

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
Policies and Rules Concerning )  
Unauthorized Changes of Consumers' )  
Long Distance Carriers )

CC Docket No. 94-129

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**COMMENTS OF LDDS COMMUNICATIONS, INC.**

LDDS Communications, Inc. ("LDDS") respectfully submits these comments in response to the above-captioned Notice of Proposed Rulemaking ("NPRM").

**I. INTRODUCTION**

LDDS is the nation's fourth largest long distance company. Acquisitions of IDB Communications, Inc., an international carrier and WilTel, Inc. were recently completed on December 30, 1994 and January 5, 1995, respectively.

The decade since divestiture has witnessed enormous growth and change in the market for interexchange services. This growth has manifested itself in many forms including improved service quality and reliability, lower rates, more carriers, more services, and an increasingly complex web of network providers, resellers, and enhanced service providers. While an overwhelmingly positive development, this growth has also increased the potential for customer confusion and abuse through the use of questionable marketing practices. LDDS is therefore

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strongly supportive of the direction taken by the Commission in this NPRM. Operating both as a "carrier's carrier" serving a large base of reseller customers and as a retailer of services competing with much larger carriers, LDDS is keenly aware that consumer confusion, misleading marketing tactics, and the complexities involved in changing long-distance carriers undermine the legitimacy of the competitive long-distance industry and damage its ability to generate more business in the future. The number of complaints which have arisen over the past year suggest strongly that an upgrade of the Commission's rules concerning Letters of Authorization ("LOAs") is required. In the comments which follow, LDDS outlines a set of rules which, if consistently applied on a nationwide basis, could minimize consumer confusion and complaints while furthering the Commission's goal of maximizing interexchange competition.

**II. EFFECTIVE RULES MUST BE APPLIED CONSISTENTLY ON A NATIONWIDE BASIS.**

As a preliminary matter, it should be recognized that in terms of changing one's Primary Interexchange Carrier ("PIC") there is no differentiation based on the inter- or intrastate nature of traffic. A single LOA suffices as a medium for changing PIC regardless of the jurisdictional nature of the services provided. LDDS is aware that two states<sup>1</sup>, Florida and South Carolina, are currently undertaking a review of their own rules concerning LOAs and that other states are contemplating similar proceedings. These states are legitimately concerned with the same issues

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<sup>1</sup>Florida PSC Docket No. 2 941190-T1, Re: Proposed Revisions to Rule 25-4.116, F.A.C., Interexchange Carrier Selection. South Carolina Public Service Commission Docket No. 94-559-C, Re: Proceeding Addressing Marketing Guidelines for Telecommunications Carriers.

addressed by the Commission in this NPRM. However, while LDDS supports stronger measures governing the language contained within, and the marketing practices surrounding the LOA, but LDDS believes that a consistent nationwide policy must be established. Failure to do so could result in a patchwork of rules and regulations to which no single marketing plan or LOA could adhere. The result of such inconsistency would undoubtedly be more expense for IXCs and more confusion on the part of long distance customers.

LDDS therefore urges that the FCC take the concerns of interested state commissions into account, either through their comments in this proceeding or by convening a Federal-State Joint Board to address the issue. The objective should be one set of LOA rules which can be applied on a nationwide basis and which are sufficiently stringent to assure that the concerns of consumers and state commissions are met.

### **III. THE LOA SHOULD INCLUDE STANDARD LANGUAGE INDICATING THE CUSTOMER'S INTENT TO SWITCH TO A SPECIFIC LONG DISTANCE CARRIER.**

In its capacity as a carrier's carrier, LDDS has noted numerous problems stemming from marketing campaigns which focus on transactions other than changing one's long-distance carrier (e.g., cashing a check, contests, sweepstakes, frequent flier miles, donations to charitable causes, etc.). In many cases it appears that consumers were unaware that their long-distance carrier was being switched, and believed that the inducement was the sole purpose of the LOA document. In addition, some marketing practices have given rise to questions as to who the responsible carrier is. This has led some to propose that the underlying long-distance network services provider should be held liable and financially accountable for the marketing activities

of the retailer offering service to end-user customers. Such proposals are problematic given that it is the carrier retailing the service -- not the underlying network service provider--which designs, packages, markets and bills for services provided to the end-user. Moreover, it is only the retailer which has a contractual relationship with the end-user, the terms of which are largely unknown to the network provider<sup>2</sup>. Indeed, the very identity of the reseller's customers is unknown to the network provider.

Fortunately, these problems can be substantially eliminated by making simple straightforward changes to the LOA document. First and foremost, the Commission should require that the name of the IXC which will bill the end-user should appear on the LOA form. No other carrier(s)' name(s) should be designated on the LOA document<sup>3</sup>.

The LOA constitutes a direct contractual arrangement between the IXC whose name appears on the LOA and the end-user. Thus, the billing IXC is responsible for all marketing practices, billing, customer service and other responsibilities related to providing the end-user with interexchange telecommunications service. There should be no requirement that the underlying facility provider be listed on the LOA form, as the IXC may use the services of any underlying carrier or combinations thereof and can make network changes without notice. Furthermore, the Commission should rule that the underlying facility provider--while required to comply with requests for information and to assist the FCC and state commissions in resolving problems that arise as the result of resale -- is not responsible for policing the

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<sup>2</sup>Network services providers supply but one of several inputs (e.g. customer service, billing, marketing, regulatory compliance and tariffing, etc.) which are required in order to act as a long distance carrier.

<sup>3</sup>It is not our intent to preclude an end-user from designating an agent (rather than a carrier) to be responsible for selecting the end user's long distance carrier.

marketing practices or LOA procedures of its wholesale customers. They are certificated IXC's in their own right and should be treated as such.

Second, the LOA should not be used for any purpose other than to designate the end-user's choice of PIC. Any ancillary marketing activities should be handled via documents physically separate from the LOA. This should eliminate customer confusion about the purpose of the LOA document itself. In addition, this does not preclude carriers from including accompanying promotional materials describing inducements offered to customers who submit valid LOAs for change of PIC. LDDS further concurs with the Commission's preliminary finding that negative option LOAs should not be considered valid<sup>4</sup>.

Finally, the Commission should designate the specific language and format to appear on the residential LOA<sup>5</sup>. This language should be a standard, straightforward and unambiguous designation of new interexchange carrier signed and dated by the end-user. Computer software manufacturers have long recognized that a standard user interface promotes users understanding of new software (witness the popularity of computer programs which use Microsoft's "Windows" interface). Such an interface between residential customers and IXC's in the form of a "standard" LOA will similarly facilitate customer understanding that they are signing a document which will result in a change of their long-distance carrier.

In addition to its benefits to end-users, such a standard form could vastly simplify the apparatus needed to process and police PIC change requests. In addition, it would help to

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<sup>4</sup>NPRM at ¶ 11.

<sup>5</sup>The Commission should clarify that any language and format that it designates is applicable on a going forward basis only and does not invalidate previously existing LOAs.

legitimize the burgeoning reseller industry which has expanded the scope of competition by serving market niches ignored or inadequately served by larger carriers.

#### **IV. POLICY CHANGE IS REQUIRED ONLY FOR WRITTEN RESIDENTIAL LOAs.**

The standard LOA requirements noted above should be used solely in conjunction with retail sales of telecommunications services to residential end-users. In the experience of LDDS, commercial customers tend to be very sophisticated in their purchases of telecommunications services and the LOA is sometimes part of a larger and specialized contractual commitment. In addition, very few complaints of the nature described in the NPRM have resulted from commercial sales and commercial LOAs.

LDDS does not believe that it is necessary to increase requirements for customer-initiated PIC changes involving 800 calls<sup>6</sup>. Such requests tend to come from consumers who are aware of the impact such a change may have on their phone bill and who openly express a desire to change to a new carrier. While there have been some complaints regarding improper use of this arrangement, LDDS is not aware of a mechanism to eliminate such problems effectively, short of barring end-users from initiating their own PIC changes<sup>7</sup>.

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<sup>6</sup>NPRM at ¶ 19.

<sup>7</sup>No amount of regulation will completely eliminate misuse of the LOA process by pranksters submitting false LOAs, sales personnel improperly submitting PIC requests without valid LOA, etc. These are problems endemic to all telecommunications carriers regardless of their level of vigilance.

## V. PROPER COMPENSATION FOR CUSTOMERS WHO DISPUTE PIC CHANGES

Even under the best of circumstances some errors will be made in the course of processing literally millions of PIC changes. As noted in the NPRM, end-users are entitled to compensation for any overbilling and switching charges they incur because of improper PIC changes<sup>8</sup>. By the same token, carriers are entitled to protection from customers who would abuse this process in order to avoid paying for services rendered. Having experienced both sides of this issue first hand, LDDS believes that the most viable rule would be to make a carrier responsible for an improper PIC change responsible for paying all charges related to moving the customer back to their original carrier, and to upon receipt of a detailed written claim,<sup>9</sup> repay any amount in excess of what the customer's original carrier would have charged for the same service. To eliminate charges on disputed PIC changes completely would incent end-users to dispute valid PIC changes in hopes of having their long distance charges refunded.

LDDS is also concerned that customers may request refunds for a number of months prior to their PIC change dispute. LDDS therefore proposes that compensation be limited to calls placed 3 months before the date of the dispute. This would give customers adequate time to discover that their IXC has been changed and act upon this information. It would also protect carriers from illegitimate and protracted claims involving numerous billing cycles.

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<sup>8</sup>NPRM at ¶ 16.

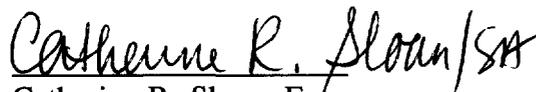
<sup>9</sup>A customer claim for refund would have to include dates of service, a statement regarding the identity of the carrier, calling plan and rates the customer expected to pay for that period.

## VI. CONCLUSION

LDDS strongly supports the initiative taken by the FCC in this NPRM. The basic policy outlined above will do much to eliminate confusion and promote honest competition in the interexchange industry, and will not impose unreasonable costs on carriers or consumers. LDDS therefore respectfully requests that the Commission adopt and implement the foregoing policies and procedures.

Respectfully submitted,

January 9, 1995

Handwritten signature of Catherine R. Sloan in black ink, with the initials "SA" at the end.

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