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

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 L.D. SERVICES, INC. ON
NOTICE OF PROPOSED RULEMAKING

L.D. Services, Inc.,[1/] a regional interexchange resale carrier providing long distance services, by its undersigned attorneys, hereby submits its comments responding to the Federal Communications Commission's Notice of Proposed Rulemaking in the above-captioned docket. L.D. Services agrees that carriers should communicate clearly with customers and avoid misleading marketing. However, less restrictive rules than the Commission's current proposal will be sufficient to eliminate deceptive marketing tactics.

I. INTRODUCTION

The Commission's proposed rules will serve to supplement the natural market incentives for carriers to communicate clearly with their customers. Carriers have a vested interest in establishing a relationship based on trust with their customers, and building a

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1/ L.D. Services is a regional interexchange resale carrier that provides competitive long distance services. L.D. Services serves primarily small and medium-sized businesses in Arizona, California, Colorado, Idaho, Illinois, Massachusetts, Montana, Oregon, Texas, Utah and Washington. L.D. Services plays an important role in meeting consumer demand for diverse, cost-efficient, high quality and affordable telecommunications products and services.

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reputation for integrity. They also have an interest in avoiding the disruption and expense generated by deceptive marketing, including payment of PIC change charges, resources expended in dispute resolution, and loss of customer goodwill. Accordingly, the rules governing PIC changes need only buttress these natural incentives, and establish a common standard by which all carriers should abide. L.D. Services therefore supports those rules, such as Section 64.1150(d), that set a standard that Letters of Agency ("LOAs") should be clear and unambiguous, and contain certain fundamental information.

L.D. Services opposes more restrictive rules that would prohibit some of the most common, effective, and reasonable marketing techniques in an attempt to eliminate deceptive practices. L.D. Services supports the Commission's attempts to eliminate misleading marketing and reduce the number of customer complaints. However, the requirement that inducements cannot be included on the same page as an LOA is not necessary to limit the use of misleading promotions. Such an approach will have the unintended effect of curbing competition in the long distance market by discouraging creative and effective marketing strategies.

II. THE COMMISSION SHOULD PREEMPT INCONSISTENT STATE RULES

As a threshold matter, L.D. Services encourages the Commission to clarify that it will preempt any inconsistent state PIC change rules in order to create a uniform nationwide standard for LOAs. Ample precedent supports such a decision: "requiring the customer to retain two redundant facilities or to invest in expensive additional equipment" frustrates the FCC's responsibilities to assure a "rapid efficient, Nationwide and world-wide wire and radio

communication service with adequate facilities at reasonable charges."[2/] Both customers and carriers would be burdened if customers were forced to sign up for service under both state and federal requirements. Since most consumers use their telephone service on an integrated basis for both interstate and intrastate calls, such a requirement would be contrary to established case law.

When a customer signs an LOA to change service, it will clearly affect both the interstate and intrastate components.[3/] Therefore, Commission preemption of inconsistent state regulations is supported by applicable law, and would be in the public interest. This is more than a hypothetical concern, as states such as Florida have proposed rules governing PIC changes.[4/] Such clarification would clarify that only the Commission's rules apply to LOAs and thereby reduce customer confusion.

III. PIC MARKETING RULES SHOULD ELIMINATE MISLEADING MARKETING EFFORTS WITHOUT RESTRICTING REASONABLE PIC CHANGE MARKETING

While some of the Commission's proposed rules recognize the importance of marketing flexibility to promoting competition in the long distance market, other rules would impede innovative and informative marketing by interexchange carriers. The Commission's

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2/ *California v. FCC*, 567 F.2d 84, 85 (1987), quoting 47 U.S.C. § 151.

3/ *See Louisiana Public Service Commission v. FCC* 476 U.S. 355 (1986), citing *North Carolina Utilities Comm'n v. FCC*, 537 F.2d 787 (4th Cir.), *cert. denied*, 429 U.S. 1027 (1976), and *North Carolina Utilities Comm'n v. FCC*, 552 F.2d 1036 (4th Cir.), *cert. denied*, 434 U.S. 874 (1977) (where interstate and intrastate components cannot be separated, preemption is appropriate).

4/ *In re Proposed Revisions to Rule 25-4.118, F.A.C., Interexchange Carrier Selection*, Docket No. 941190-TI, Order No. PSC-94-1566-NOR-TI (December 15, 1994).

adoption of alternative verification methods -- "intended to facilitate the IXCs' marketing efforts" -- demonstrates that the Commission recognizes the importance of marketing flexibility to IXC competition. The ability to use innovative marketing techniques is indeed critical to IXC attempts to encourage customers to consider an alternative long distance provider.

Certain of the Commission's proposed rules, such as Section 64.1150(d), continue to provide IXCs with flexibility in the manner in which they provide marketing information to customers. Section 64.1150(d) takes the appropriate approach of setting a broad standard, requiring "clear and unambiguous" LOAs.[5/] Adoption of this rule will inhibit unclear and deceptive practices, without impeding creative, efficient, and effective marketing.

L.D. Services opposes certain other rules proposed by the Commission that would limit the company's marketing options, including some of the most effective and reasonable approaches. The requirements that the LOA be on a separate document and not be on the same page as an inducement would unnecessarily restrict marketing efforts.[6/] The Commission could achieve its goal of eliminating unfair tactics by enforcing the rule that LOAs must be clear and unambiguous. Prohibiting an LOA from being on the same page as an inducement will not make the proposed rules any stronger: ambiguous inducements could still be contained on separate pages, while perfectly fair and clear inducements that happen to be on the same page would be prohibited under the rules.

5/ Another example of a reasonable restriction is the "negative option" rule that prohibits LOAs that require customers to take some affirmative action, such as removing a sticker, to keep the same carrier. *See* Section 64.1150(e).

6/ §§ 64.1150(b) and (c).

More importantly, these particular proposed rules will hurt the industry because benign and effective marketing approaches will be prohibited. This prohibition will limit unnecessarily the means of persuading customers to change carriers, and will make it more difficult for IXCs to differentiate themselves, resulting in decreased competition. Both customers and providers will be harmed by these limitations. The Commission should describe and enforce a broad standard, while permitting carriers the flexibility that the Commission has supported in the past to attract customers through innovative but fair marketing.

IV. ADDITIONAL SPECIFIC REQUIREMENTS WOULD FURTHER IMPEDE COMPETITION

The Commission proposed a variety of additional requirements to reduce the number of customer complaints. L.D. Services believes that additional rules would only result in customer confusion, and would not assist the Commission in reducing or eliminating questionable practices.

For example, the Commission requests comment on whether business and residential customers should be subject to different rules, based on the assumption that businesses may have greater difficulty in routing LOAs to the authorized person. There is no empirical evidence for this assumption, and such a rule would impose additional costs on IXCs, particularly smaller ones, that do not currently market separately to business and residential customers.

Other suggestions by the Commission should not be adopted. While noting that inducements "may be proper and effective marketing devices for attracting customers," the

Commission proposes eliminating them altogether or requiring them to be included in a separate envelope. Such changes are not pro-competitive, and will not benefit consumers. Rather, they will increase IXCs costs, limit marketing options, and greatly decrease the effectiveness of IXC marketing. The effect of changes on the IXC marketplace would be to impede competition, and favor the largest, most established IXCs. This result certainly will not achieve the Commission's goals.[7]

The Commission should be seeking ways to streamline its proposed rules, not means of adding additional detail. The proposed "clear and unambiguous" standard, combined with content that must be included in each LOA, provides an adequate safeguard against deceptive practices. More elaborate regulation would only serve to limit innovative marketing and thereby harm the public interest.

V. CONCLUSION

The Commission's proposed rules can achieve the worthy goal of improving the quality and clarity of customer communications without imposing unnecessary requirements on IXCs. Significantly, the Commission should clarify that its rules will preempt inconsistent state rules on PIC changes. For example, the Commission should not mandate that LOAs be included on a separate document, or without inducements on the same page. The Commission has noted that inducements serve a valid marketing purpose, and restricting them will harm the public interest by stifling innovative and effective marketing approaches. L.D. Services therefore supports the requirement that LOAs be "clear and unambiguous" and

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[7] Similarly, suggestions regarding standard type size, verbiage, or titles will limit marketing options with no signficant benefit for the public interest.

include certain basic language, and believes that this standard can be applied to effectively reduce deceptive practices.

WHEREFORE, L.D. Services, Inc. respectfully submits these comments on the Commission's proposed rules on PIC changes.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of January 1995, copies of the foregoing document were served by hand delivery on the following:

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