes from AT&T to another IXC.

No amount of additional rulemaking by the Commission can deter the outright thefts of customers described above. Nor are any new rules needed to prohibit this conduct; as shown above, the Commission's existing rules already clearly bar PIC changes in the absence of customer authorization. The only effective way to control this abusive and unlawful conduct is for the Commission to vigorously enforce its existing regulations against IXCs that engage in flagrant slamming.

Regrettably, to date the Commission has appeared reluctant to take energetic enforcement action against these violators. AT&T is aware of no instance in which the Commission has invoked its authority under Section 503(b) of the Communications Act, 47 U.S.C. § 503(b), to impose fines or forfeitures on IXCs for

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[7] Due to differences in the studies methodologies, the results of AT&T's 1994 survey cannot be directly compared to AT&T's 1989 survey data.

violations of its presubscription rules.[8] Even where IXCs have engaged in blatantly deceptive conduct, such as using LOAs disguised as charitable solicitations that omitted all of the Commission's prescribed disclosures, the Commission has limited itself merely to "strongly admonish[ing]" the offending carrier.[9] In another instance, after investigating for well over a year reports of flagrant slamming by one IXC, the Commission entered into a consent decree in which that carrier admitted none of the alleged violations.[10]

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[8] In the only reported instance in which a carrier was threatened with even minimal liability for such violations, the Common Carrier Bureau decided not to impose the proposed $2,000 fine because the IXC had adopted "rehabilitative steps" after its conduct was detected. Instead, the Bureau "admonish[ed]" the IXC "to exercise a greater degree of care in the future" concerning presubscription practices. See Microtel, Inc. (Notice of Apparent Liability), 2 FCC Rcd 3127 (1987)(¶ 4)(IXC conceded that it had "consciously decided to eliminate the use of customer-signed authorization cards in its operations" despite the Allocation Order's requirements).

[9] See Dennis Miga (Managing Partner, Matrix Telecom), 8 FCC Rcd 4194 (1993)("Matrix Order").

[10] See Cherry Communications, Inc., 9 FCC Rcd 2086 (1994). By the time the Commission took this action, the Florida Public Service Commission ("PSC") had already revoked the IXC's certificate to operate as a carrier in that state, after rejecting a settlement offer. See Cherry Payment Systems, Inc. d/b/a Cherry Communications, Docket No. 921250-TI, 93 FPSC 9:412 (Fla. PSC Sept. 20, 1993). Similarly, the Louisiana PSC had revoked the carrier's license to conduct business in that state. See Louisiana PSC v Cherry Communications, 1994 La. PUC LEXIS 53 (La. PSC March 29, 1994).

The slamming problem cannot be fully resolved unless the Commission effectively deploys its enforcement authority against this abuse, in the same manner that several state regulatory commissions are already doing with their regulations that mirror the Commission's antislamming rules.[11] The need for such enforcement action is underscored by the fact that the instant rulemaking does not address slamming caused by telemarketing, which remains the principal source of such abuse, despite the safeguards adopted in the PIC Verification Order.[12] Although the Commission has previously found that written PIC solicitations are less

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[11] For example, the Florida PSC has cited numerous IXCs -- including MCI and Sprint -- for significant monetary penalties for slamming. See MCI Telecommunications Corp., Docket No. 910205-TI, Order No. 24550, 1991 Fla. PUC LEXIS 943 (Fla. PSC, May 20, 1991); Sprint Communications Co., Docket No. 891306-TI, Order No. 24037, 1991 Fla. PUC LEXIS 25 (Fla. PSC 1991).

[12] This fact was graphically underscored by Commissioner Quello's account at the open meeting adopting the NPRM in this proceeding, describing how his own residential telephone was slammed when his wife answered "Yes" to a telemarketing call asking if she wanted to save money on long distance. AT&T has received numerous reports of such episodes in which IXCs have switched customers without following the third-party verification procedure or other methods prescribed by the Commission just three years ago. It appears from the information available to AT&T that these procedures are being widely ignored, particularly by smaller IXCs.

susceptible to abuse than telemarketing,[13] enforcement of the current presubscription rules will also assist in reducing the problem of slamming caused by these devices.[14]

Insofar as the NPRM points out a recent growth in new misleading tactics regarding written PIC solicitations, however, additional regulations may be warranted to clarify the Commission's authority to prohibit these practices and to provide a basis for policing the presubscription process against such abuses. In the balance of these comments AT&T examines the NPRM's proposals and evaluates their contribution to

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[13] See PIC Verification Order, 7 FCC Rcd 1045 (¶ 42)(finding that "consumers solicited in mail and by person have not been the focus of public complaints" about slamming by IXCs).

[14] In addition to strengthening enforcement of its antislamming rules, the Commission should reexamine the lawfulness of the "no fault" PIC change tariffs filed by many LECs which the Common Carrier Bureau has permitted to take effect. Under those tariffs, IXCs that elect such treatment are not required (or, indeed, even permitted) to produce LOAs to substantiate the PIC changes submitted by those carriers, and the IXCs are subject only to nominal unauthorized PIC change charges. See, e.g., Bell Atlantic Telephone Companies (Transmittal Nos. 541 and 562), 8 FCC Rcd 2148 (1993); Bell Atlantic Telephone Companies (Transmittal No. 654), 9 FCC Rcd 3376 (1994). As a practical matter, these tariffs subvert the PIC Verification Order by eliminating the rationale for requiring IXCs to obtain LOAs, as well as by significantly reducing the economic deterrent to slamming. See 7 FCC Rcd at 1046 (¶ 48).

effectuating knowing and voluntary choices of IXCs by telephone customers.

STATEMENT

Nearly a decade ago in the Allocation Order, the Commission correctly concluded that LOAs solicited from telephone subscribers by IXCs should contain certain minimum disclosures to assure that customers understand the nature and effect of those transactions.[15] The PIC Verification Order reaffirmed these essential requirements.[16] The Commission's rule now proposed in the NPRM recodifies these requirements, and provides that those disclosures must be set forth "in clear and unambiguous language" and in a "clearly legible" type font.[17]

AT&T supports the Commission's effort described above to assure that LOAs properly reflect mandatory disclosures in a manner that will be readily identifiable

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[15] In addition to listing the telephone number to which the PIC selection applies, these disclosures include the customer's express acknowledgment that (a) the IXC had been designated to act as the customer's agent for presubscription; (b) that only one IXC may be designated as the PIC for a given telephone number; and (c) that the PIC change may entail a charge from the LEC. Allocation Order, 101 F.C.C.2d at 929.

[16] See 47 C.F.R. § 64.1100(a).

[17] See proposed Section 64.1150(d)(1)-(5).

and comprehensible to customers.[18] Because there can be little misunderstanding among IXCs regarding these requirements, the NPRM is clearly correct in concluding (¶ 10) that there is no need for the Commission at this late date in the presubscription process to prescribe specific language for LOAs.[19] As the Commission observes there, "IXCs acting in good faith can implement these minimum guidelines without difficulty." AT&T has no objection, however, to the NPRM's additional proposal

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[18] One of the required disclosures, however, is potentially confusing to customers and should be modified. Specifically, the statement mandated in 1985 that "selection of multiple carriers will invalidate all such selections" is a holdover from pre-cutover carrier selection, which now represents an insignificant proportion of all IXC designations. In a post-cutover marketplace, customers may (and often do) designate successive IXCs, limited only by those subscribers' willingness to absorb change charges. Additionally, with the advent of intraLATA presubscription customers may mistakenly be deterred by this statement from selecting differing carriers for their inter- and intraLATA calling. The Commission should therefore require this disclosure only for LOAs submitted to customers in areas undergoing initial conversion to interLATA equal access. Moreover, if such areas are simultaneously undergoing conversion to intraLATA equal access the Commission's prescribed warning should be expressly limited to the selection of an interLATA carrier.

[19] It is also neither necessary nor appropriate for the Commission to require that the customer's telephone number be preprinted on an LOA. See NPRM, ¶ 10. Mailings by IXCs soliciting a customer's PIC change must often omit the telephone number for a variety of reasons, including (but not limited to) where the customer's number is unlisted in published LEC directories and is unavailable through Billing Name and Address ("BNA") data from the LECs.

(¶ 18) to specify a uniform, non-technical caption or legend for carrier's LOA forms, clearly identifying the purpose of these documents.

The rationale for these requirements -- namely, to permit customers to understand the request to change IXC and its effect -- also strongly militates in favor of the NPRM's suggested requirement (¶ 18) that an LOA be completely translated into a foreign language where any portion of the LOA is presented in that language. This reform will effectively preclude abusive marketing conduct, such as that described at the Commission's open meeting initiating this proceeding in which the customer's intent to change IXCs was set forth in English in an LOA otherwise in another language. The proposed requirement also should not unduly burden IXCs; AT&T, for example, has long accompanied its marketing in foreign languages with bilingual LOAs.[20]

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[20] Exhibit A provides a copy of one of AT&T's bilingual presubscription mailings with a foreign language LOA (in this case, Spanish). AT&T currently conducts presubcription direct mailing to customers in additional foreign languages, including Chinese, Korean, Vietnamese, and Tagalog. In all of these mailings, as with the example in Exhibit A, both the LOA and any accompanying marketing literature are set forth in English and also fully translated into the foreign language. In particular, a statement that the customer is selecting AT&T as the presubscribed long distance carrier is set forth in both English and the foreign language directly above the line for the customer's signature.

AT&T likewise agrees with the Commission that there is no place in the carrier selection process for the "negative option" LOAs used by some carriers, which the NPRM (¶ 11) describes as instruments that purport to require the consumer to take some action to avoid a PIC change. Customers (and their properly designated carriers) should not have their choices displaced simply because they discard or fail to respond to another IXC's mailing. The proposed rule against "negative option" LOAs should be promptly adopted.

In addition to assuring that essential disclosures will be made to customers in a prominent and comprehensible manner, however, the NPRM (¶ 11) seeks to preclude IXCs from combining LOAs with any other "inducements," such as prize entry forms and checks. The Commission's basis for this drastic step is that these instruments have given rise to numerous complaints of customer confusion concerning the true nature of these LOAs. Id.

The proposed rule absolutely barring combined LOA/inducements goes far beyond what is necessary to protect telephone subscribers from abuses or deception, and would if adopted impose serious hardships on both consumers and IXCs. As a threshold matter, while the NPRM does not provide any specific information regarding the customer complaints on which the proposed rule is based, it is apparent that most (if not virtually all) of

these complaints must involve documents which failed to disclose the fact they were also an LOA, or which omitted or suppressed information about the proposed PIC change.[21] These problems will be cured by the companion proposals in this docket requiring that LOAs clearly and unambiguously set forth in a legible typeface all of the Commission's prescribed disclosures. The possibility of customer confusion should be rendered even more remote if the Commission prescribes a uniform, prominent caption for all LOAs, as AT&T has urged above.

AT&T's own experience with combined LOAs and checks payable to customers underscores how effectively such disclosures eliminate customer confusion regarding these solicitations. AT&T's check program has mailed millions of these instruments to customers over the past two years. The front of the checks prominently displays the legend "ENDORSEMENT OF THIS CHECK SWITCHES YOUR LONG DISTANCE SERVICE TO AT&T," and the statement "Yes, switch me to AT&T Dial-1 Long Distance Service" appears immediately above the endorsement line, with the Commission's prescribed disclosures immediately below

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[21] Example of these covert LOAs were displayed by the Commission staff at the open meeting initiating this proceeding. See also Matrix Order, supra (LOA at end of prize drawing form written "in small print" and omitting all disclosures required by Allocation Order).

that line. The fact that endorsement of the check will switch the customer's PIC to AT&T is also expressly stated in the marketing literature accompanying these checks.[22]

These disclosures make absolutely clear to customers that endorsement of the checks will automatically switch them to AT&T. Significantly, although the Commission routinely forwards to AT&T any customer complaints received by the agency regarding its services, during the past two years AT&T has not received even one informal complaint from the Commission contending that the customer mistakenly endorsed AT&T's check, or believed that it would not result in a PIC change.[23] This record abundantly demonstrates that combined check/LOAs accompanied by proper disclosures are fully appropriate and in no respect misleading to

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[22] Examples of AT&T's checks and related marketing materials are attached as Exhibit B.

[23] AT&T has received virtually no informal complaints from the Commission regarding any other aspect of its check program. In two instances (IC-93-06501 and IC-94-14021), customers expressed concern that their long distance carrier could be changed if an unauthorized person gained access to and endorsed their checks. AT&T has demonstrated that this concern is misplaced, because AT&T's checks can only be deposited to the account of the customer named as payee. In two other cases (IC-93-04752 and IC-93-06698), customers objected to being offered money in connection with their PIC selection (although the Commission has recognized there is nothing improper about this practice).

consumers. The NPRM provides no reasoned basis -- and AT&T submits there is none -- for the Commission's tentative conclusion (¶ 12) that LOAs must not only be clear and unambiguous, but also physically separate from inducements.

The outright ban on combined LOA/inducements proposed in the NPRM not only is unnecessary to protect against slamming, but would also seriously disserve consumers. Such a prohibition would effectively deprive IXCs of the ability to use many of these inducements, even though the NPRM necessarily concedes (¶ 12) that they are "proper and effective marketing devices for attracting customers to an IXC's services." Many customers would also be needlessly subjected to inconvenience and delay in obtaining any inducements carriers do choose to offer, without providing any additional consumer protection.

There is thus no justification for the Commission to bar combined LOA/inducements containing proper disclosures. And it would be all the more unwarranted and destructive to competition in the interexchange market for the Commission to prohibit inducements from being mailed in the same envelope as LOAs (which would effectively preclude use of inducements by IXCs), or to bar inducements altogether as described in the NPRM (¶ 12).

The NPRM properly focuses on consumer protection, however, when it notes (¶ 14) that the Commission has received many complaints from subscribers who have been unable to determine which IXC identified on an LOA is offering the long distance service. Such LOAs are misleading because they indicate that one IXC is providing the long distance service, when in fact the service is being offered by another IXC, usually a reseller.[24] The Commission therefore seeks comment on how IXCs should be identified on the LOA so as not to confuse or mislead consumers.

AT&T believes that as a general matter the IXC that sets the rates charged to end users should determine how that IXC will be identified on the LOA. To avoid confusing consumers, however, no IXC -- including one that sets rates for the end user's service -- should be permitted to identify another carrier on the LOA (such as the IXC that provides the underlying long distance capacity). This restriction is similar to the Commission's approach for the "branding" of operator services where more than one carrier may be involved in

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[24] For example, AT&T has received numerous complaints from the Commission, state regulators and affected customers concerning resellers who have misrepresented their relationship with AT&T as those entities' underlying service provider.

the provision of service.[25] Requiring the rate-setting IXC to brand only its own service on the LOA will reduce consumer confusion, because consumers will be able to clearly identify the IXC with which they have established a customer/supplier relationship.[26]

The NPRM (¶ 14) proposes similar, but slightly different, relief by suggesting that the LOA name only the IXC that actually sets the rates. This approach, however, could inadvertently impose unnecessary restrictions on how an IXC could market its service. Requiring the name of the rate-setting IXC to appear on the LOA would accomplish the goal of prohibiting resellers from improperly identifying multiple providers to confuse consumers, but it would also prohibit legitimate actions by IXCs to brand their service most effectively -- for example, using a trade name or service mark. The twin goals of avoiding consumer confusion and allowing IXCs to market their services effectively are best served by permitting the rate-setting IXC to

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[25] See Policies and Rules Concerning Operator Service Providers, 6 FCC Rcd 2744, 2757 (1991).

[26] Additionally, it is important for the Commission to now prescribe the proper carrier identification for LOAs because some state PSCs have indicated their intention to hold the underlying IXC derivatively accountable for erroneous PICs submitted on behalf of resellers of that carrier's services.

determine how to identify its interexchange service on an LOA.

The Commission further seeks comment on whether customers of optional calling plans ("OCPs") should be absolved of liability for those plan's monthly charge if the customer has been converted to another PIC without authorization. NPRM, ¶ 16. To reflect the differences in the features of OCPs marketed to residence and business subscribers, as well as the differing degree of sophistication of residential and business customers, AT&T urges that only residential customers of domestic OCPs be absolved of the monthly OCP charge when those customers are switched to another IXC without authorization.

Residential customers of domestic OCPs typically receive discounted rates only for direct dial calling placed from their residence telephones.[27] When such a residential OCP customer's home telephone is switched to another PIC, that customer therefore loses all of the benefits of the OCP, i.e., discounted 1+ long distance service. In these circumstances, it is not

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[27] International OCPs, such as AT&T's TrueWorld℠ Savings plan, provide discounts on calling card and other operator-assisted traffic originated by the subscriber from any location, in addition to discounts on direct dialed domestic and international calls originated from the subscriber's home telephone.

unreasonable to conclude that the customer should not be required to pay for a service which he or she is no longer receiving. Indeed, AT&T's tariffs for Reach OUT® America and other domestic residential OCPs already provide for immediate termination of a subscriber's service under those OCPs when AT&T is notified by the LEC that the customer has become presubscribed to another IXC, whether voluntarily or otherwise.[28]

By contrast, business OCP customers receive more than just discounted direct dialed service under these plans; in many cases, such OCPs also offer discounted rates on calls placed from locations other than the subscriber's premises using calling cards associated with the customer's main billed account.[29] Consequently, business customers often continue to receive meaningful benefits from an OCP, even after they have been slammed. Terminating their participation in these plans automatically, merely because they have been improperly switched to another carrier, would only

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[28] See AT&T Transmittal No. 3628, filed November 15, 1991. Customers who presubscribe to another carrier but wish to remain subscribed to these OCPs may do so by notifying AT&T of their decision to continue their calling plan.

[29] See, e.g., AT&T Communications (Transmittal Nos. 3380, 3537, 3542, and 3543), 7 FCC Rcd 7730 (1992) (describing calling card discounts under the AT&T PRO WATS calling plan).

inflict further injury on these customers beyond that already caused by the slamming.

Because consumers that are switched without their authorization are billed for the service they receive from the slamming IXC, the NPRM (¶ 17) also seeks comment on whether these improperly generated bills should be paid, in full or in part, by the victims of slamming. Clearly, the slamming IXC should not be permitted to unjustly benefit by its actions. In theory, the slamming IXC should compensate the consumer for his or her out-of-pocket expenses; that is, the difference between what the consumer paid and what he or she would have paid if properly connected to their IXC of choice.[30]

This approach, while logical, would be impractical to administer. Long distance carriers offer many different service plans, so that comparison between competing IXCs' rates may be complex. The interexchange market is also characterized by frequent changes in IXCs'

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[30] See Franks v U.S. Telephone, Inc., File No. E-86-11, Mimeo 4620, released May 7, 1986 (¶ 12). In Franks, the Common Carrier Bureau noted that it would be improper for the complainant (a slammed customer) to receive the long distance service free of charge, because "[c]omplete forgiveness of charges exceeds the damages suffered by complainant." Id. Moreover, allowing consumers to receive free long distance service simply by raising a claim of slamming could also lead to an increase in reported slamming generated by customers looking for free service, and require IXCs to expend significant time and effort to investigate and rebut such claims.

rates, through promotions and otherwise. As a general matter, therefore, calculating the amounts that individual customers would have been charged by their designated IXC would also be unduly burdensome for carriers to perform and for slammed customers to verify.

To compensate the consumer, while keeping the administrative burdens to a minimum, AT&T suggests that slammed customers should be required to pay the slamming IXC its basic long distance rates, less a fixed percentage specified by the Commission to approximate the rate differential from the customers' designated IXC. AT&T submits that a credit of 20 percent for domestic calls and 40 percent for international calls should adequately compensate consumers and appropriately penalize the slamming IXC.[31]

Finally, the NPRM also seeks comment (¶ 19) on how customers are affected by IXC marketing practices when the customer calls the IXC on an 800 number. In the

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[31] A higher adjustment for international calls is warranted because international OCPs, to which slammed customers frequently subscribe, generally offer this level of discount from that IXC's basic international direct dialed rates. With respect to both domestic and international calls, however, customers should only be entitled to the credit if they notify the new IXC within two billing cycles after the alleged slam occurred. This period is sufficient to allow those subscribers to detect that they have been changed to another carrier without authorization, and to contest the charges for calls placed using that IXC.