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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	)	CC Docket No. 94-129
Unauthorized Changes of Consumers'	)	
Long Distance Carriers	)	

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COMMENTS OF HOME OWNERS LONG DISTANCE, INC.

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SUMMARY

This proceeding proposes rules to govern the language and content of Letters of Agency ("LOAs"). The proposed rules will severely limit the effective use of promotional offers as a marketing tool by interexchange carriers ("IXCs") by requiring that such promotional offers be described on a document that is separate from the LOA.

Home Owners Long Distance, Inc. ("HOLD"), a long distance resale carrier, wholeheartedly supports the goals of the FCC in this proceeding — to protect consumers from misleading marketing materials and ensure that customers are aware that a switch in long distance carriers is being made when an LOA is executed. HOLD strongly objects, however, to any rules that require the separation of promotional offers from the LOA. As detailed in these comments, such rules simply are not required to meet the goals of this proceeding. Alternatives are available that will equally protect consumers but at the same time reduce dramatically the adverse impact on small IXCs that will be caused by an adoption of the FCC's proposed rule on promotional offers.

Instead of adopting a rule that requires the separation of promotional offers, HOLD suggests that more emphasis be placed on the language and type-face of the LOA itself. If the LOA document is clearly entitled a "Long Distance Service Application" (or a similar title), and if that title, as well as pertinent information on the long distance service and the interexchange carrier, is prominently displayed in bold typeface, consumers will be clearly informed that a switch of long distance service will occur if the LOA is executed. And if consumers are so clearly informed in this manner, whether or not the LOA also contains a promotional offer simply does not matter. Consumers will neither be deceived, misled, or confused by a document that is

so titled and structured; at the same time, consumers also will receive the benefit of legitimate promotional offers.

Moreover, adopting rules concerning the language of the LOA, but permitting promotional offers to remain on the LOA document, will allow the use of promotional offers by interexchange carriers to continue as an effective marketing tool. In considering these issues, the Commission must keep in mind the disparity in advertising and marketing budgets between the "Big-Three" carriers and smaller carriers such as HOLD. HOLD simply does not have available to it the alternative of instituting a massive advertising campaign on nationwide television. Therefore, the ability to use clear and explicit LOAs, combined with legitimate promotional offers, is critical to HOLD's ability to reach its target market, which is residential subscribers.

HOLD also proposes rules concerning follow-up mailings after LOAs are received by IXCs but before PIC changes are made; mandatory responses by IXCs to customer complaints of unauthorized switching of service; and local exchange carrier PIC change procedures. The rules proposed by HOLD will fully protect consumers but still allow smaller IXCs to effectively market their services in a clear and explicit manner. The competitive long distance marketplace will thereby be promoted and strengthened.

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COMMENTS OF HOME OWNERS LONG DISTANCE, INC.

Home Owners Long Distance, Inc. (hereafter "HOLD"), by its attorneys, hereby submits its comments in response to the FCC's Notice of Proposed Rulemaking, FCC 94-292 (hereafter "Notice"), in the above-captioned docket.

I. Introduction and Background

HOLD is an interexchange carrier based in San Antonio, Texas. HOLD provides long distance services, primarily to residential subscribers, on a "switchless resale" basis using the facilities of underlying facilities-based carriers. HOLD has been successfully providing resale services since 1990 on an interstate, international, and intrastate basis. HOLD is a privately held corporation that is a part of the statistical group of "more than 500" smaller long distance companies that is frequently cited by this Commission as proof of the successfully competitive state of the long distance marketplace.

HOLD's target market is residential subscribers with relatively low volumes of monthly usage in comparison to the monthly billings of business long distance users, even smaller business

users. HOLD's marketing primarily to residential subscribers is somewhat atypical of the smaller resale carriers, who frequently target the small to medium sized business user of telecommunications services. HOLD thus offers one of the few available alternatives to the services provided by the "Big-Three" long distance companies.

HOLD applauds the efforts of the Commission to explore ways in which carrier marketing practices can be improved so as to minimize customer confusion and unauthorized switching of customers' long distance service providers. HOLD recognizes that the long distance industry, like most other industries, does contain some players that utilize marketing techniques that may mislead or confuse consumers. However, the Commission must recognize that the use of such techniques is not limited to the smaller players in the industry — in fact, it was a dispute between MCI and AT&T that led to the Commission's adoption of rules in 1992 concerning telemarketing of long distance services. Notice at paragraphs 4-5.[1]

The Commission also must recognize that it is the smaller players in the industry that will be most impacted by the rules now being proposed. Because such companies simply do not have the huge advertising budgets of the larger carriers, LOAs that reach the customer through mailings or display tables or boxes, in conjunction with promotional inducements, often are the most cost-effective methods of reaching their customer base — particularly if that base is residential subscribers. It is therefore crucial that the Commission, in its zeal to correct a

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[1]Surely the Commission is aware that certain of the practices cited in the Notice — most notably the mailing of checks to consumers which, when endorsed and cashed, switch the customer's long distance service — frequently are used by AT&T and the larger carriers. These carriers also run promotional offerings involving free goods and services for switching to the carrier, including, but not limited to, providing the customer with points/credits for participation in an airlines' frequent flyer programs. Many of these programs involve perforated LOA and promotional materials on the same document.

perceived problem, not lose sight of the needs of smaller carriers to efficiently and economically market their services.

It is also crucial that the record in this proceeding properly document the scope of the problems encountered with promotional inducements before any final action is taken. For example, the Notice states, in the opening paragraph, that the FCC received over 1700 "slamming" complaints in Fiscal Year 1993, and over 2500 such complaints in 1994, but then goes on to state that "many" of the complaints involve telemarketing calls. HOLD feels that it is important to document how "many" of the complaints were from telemarketing sales, how many involved other issues, and how many actually involved LOAs that also contained promotional inducements.[2] Additionally, it is important to consider the number of complaints in its proper perspective — i.e. how many millions of customers signed up for long distance service during that same time period? And how many such complaints involve clear and accurate LOAs or sales presentations but the customer simply changed its mind or forgot that a switch had been authorized? How many involved errors by the local exchange company implementing the PIC

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[2]It has been HOLD's experience, based on over four years of marketing to residential subscribers, that service orders taken by telemarketers are far more likely to generate customer claims of unauthorized switching. Telemarketing calls rarely are made by direct employees of the carrier, but usually are made by an independent telemarketing company. Therefore, it is extremely difficult for the long distance carrier to police the actual calls that are made. Additionally, because the individual making the telemarketing call is paid on a commission basis, the incentive to sign up large numbers of customers is obvious. These same problems are inherent in the use of independent sales agents. It is for these reasons that the use of customer LOAs, that are either mailed to customers or are executed by customers at display tables or display boxes, and then collected by the carrier, are an effective means of reaching residential consumers that actually is less susceptible to incidences of customer confusion or misunderstanding than are telemarketing calls, particularly if the company follows up the LOA with a confirmation letter and other materials before initiating a PIC change. See pages 7-9 infra.

change? How many involve inadvertent "human" error such as the transposing of a telephone number by a data entry clerk?

HOLD certainly supports reducing the number of customer "slamming" complaints down to zero, but unfortunately, as a practical matter, that just may not be possible. It must be recognized that no matter how "crystal clear" a written document is, some consumers simply do not read the document, and some consumers simply experience "buyer's remorse" and then claim that they were misled in some way.

The remedies now proposed in the Notice involve changes to the LOA to require contests and other promotions to be completely separate from the LOA, as well as to require the LOA to contain (or not contain) certain language and type face. HOLD supports some of the proposed changes. However, HOLD also suggests alternatives to the Commission's proposal, that, in its view, will protect consumers but at the same time be less obstructive to carrier marketing efforts.

II. The Language, Typeface and Structure of the LOA Is More Important Than the Separation of Promotional Inducements

As stated above, HOLD certainly does not deny that there are marketing materials out in the marketplace that may be misleading or confusing to consumers. However, requiring that promotional offres be separate from the LOA is neither necessary or desirable to cure this problem. Rather, the key to the solution to this problem is in the language of the Notice itself.

The Notice describes what is considered to be an "apparantly deceptive marketing practice", which is the use of a "form document that does not clearly advise the consumers that they are authorizing a change in their PIC." Notice at p. 5 (emphasis added). The underscored language is precisely the point — if the form document does in fact clearly advise the consumer that a change in carrier is being authorized, then it should be immaterial that the document also

enables the consumer to receive a promotion, or allows the consumer to participate in a prize drawing, etc.[3] The Notice goes on to complain about LOAs that are "disguised" as contest entry forms or solicitations for charitable contributions. Id. A fortiori, if the LOA is clearly labeled as a long distance service application in prominent letters that "jump out" at the consumer, clearly it is not being "disguised" as anything, and it therefore will not confuse or mislead the consumer if the LOA also happens to contain language concerning a prize drawing or charitable contributions that are being made by the long distance carrier.[4]

HOLD thus submits that the Commission's proposal on page 8 of the Notice that the text of the LOA be "clear and unambiguous" and that it be printed in "type that is sufficiently large and of such a style to be clearly legible" is actually far more beneficial to consumers than whether the promotional language is on a separate piece of paper. In this regard, HOLD suggests that the Commission require that LOAs be clearly entitled a "Long Distance Service Application" or similar title, that the title be prominently displayed, and that the title be in a larger type face, and bolder print, than any surrounding language concerning the promotional inducement. Such changes would be able to be easily implemented by carriers within the context of their present

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[3]The Notice appears to be concluding, but without any support for the conclusion, that all LOAs that are combined with promotional inducements do not clearly advise the consumer that a change in carrier also is being authorized, and that therefore all such LOAs must be assumed to be deceptive. Not only is that not the case on an industry-wide basis today, but if the Commission adopts rules, as proposed herein, concerning the language and type-face of LOAs, it would certainly not be the case in the future.

[4]The Notice also appears to be assuming that every prize offering, reference to a charitable contribution, and etc. that are contained in an LOA are not properly run, lawful offerings. Nothing could be further from the truth. The Commission should take some time to understand and appreciate the many legitimate promotional and charitable offerings that are being administered by long distance carriers that not only effectively generate revenue for the carrier, but also contribute to the quality of life of the customer base that such carriers serve.

marketing materials, yet would still unambiguously present consumers with the most vital piece of information — which is that their long distance service carrier will be changed. And by allowing additional language concerning promotional inducements to remain on the same document as the LOA, the carrier still will be able to receive the marketing benefits of being able to attract consumers with easily recognizable incentives.[5]

The Notice also discusses what is termed "negative option LOA" forms, in which consumers that complete the LOA document also are asked, as part of their completion of the document, to check a box on the form if they do not want their long distance service changed. This practice clearly is not a true "negative option" in the traditional sense, because a true negative option results in a service or product being provided to the consumer despite the fact that the consumer has taken no action at all with respect to that product or service. Thus, it would

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[5]The Notice recognizes that inducements "may be proper and effective marketing devices for attracting customers to an IXC's service." Notice, p. 8. Nevertheless, comments are sought on whether inducements should be prohibited altogether, or should be required to be mailed in a separate envelope from the LOA. HOLD strongly objects to any action that would prohibit inducements entirely. While some form of promotional inducements are used by all carriers, including the "Big-Three", clearly it would be the smaller carriers that would be most hurt by such a prohibition, as they do not have available to them the alternative of a massive advertising blitz on prime time television. Moreover, the Commission clearly would have to specifically delineate, based on a complete record, the precise types of "inducements" that would be prohibited. For example, would contest entries be prohibited, but not an offer of free or waived installation charges and/or monthly fixed or usage fees, which for a large high volume business user easily could equal the amount of any grand prize drawing in a contest? What about offers of frequent flyer mileage, or offers of free goods and services, which are common marketing offers of AT&T, MCI, and Sprint? Does the Commission really want to be embroiled in issues as to which inducements are or may be "misleading" and which are not? And as to whether inducements should be prohibited from being included in the same mailing as the LOA, by that same reasoning, should AT&T, MCI and Sprint likewise be prohibited from advertising any promotions — including frequent flyer mileage promotions, or offers of other free goods or services for a promotional period — in the same TV advertising spot in which they are asking customers to sign up for their service?

clearly be a "negative option" if a consumer is mailed an LOA and then automatically switched to a new carrier even if the consumer has not responded in any way whatsoever to the mailing. In other words, if the customer is switched because it fails to send in a form declining the switch to the new carrier, a negative option situation arises. In contrast, in the situation discussed in the Notice the consumer obviously is taking some action in response to the mailing by choosing to complete and return the document. In this regard, the practice of including a box on the LOA actually has developed as a protection for the consumer to avoid being misled, and as a protection for the carrier against slamming allegations, because it helps to ensure that the consumer actually reads through the document (and thus realizes that its long distance service will be changed) before completing it and returning it to the carrier.

Therefore, rather than forcing carriers to eliminate this protective device entirely, a better solution is to either require that the box to be checked must be prominently displayed on the top of the LOA document, in bold face or suitably large typeface, or to require that the LOA contain two boxes — one to check if the consumer does not want to switch its long distance carrier, and one to check if the consumer does want to make a change. In this way, the carrier would still have some comfort that the consumer has read through the LOA document, but the danger that the consumer may misunderstand the document that it is executing would be greatly reduced.

III. Follow-Up Mailings And Prescribed Complaint Resolution Procedures Are Most Effective In Preventing Slamming Disputes

HOLD submits that the most effective mechanism to reduce the incidences of "slamming" allegations made by consumers is to impose a requirement similar to that contained in Section 64.1100(d) of the FCC's rules that the carrier follow up all written LOAs with a mailing containing pertinent information on the new long distance carrier, and listing any charges that will

be incurred by the switch of carriers and the telephone number to be switched. This package also should include a toll-free telephone number that the consumer can use to reach the carrier with any questions about the service, or to decline the switch altogether. Finally, the carrier also should be required to wait a suitable period after the mailing is sent out (such as the fourteen day period required by Section 64.1100(d)) before any PIC change is initiated for the customer.

The Commission's rules do not currently require that all carriers send out such follow-up mailings, but rather only provide that follow-up mailings are one of the four permitted methods to confirm a service order that was generated by a telemarketing call. HOLD submits that requiring all written LOAs to be followed by a mailing from the new long distance carrier will eliminate the majority of claims of unauthorized switching. Such mailings will sufficiently alert those customers that may not have been aware, or may have forgotten, that their long distance carrier was being changed when it signed the LOA or entered a promotional drawing, and additionally will prevent a switch from being made in those instances where the wrong telephone number was inadvertently included on the LOA or the LOA was completed by an individual that is not authorized to make the switch. Moreover, such mailings also will provide consumers an opportunity to simply change their minds before a PIC change is initiated by the carrier.

Finally, HOLD suggests that requiring carriers to make a specific written response, within a certain time period, to all customer complaints of unauthorized switching will go a long way towards eliminating the misleading practices highlighed in the Notice, particularly if the FCC ensures that customers are made aware of such requirements. HOLD submits that no legitimate business wants customers that are unhappy with the service or simply do not want to be there, for whatever reason. Such customers are detrimental to the business reputation of the company, and

only lead to more unhappy customers and more customer complaints. For its part, HOLD has an express company policy that requires that all customer complaints be responded to in writing, that dissatisfied customers are promptly switched back to their desired carrier, and that customers who document that an authorized or unwanted switch did take place are provided with monetary refunds, including the amount of the LEC PIC change charge. Depending on the circumstances, such refunds are either the full amount of all charges incurred by the customer while on HOLD's service, or the difference in the amount that the customer was charged by HOLD and that it would have been charged if it had remained on its desired carrier.[6] Requiring that refunds be provided by all carriers in a similar manner will go a long way towards eliminating those less principled companies that feel that misleading marketing practices are necessary in order to maintain a presence in the marketplace.

IV. Rules Should be Adopted to Require Protective Action by Local Exchange Carriers

The Commission also must recognize, in considering rules to be adopted in this proceeding, that many of the customer misunderstandings encountered by smaller long distance carriers, particlularly resale carriers, could be easily alleviated by certain actions by the local exchange carriers that initiate customer PIC changes. Resale carriers are common carriers, just like facilities based carriers, with all the rights, obligations, and responsibilities that accompany such common carrier status. However, roadblocks to the effective execution of such responsibilities often are created by local exchange carriers.

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[6]For example, if HOLD determines that a customer was switched to HOLD because of a data processing error by HOLD (i.e. the wrong telephone number inadvertently was inputted), or because an unauthorized individual completed an LOA, the full amount of all charges incurred, including any PIC change charges, are refunded.

For example, LECs should be required to provide reseller IXCs, at a reasonable cost, with verification of the customer name and address information associated with a billing telephone number. Many LOAs are completed by customers by hand-written entries that are not completely legible. Additionally, the customer completing the form may simply transpose certain numbers when writing down the telephone number, or LOAs may be completed fraudulently by writing in telephone numbers that are not those of the consumer. Reseller IXCs, however, have no way of verifying that the information provided on the LOA is accurate, and as a result inaccurate (but completely inadvertent) switches may be made by the carrier. The means are well within the capabilities of the LECs to correct this problem, and if so corrected, another common source of "slamming" complaints will be easily eliminated.

Moreover, the Commission must be careful to assess the needs of resale carriers if any FCC rules concerning the names of the carriers to be listed on the LOA are adopted. In order to protect resale carriers from unsubstantiated "slamming complaints", as well as alleviate customer confusion, it is crucial that the name of the billing IXC appear on the LOA in a prominent location. As the billing IXC is responsible for all marketing practices, billing, customer service and other responsibilities related to providing the end user with telecommunications service, if the name of the billing IXC is conspicuously noted on the LOA customer uncertainty as to the service that is being subscribed to will be considerably minimized.

This is particularly important in light of the fact that resale carriers typically are not assigned their own CIC codes by local exchange carriers. And it the resale carrier does not have its own CIC code, direct identification of the reseller for the purpose of answering end user inquiries, confirming PIC changes, and resolving PIC disputes and complaints is more difficult.

For example, if a resale carrier does not have its own CIC code, a customer that has questions about its long distance carrier status, and calls an LEC customer service operator or a 700 number to inquire about such status, will be informed that they are a customer of the underlying facilities provider rather than the reseller IXC. Customer confusion and misinformation, and resulting complaints to both this Commission and the carriers, therefore can arise. Requiring a prominent display of the billing IXC on the LOA could go a long way to removing such confusion.

V. Conclusion

In conclusion, HOLD again stresses the importance of assessing the impact on smaller long distance carriers of any final action taken in this proceeding. In other contexts, the Commission frequently points to the number of long distance carriers, both large and small, as proof that Commission deregulatory policies designed to foster a competitive marketplace are working as anticipated. Yet if action is now taken that disproportionately impacts the "lower end" of the marketplace, not only will the competitive state of the marketplace suffer, but so will the residential and small business subscribers that such carriers serve.[7]

Surely the Commission is aware of the popularity — among both large and small carriers of the use of promotional inducements in conjunction with the marketing of long distance services.

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[7]On January 4, 1995, the Commission released a decision that once again reiterates its belief that "numerous public benefits...flow from unlimited resale and sharing activity...." Notice of Apparent Liability For Forfeiture and Order To Show Cause, In re AT&T Communications, FCC 94-359, at paragraph 12 (released January 4, 1995). This Commission also states that "unlimited resale promotes the public interest by creating competitive pressures on carriers to provide service at rates near the cost of service and by stimulating demand for service. Id. at paragraph 2. In that very recent case, enforcement action was initiated against AT&T Communications for apparently violating Section 201(a) of the Communications Act for failing to provide service under its tariff to resale carriers. It would be incongruous to take action in this proceeding, so soon after reaffirming the importance of the resale industry to the competitive marketplace, that will adversely impact resellers far more than other segments of the industry.

The Commission also must be aware that smaller carriers have fewer available alternatives to the use of such promotional inducements, as such carriers are unable to support the huge advertising and marketing budgets of the "Big-Three" carriers. Therefore, while action by the Commission to improve LOA documents to make such documents more explicit and understandable to consumers is clearly warranted, separation of promotional inducements from the LOA is not required at this time. It is critical to the resale industry that any action taken in this proceeding not preclude the effective use of promotional inducements as a legitimate marketing tool, particularly when less drastic alternatives, such as those proposed herein, are available and appropriate.

Respectfully submitted,

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