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

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In the Matter of:

Policies and Rules Concerning
Unauthorized Changes of Consumers'
Long Distance Carriers

CC Docket No. 94-129

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TO: The Commission

COMMENTS ON NOTICE OF PROPOSED RULEMAKING

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Summary

The NPRM sets forth a "restatement" of the Commission's existing rules for a "letter of agency" (LOA) for changing a customer's long distance carrier of choice. The restated rules reiterate the principles of the existing rules. In addition, specific format requirements are set forth to avoid customer confusion for promotional and inducement materials or wording surrounding an LOA.

Allnet strongly supports the proposed changes in the rules, and proposes some refinements to strengthen the proposed rules. The refinements include setting forth actual language for the LOA, as well as accommodating intraLATA presubscription. Also, the issue of the limited responsibility of the underlying primary interexchange carrier is discussed.

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Comments On Notice of Proposed Rulemaking

Allnet Communication Services, Inc. (Allnet),[1] hereby submits these comments on the Commission's November 10, 1994 Notice of Proposed Rulemaking (NPRM). The NPRM sets forth a "restatement" of the Commission's existing rules for a "letter of agency" (LOA) for changing a customer's long distance carrier of choice. The restated rules reiterate the principles of the existing rules. In addition, specific format requirements are set forth to avoid customer confusion for promotional and inducement materials or wording surrounding an LOA.

Allnet strongly supports the proposed changes in the rules, and proposes some refinements to strengthen the proposed rules. The refinements include setting forth actual language for the LOA, as well as accommodating intraLATA presubscription. Also, the issue of the responsibility of the underlying primary interexchange carrier is discussed.

[1]Allnet, which is based in Michigan, has provided long distance services in the United States since 1981. Allnet serves hundreds of thousands of both residential and commercial customers from coast to coast, with enhanced, high quality 1+ and 800 services.

I. Background

The Commission's existing presubscription rules (i.e. PIC change rules) require an LOA that: 1) contains the customer's name and address, and each telephone number to be covered by the PIC change order, 2) requests the PIC change to the IXC, 3) explains that only one IXC may be designated for each line, and 4) informs the customer that there may be a charge if the customer changes its PIC. See, Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 911 (1985) (Allocation Order), recon. denied, 102 FCC 2d 503 (1985) (Reconsideration Order); Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 935 (1985) (Waiver Order); see, also, Illinois Citizen's Utility Board, Petition for Rulemaking, 2 FCC Rcd 1726 (1987) (Illinois Utilities Board); also, Policies and Rules Concerning Changing Long Distance Carriers, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992) (PIC Verification Order), recon. granted in part, 8 FCC Rcd 3215 (PIC Verification Recon. Order), and Notice of Proposed Rulemaking, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, released November 10, 1994 (NPRM).

The end users' carrier must, at a minimum, "institute steps designed to obtain signed" LOAs. Waiver Order, 101 FCC 2d at 942. When the Citizens Utility Board sought to have the FCC make these requirements more stringent, the Commission rejected that request finding in part that the rules were intended to "facilitate the IXCs' marketing efforts while maintaining the protection embodied in the letter of agency requirement." Illinois CUB Order at 1729.

Finally, when Sprint requested the Commission to clarify the responsibilities of the underlying carrier of a "switchless reseller," the Commission agreed that a "2-step

LOA" would comply with the Commission's presubscription rules. PIC Verification Recon. Order, 8 FCC Rcd at 3218-9 (1993). The essential elements of the 2-step LOA were that there would be a "signed LOA from the end user designating the switchless reseller as its long distance carrier, and an LOA from the switchless reseller designating the carrier who is being resold as its agent." Id. at 3218. Thus, the Commission recognized that the LOA that was signed by the end user was the responsibility of the end-user's carrier (who might be a switchless reseller) and that such LOA should contain the basic information required by the Commission's rules. The Commission further recognized that it had "prescribed the content, but not the precise form, of LOAs in order to allow IXCs flexibility in their business operations while providing consumers protections against unauthorized PIC changes." Id, at 3219.

II. Section-By-Section Discussion

The Commission's previous reluctance to be more specific as to the form and content of LOAs was understandable. The industry was evolving and it would have been difficult for the Commission to have been more specific as to the LOA form and content without creating an oppressive environment to the developing competition.

As a general matter, the Commission's objective allowing "IXCs flexibility in their business operations while providing consumers protections against unauthorized PIC changes" should continue. The Commission's NPRM identifies a "promotional or inducement" format for LOAs that technically complies with its rules, but apparently has resulted in a number of complaints. Promotional or inducements have been widely used by major carriers, such as AT&T, and MCI, as

well as some smaller carriers.[2] Thus, the rules appear to require further elaboration to assure that such promotional and inducement formats do not compromise consumer protections against unauthorized PIC changes.

Each of the proposed changes is now examined and discussed. Proposed improvements are noted and a counter-proposal is presented.

Section 64.1150(a)

Proposed: ***An interexchange carrier shall obtain any necessary written authorization from a subscriber for a primary interexchange carrier change using a letter of agency as specified in this section. Any letter of agency that does not conform with this section is invalid.***

Counter-Proposed: ***An interexchange carrier (i.e., "toll carrier") shall obtain from a subscriber a valid written letter of agency for authorization for that interexchange carrier to make a one time request that the primary interexchange carrier or any reseller of that primary interexchange carrier, as required, named in the letter of agency be changed to enable the interexchange carrier to provide interexchange service to that subscriber. Any letter of agency that does not conform with this section is invalid. The authorization for making the change request is valid for only 90 days from the date of signing by the subscriber.***

Discussion: This requirement needs to more clearly indicate that it is the subscriber's carrier (i.e, the carrier whose rates are billed to the subscriber) who must obtain the LOA . Because the "interexchange carrier" may also be the local

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[2]Allnet does not use or endorse any of the promotional or inducement LOAs described in the NPRM. But some of the carriers who resell Allnet have used such formats. Due to the Commission's policies barring resale and shared use prohibitions, Allnet cannot control the use of such formats by carriers who resell Allnet.

exchange carrier who provides toll services,[3] the term "interexchange" carrier should be clarified to include any "toll carrier." In addition, where a switchless reseller solicits the PIC changes for its subscriber, a change in the underlying carrier who is resold will often occur. Thus, the LOA wording must clearly delineate that the PIC change being authorized is the PIC change made by the LEC (i.e., the "primary interexchange carrier") plus the change of any intermediate resale carriers between the primary interexchange carrier and the subscriber's carrier.[4]

The language must also make clear that the LOA may only be used once, and even then only within 90 days of the signature date. Allnet has found that some switchless resellers either negligently or intentionally recycle LOAs -- i.e., use them more than once, often after the subscriber has left the resale carrier. Also, by limiting the amount of time that the LOA is good, the problem of "stale" LOAs is avoided. Allnet has found that some resellers will submit PIC change orders that are based on LOAs that were signed many months before -- long after the subscriber forgets that they signed the LOA and signed up for another carrier.

The clarified language also makes clear who is being authorized, what is being authorized, and the scope of that authorization.

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[3]A number of areas in the United State now allow a subscriber to presubscribe to both an interLATA and intraLATA toll carrier -- either of which may be an interstate carrier (because some LATAs do cross state boundaries for toll services).

[4]Sometimes resale carrier resell other resale carriers.

Section 64.1150(b):

Proposed: ***The letter of agency shall be a separate document whose sole purpose is to authorize an interexchange carrier to initiate a primary interexchange carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the primary interexchange carrier change.***

Counter-Proposed: ***The letter of agency shall be a separate document whose sole purpose is to authorize a named interexchange carrier to initiate a local exchange carrier change of a primary interexchange carrier, and the change of any intermediate resale carriers, as required. The letter of agency must be signed and dated by the subscriber to the telephone line(s) (i.e., the person or entity named on the local exchange carrier bill), or if subscriber to the telephone lines is a commercial entity, by an authorized employee of that commercial entity, authorizing the carrier changes. If the letter of agency is for a commercial account, the title of the signing party must also be included.***

Discussion: The wording is clarified with reference to the carriers who are to be changed, including the primary interexchange carrier who the subscriber's carrier resells, once or more removed. In addition, because the signing party for a commercial entity is typically not the subscriber, the signing party should be required to 1) be authorized to sign for the commercial subscriber, and 2) provide its title.

Section 64.1150(c)

Proposed: ***The letter of agency shall not be combined with inducements of any kind on the same document.***

Counter-Proposed: ***The signed letter of agency shall be of such a form as to be limited to addressing the requesting, ordering, and provision of interexchange and ancillary services, and, thus, shall not contain any language or references to non-interexchange service-related inducements of any kind on the same document. The signature on the letter of agency must be immediately below the text satisfying the minimum requirements set forth in (d). The signature on the letter of agency may not be used to authorize or confirm for any purpose other than the ordering of long distance telephone service from the interexchange carrier.***

Discussion: The Commission's proposed language is somewhat vague. It is unclear what "inducements" are being referred to. The "inducements" that the Commission spoke of in the NPRM were check LOAs (i.e., where the signature served as a check indorsement), and contest entry forms. However, inducements relating solely to the interexchange service ordered should not be prohibited. For example, an offer to credit a customers PIC change charge is technically an "inducement," but should not be prohibited from being on the LOA form. Furthermore, proposed section (b) already prohibits wording involving non-interexchange service related material in order to avoid confusing the signer as to the purpose of the form. Finally, it is very important that the signature be immediately below (or adjacent to) the required text. This will maximize the chance that the signer has read the critical words. If the

required language is placed remotely from the required language, it is more likely that the signer will not have read or otherwise focused on the important language.

Section 64.1150(d)

Proposed: ***At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:***

1) the subscriber's billing name and address and each telephone number to be covered by the primary interexchange carrier change order; and

2) the decision to change the primary interexchange carrier from the current interexchange carrier to the prospective interexchange carrier; and,

3) that the subscriber designates the interexchange carrier to act as the subscriber's agent for the primary interexchange carrier change; and

4) that the subscriber understands that only one interchange carrier may be designate as the subscriber's primary interexchange carrier for any one telephone number and that selection of multiple carriers will invalidate all such selection; and

5) that the subscriber understands that any interexchange carrier selection they choose may involve changing the subscriber's primary interexchange carrier.

Counter-Proposed: ***At a minimum, the letter of agency must be printed with type greater than 9 point and be clearly legible and must contain the following language immediately above the signature line [with the materials in square brackets added whenever the interexchange carrier is not the same as the primary interexchange carrier and the information in doubles square brackets for where intraLATA presubscription exists]:***

> ***I authorize (insert name of the interchange carrier's name) (the "short name of carrier") to provide my long distance service. and to act as my agent for the next 90 days in all matters related to changing my [[long haul/shorthaul/all of my]] long distance service from my current carrier(s) to ("short name of carrier") for the telephone number(s) listed on this form. I understand that (i) I may only subscribe to one long distance carrier for my [["long-haul"]] long distance services, [[and one long distance carrier for my "short-haul" long distance service]], (ii) there may be a charge from my local telephone company for each change in my long distance service provide, [and (iii) that the name of (insert name of the primary interexchange carrier) may appear one time on my local telephone bill when this requested change is implemented.***
>
> ***I also certify that I am authorized to make this request***

for the telephone numbers listed below (or on this form). If I have any questions regarding this change in my service, I understand that I should contact ("short name of carrier") . at 1-800-NXX-XXXX.

Telephone numbers:

_____ _____

_____ _____

_____ _____ _____

Customer Signature ***Title*** ***Date***

Customer Name and Billing Address:

_____

_____

Discussion: Allnet believes that many of the problems that are identified in the NPRM could have been avoided if the Commission had specified the boilerplate language that would satisfy the Commission's content requirements. In place of such specific language, many carriers have engaged in creative variations on wording for the LOA language which may not be as clear and committal as the Commission might have intended. Thus, rather than simply specifying the content, the Commission would be wise to specify the exact wording it wants for satisfying the content requirements. Above is some suggested language.

In addition, the suggested language provides for the ability to specify a presubscribed intraLATA carrier. In a number of non-BOC locations throughout the country, intraLATA presubscription has become a reality. Those areas include Western Reserve (Ohio), Cincinnati Bell (Ohio), Iowa Switch (Iowa), and MEAC (Minnesota). New York, Kentucky, and Minnesota will soon join the ranks of those

intraLATA presubscription areas. Many states are about to require the option, including the FCC, if it has not done so already.[5] Thus, the Commission should include this option in both its content and language requirements.

Furthermore, the counter-proposed language makes clear who is authorizing what, and for how long. Finally, by limiting the purpose of the signature to authorizing the provision of long distance and ancillary services, many of the "dual purpose" signature lines on the contest and check LOAs would be avoided.

Section 64.1150(e)

Proposed: ***Letters of agency shall not purport to instruct the subscriber to take some action in order to retain the subscriber current interexchange carrier.***	**Counter-Proposed:** ***Letters of agency shall not suggest or require that a subscriber take some action to avoid a change in the subscriber's current interexchange carrier.***

Discussion: The Commission-proposed language is unclear and will create confusion. By limiting itself to "instruct"[ing] a subscriber, one can imagine language that does not instruct, but still results in a "negative option" -- which was intended to be prohibited. The counter-proposed language reflects the language used in the text of the NPRM at ¶11.

[5]Administration of the North American Numbering Plan, CC Docket No. 92-237, Phases One and Two.

III. Other Unauthorized Conversion Issues

1) Naming the Carrier: The Commission seeks comments on which long distance carriers should be named on the LOA. Allnet believes that there should be no more than two carrier names on the LOA, one who is clearly delineated as the subscriber's carrier and the other for the limited purpose of being mentioned as the primary interexchange carrier. The subscriber's carrier is the carrier whose name appears on the long distance bill. The primary interexchange carrier is the carrier whose name will appear one time on the local telephone bill when the presubscription change occurs. The counter-proposed language for (e), above, puts the subscriber on notice of what to expect, and thus to avoid confusion.

2) Business vs. Residential: The Commission seeks comment on whether business and residential customers should be treated differently with respect to LOAs. The counter-proposed language takes care of this problem.

3) Optional Calling Plans and Other Adjustments: The Commission asks whether the monthly fees for some optional calling plans should be absolved in the case of unauthorized conversions. Similarly, it asks whether any adjustments to long distance telephone charges should be made for consumers who are the victims of unauthorized PIC conversions.

If there were a way of preventing user fraud in filing false claims for unauthorized conversions, then a properly formulated adjustment (rather than an absolution of charges) would be a viable option. No adopted adjustment should result in effective rates (including the effects of any minimum or monthly usage charges) that are lower than the effective rates the consumer would have actually received from its prior long distance carrier. Thus, two critical elements are required for

addressing this problem:

a) a means of deterring fraudulent claims, and

b) a simple algorithm for adjusting rates that is not unfair to the carrier or the consumer.

Preconditions for an Adjustment Refund -- A Need to Avoid Fraud: A refund adjustment should only be required where the FCC has ruled that an unauthorized conversion has occurred, based on a verified formal complaint, with opportunity for discovery.[6] Furthermore, the carrier who billed the charges should be solely liable for the refund adjustment. The underlying presubscribed interexchange carrier is not responsible and should not be held liable (see discussion below). To deter fraudulent claims, as a prerequisite to making a claim for adjustment due to unauthorized conversions, a consumer should be required to sign a sworn notarized statement setting forth penalties for fraud if it is found to have made misrepresentations to the FCC.

Although Allnet sees some benefit to providing an incentive for providing some form of refund adjustment, Allnet is very concerned about customers who will become "long distance carrier surfers." That is, customers who will make bogus claims of unauthorized conversions simply to avoid paying charges, to obtain reduced charges, or to get out from term-agreement commitments they have previously made. This will only increase the number of complaints, and force more complaints to require a

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[6]Only a ruling by the FCC (as opposed to a state or court) should be allowed to trigger an adjustment refund for interstate charges. Limiting such determinations to the FCC would assure consistency in refunding among consumers and carriers -- complying with the requirements of the Act 47 U.S.C. §151 et. seq. Each state has different processes, and standards and thus determinations would vary by state and where the claim was made.

ruling by the Commission, rather than settlement.

The Nature of Adjustments: A consumer should not be allowed to profit from an unauthorized conversion. Furthermore, a consumer must make a timely claim for unauthorized conversion in order to make a refund claim. Specifically, the consumer must 1) have taken action to correct the unauthorized conversion (i.e., either having contacted the local exchange carrier or the old long distance carrier) by the earlier of a) 7 days of receiving its first bill from the allegedly unauthorized carrier or b) 20 days of having receiving a notice on the local exchange bill that a conversion to the unauthorized carrier had taken place, and 2) have filed its complaint at the FCC within 60 days of having received the first bill from the allegedly unauthorized carrier.

If a refund adjustment is called for, the consumer should only be entitled to an effective average per minute rate equal to that which the consumer actually paid over the prior two months from its previous carrier. Thus, for example, if a consumer was billed $10 in total charges (interstate plus intrastate plus monthly charges) for 100 minutes of telephone calls, then the effective per minute rate was 10 cents per minute. If the new carrier billed for 200 minutes of call at $24, then the consumer would be entitled to a refund of the difference between the calls at the new carrier's effective rate (i.e., $24) and the amount at the 10 cent per minute rate under the old carrier ($20) -- but only if those original carrier's bills were actually paid and the rates imposed by the earlier carrier were specified in tariffs.[7] To

[7]There is a growing segment of residential and commercial customers who make a ritual of hoping between carriers to avoid paying their bills. Filing fraudulent slamming complaints to receive refunds would only add to their arsenal of avoiding the payment of bills or receiving refunds that they are not owed. Section 203 requires that rates be tariffed.

substantiate a refund claim, the consumer should be required to provide copies of the last two bills from the prior carrier that are shown to be fully paid (i.e., that show no amounts overdue), and not more than three months older than the alleged date of the unauthorized conversion.

4) **Language Requirements:** It is only reasonable that if any of the language on the LOA is in a non-English language, then all of the language on the LOA (other than English translations of the non-English words) must be in that same language. Also, if any portion of the LOA is translated to English, then all of it should be translated into English.

IV. Other Issues

Telemarketing Should Similarly Require Written LOAs: The Commission's proposed tightening of LOA requirements is welcome. However, the tightening of these requirements will cause a migration to telemarketing methods, which are not as strict. Thus, the Commission must integrate all of these same requirements into telemarketing methods. In other words, even if an end user is telemarketed or calls an 800 number,[8] a signed LOA that conforms to these requirements should be required before conversion takes place.

Responsibilities of the Primary Interexchange Carrier: The Commission's resale and shared used decisions are very clear that an underlying

[8]See, NPRM at ¶19.

carrier may not impede another carrier from reselling that underlying carrier's services. *See, Resale and Shared Use of Common Carrier Services and Facilities*, 60 FCC 2d 261, 271 (1976) (Resale and Shared Use Decision), *modified on other grounds, Resale and Shared Use Reconsideration Order*, 62 FCC 2d 588 (1977), *aff'd sub nom. AT&T v. FCC*, 572 F.2d 17 (2d Cir. 1978), cert. denied, 439 U.S. 875 (1978). *See, also, Resale and Shared Use of Common Carrier Domestic Public Switched Network Services*, 83 FCC 2d 167, 193(1980) (Resale of Switched Services). The Commission recently demonstrated the full force with which this prohibition will be enforced in its recently released order imposing $1 million in forfeitures on AT&T.[9] In that order, the Commission stated its policy regarding the responsibilities of primary interexchange carriers:

> we expect that carriers who are requested to provide the service should make all efforts to do so, such as providing them under protest pending the resolution of complaints, petitions, or litigation, rather than refusing to meet a questionable obligation until after the complaint or litigation is resolved. Those who choose the course of non-compliance are on notice that they will be acting at their own peril, should the question of the legitimacy of their refusal to meet the common carrier obligations be decided against them.[10]

Thus, a primary interexchange carrier is in a very difficult position to "enforce" the Commission's presubscription requirements against resellers .

Moreover, even if the resale and shared use prohibition did not exist, the

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[9]See, Notice of Apparent Liability For Forfeiture and Order to Show Cause, AT&T Communications, Apparent Liability, FCC 94-359, released January 4, 1995

[10]In the Matter of Hawaiian Telephone Company, 78 FCC 2d 1062, 1065 (1980), see also, Cable News Network, Inc. et. al., 78 FCC 2d 1200A, 1204 (1980); Ward v. Northern Ohio Telephone Company, 300 F.2d 816 (6th Cir. 1962), cert denied 371 U.S. 820 (1962).

primary interexchange carrier has no reasonable means by which it can determine that a reseller or a reseller of a reseller is in compliance with the Commission's rules. The reseller is not required to forward the signed paper LOA with its PIC change order. See, PIC Verification Recon., 8 FCC Rcd at 3218. Not until a customer is wronged by a reseller (i.e., a PIC dispute occurs), does the primary interexchange carrier possibly have an opportunity to request an LOA from reseller.

But, there may be no LOA because the account was telemarketed. Moreover, even if there is a written LOA, this is too late in the game to have prevented the unauthorized conversion which has already occurred. Unless the FCC requires that resellers forward all PIC change orders with signed LOAs before those orders are submitted, the primary interexchange carrier has no way of detecting violations and preventing unauthorized conversions. On the other hand, such a priori submissions of LOAs would impose marketing and sales costs on resellers (by requiring them to submit LOAs in advance) that are higher than those imposed on primary interexchange carriers (who don't have to submit those LOAs in advance) -- thus conflicting with the Commission's resale and shared use policies.

Thus, the Commission should clearly reiterate that the LOA responsibility lies solely on the carrier who directly serves (i.e., the carrier who bills and rates the calls) of the end user. The primary interexchange carrier is not, and should not, be placed in the position of monitoring and policing the marketing and sales practices of resellers -- who are often the primary interexchange carrier's competitors. Placing such responsibilities on the primary interexchange carriers would be both impractical and in violation of the Commission's policies, including its resale and shared use policy.

V. Conclusion

For the reasons set forth herein, the Commission should adopt the proposed refinements set forth above.

Respectfully submitted,
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Dated: January 9, 1995