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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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AT&T REPLY COMMENTS

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## SUMMARY

The comments on the NPRM confirm AT&T's showing that more vigorous enforcement of the Commission's existing rules, rather than adopting additional burdensome regulations on IXCs and their customers, is essential to any resolution of the current slamming problem. The record also describes methods by which the Commission can more effectively deploy its resources to detect and sanction violators of the slamming rules, including collection of information from LECs and other regulatory agencies, and use of the Commission's Field Operations Bureau to investigate reported slamming. The Commission can also protect customers against slamming by, for example, requiring LECs to make "PIC freeze" options available to all subscribers.

There is no dispute that "negative option" LOAs and incompletely translated bilingual LOAs are abusive practices that should be prohibited. It is also common ground that carriers should be required to employ LOAs that are legible and that use clear and unambiguous language, and there is little opposition to the Commission prescribing a uniform caption for these instruments. Commentaries also widely recognize that LOAs should identify only the IXC that sets the rates to end users, to remedy current widespread customer confusion caused by listing of multiple carriers.

In view of these requirements, however, it is neither necessary nor appropriate for the Commission to adopt a ban on combined LOA/inducements. Combined instruments that legibly and understandably describe their purpose pose no threat of customer confusion. (Indeed, the record shows that these devices play an important part in maintaining the competitiveness of the interexchange market.) On this record, a prohibition on combined LOA/inducements would be unjustified and Constitutionally suspect.

The record also demonstrates that residential subscribers to domestic OCPs who have been slammed should be terminated from their OCPs, to preclude unwarranted charges. All slammed customers should receive bill adjustments to assure their charges do not exceed the amount that would have been incurred with their chosen IXC. Because such calculations are complex, the Commission should adopt AT&T's proposal for fixed percentage reductions in the slamming IXC's bill.

Finally, the Commission should preempt inconsistent state regulation of the presubscription process to assure that its antislamming policies and rules are not impeded, and to protect the substantial federal interest in preserving competitive interstate telecommunications.

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AT&T REPLY COMMENTS

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") submits this reply to the comments of other parties<sup>1</sup> on the Commission's proposals in this proceeding to revise its rules governing unauthorized changes of customers' long distance carriers.<sup>2</sup>

As shown below, it is undisputed that eliminating abusive practices such as "negative option" letters of authorization ("LOAs") and incompletely translated bilingual LOAs, when coupled with effective enforcement of these provisions and related Commission rules, could help reduce customer confusion and control the pernicious practice of "slamming." Nothing in the

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<sup>1</sup> Appendix A provides a list of the other commenters.

<sup>2</sup> See Policies and Rules Concerning Unauthorized Changes of Customers' Long Distance Carriers, CC Docket No. 94-129, Notice of Proposed Rulemaking, 9 FCC Rcd 6885 (1994) ("NPRM").

record, however, justifies the NPRM's Constitutionally problematic proposal to bar combining LOAs and other inducements in the same document. The comments also make clear that the Commission should preempt state regulation of presubscription practices, so that carriers and their marketing agents will not be confronted with a patchwork quilt of mutually inconsistent requirements governing LOAs and other interexchange presubscription marketing practices.

I. MORE EFFECTIVE ENFORCEMENT OF THE COMMISSION'S RULES IS REQUIRED TO CONTROL SLAMMING.

As AT&T demonstrated in its Comments (pp. 4-8), further Commission rulemaking to address the slamming problem is unlikely to have any significant impact unless it is coupled with energetic enforcement of both the current regulations and any new rules adopted in this proceeding. In particular, additional rules are unnecessary to control the practice by some unscrupulous interexchange carriers ("IXCs") and marketing agents of misappropriating customers without having contacted those subscribers; this conduct is already clearly proscribed under existing regulations. This form of blatant misconduct has particularly affected non-English speaking

subscribers, who are a principal focus of the present proceeding.<sup>3</sup>

Other commenters confirm the validity of AT&T's observations regarding the need for vigorous enforcement of the Commission's antislamming rules. GTE points out (p. 2) that "the majority of customers who are slammed never even sign an LOA, misleading or otherwise." Thus, GTE states (*id.*) "more clearly defined rules regarding LOAs will not likely deter IXCs willing to engage in this type of behavior;" instead, "to put teeth into any new rules . . . those IXCs engaging in [slamming] must be sanctioned sufficiently to deter such conduct by any IXC in the future."

Similarly, MCI (p. 4) "recommends that the Commission employ its considerable enforcement powers" against carriers and their agents who engage in abusive presubscription practices. As MCI observes, such "targeted enforcement actions" can effectively discipline misbehavior by the small minority of recalcitrant IXCs

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<sup>3</sup> See NPRM ¶ 18. AT&T showed (Comments, pp. 4-5) that 7 percent of AT&T residential customers surveyed during 1994 who had changed their IXC stated that neither they nor anyone in their household had been contacted by that carrier to authorize the change. Among non-English speaking residential customers, moreover, up to 18 percent of the survey respondents reported having had their primary interexchange carrier ("PIC") changed without any contact from the carrier.

without imposing additional regulatory burdens on carriers that attempt in good faith to comply with the Commission's presubscription rules. In like manner, Sprint (p. 2) supports "using the Commission's enforcement powers to address specific practices of individual carriers rather than imposing a new layer of regulation" on all carriers, regardless of their conduct.

The comments in this proceeding also describe the methods by which the Commission can more effectively focus its investigative and enforcement efforts. Specifically, Pacific/Nevada Bell suggests (p. 2) that local exchange carriers ("LECs") compile and submit to the Commission on a monthly basis reports showing the number of PIC changes submitted by each IXC and the number of unauthorized changes reported for that carrier through customer complaints. Carriers whose reported percentage of slamming exceeds the norm could then be targeted by the Commission to explain and justify these discrepancies and, if the facts warrant, for imposition of fines or forfeitures under Section 503 of the Communications Act.<sup>4</sup> Additionally, through cooperation

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<sup>4</sup> However, LECs should not be permitted to impose monetary penalties on IXCs that exceed the designated threshold, as Pacific/Nevada Bell and some other commenters propose. See also Frontier, pp. 3-4; NYNEX, p. 4. As GTE correctly points out (p. 6), LECs should not act as arbiters in PIC disputes. Nor should the Commission automatically assess fines or forfeitures against IXCs based solely on the results

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with state PUCs and attorneys general and their national organizations (NARUC and NAAG), the Commission can monitor patterns of complaints received by those agencies to supplement information obtained through its own complaint process. Further, to augment the resources of the Enforcement Division in addressing these claims, the Commission should deploy its Field Operations Bureau staff to investigate reported slamming, in the manner previously used with other abusive marketing practices.<sup>5</sup> Taken together, these measures should enable the Commission more effectively to enforce existing antislamming rules and to avoid needlessly imposing additional regulatory burdens on IXCs and their customers.<sup>6</sup>

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of the LECs' monthly reports; a multitude of factors (such as slamming by a reseller reported against the IXC that provides the underlying service) can account for an apparent increase in slamming by a carrier. For this reason also, the LECs' reports to the Commission should be filed as confidential (*i.e.*, non-public) information.

<sup>5</sup> See, e.g., Final Report of the Federal Communications Commission Pursuant to the Telephone Operator Consumer Services Improvement Act of 1990 (November 13, 1992), p. 13 (describing participation of Field Operations Bureau in conducting review of compliance with TOCSIA).

<sup>6</sup> The Commission may also wish to revisit its 1992 decision not to require IXCs to conduct periodic audits of their PIC change orders and to institute an independently supervised Quality Assurance Program ("QAP") to oversee their PIC solicitation process.

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As an ancillary measure to its enforcement efforts, the Commission can also facilitate customers' ability to protect themselves from deliberate or inadvertent slamming.<sup>7</sup> California points out (pp. 4-5) that the major LECs in that state have made available a "PIC freeze" option, whereby a customer who has already been slammed may instruct the LEC not to implement any further PIC changes unless the customer directly notifies it to do so. Although many other LECs offer similar

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See Policies and Rules Concerning Changing Long Distance Carriers, 7 FCC Rcd 1038, 1046-47 (1992) ("PIC Change Order"). Although the Commission there recognized that these procedures can have a salutary effect in eliminating slamming, and "suggest[ed] that IXCs may benefit from instituting such programs on their own behalf," it declined to mandate them for all carriers "at this time . . . without a record suggesting such steps are necessary to protect consumers." Id. at 1046. The well-documented prevalence of slamming in the face of the additional protective measures (such as third-party verification) adopted in the PIC Change Order indicates that a reexamination may be warranted of the Commission's prior conclusions regarding the necessity for IXCs to implement audit and QAP programs.

<sup>7</sup> The Commission can likewise reduce the incentives for IXCs to engage in slamming by requiring LECs to withdraw their "no fault" PIC change tariffs, as AT&T has suggested (p. 8 n.11). Several LEC commenters here acknowledge that cost-based charges to IXCs for submitting invalid PIC change orders (which the "no fault" tariffs have eliminated) can serve as a potent deterrent to slamming. See NYNEX, p. 4; Frontier, p. 3; Pacific/Nevada, p. 2. The Commission has also recognized that unauthorized PIC change charges are an important measure in controlling slamming. See PIC Change Order, 7 FCC Rcd at 1046 (¶ 48).

options to their subscribers, this capability is not currently available in all areas, nor is it uniformly offered to residential as well as business customers. The Commission can therefore serve the interests of customers by requiring all LECs to make the "PIC freeze" option available to all of their subscribers.<sup>8</sup> There is no apparent justification for restricting this valuable consumer protection to customers have previously been victimized by slamming.

Similarly, the Commission should require LECs to popularize to their subscribers the nationwide PIC identification number, 1-700-555-4141, through which customers can immediately determine the IXC to which their telephone is presubscribed. This information would enable consumers promptly to detect whether they have been slammed and to take corrective action to be reconnected to their designated IXC.

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<sup>8</sup> As NAAG points out (p. 8), "the potential for slamming exists for business and residential customers alike." Indeed, the comments overwhelmingly confirm that as a general matter presubscription procedures should not treat business and residential customers differently. See also ACC, p. 6; CA, p. 3; CTS, p. 6; GCI, p. 5; Hi-Rim, pp. 4-5; LDS, p. 5; MCI, pp. 17-18; NYNEX, p. 4; One Call, p. 11; Sprint, p. 10; TRA, p. 15.

II. LIMITED REVISIONS TO THE PRESUBSCRIPTION RULES ARE WARRANTED TO PROTECT CONSUMERS AGAINST SLAMMING.

The NPRM proposes a wide range of potential revisions to the Commission's current presubscription rules, with the objectives of assuring that consumers can readily identify an LOA and comprehend the effect of executing such a document. The record largely confirms the desirability of the measures suggested by the Commission. However, the comments demonstrate that the Commission's proposal to sever LOAs from inducements goes far beyond what is required to serve any valid consumer protection objective, and would seriously impair the working of the competitive interexchange marketplace to the detriment of IXCs and customers alike.

There is no dispute that so-called "negative option" LOAs (i.e., instruments that purport to require subscribers to take some action to avoid a PIC change) are improper and should be prohibited.<sup>9</sup> Similarly, no

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<sup>9</sup> As AT&T showed in its Comments (p. 12), a customer that has designated an IXC should not have that choice displaced simply because the subscriber discards or otherwise fails to reply to another carrier's mailing. Other commenters resoundingly confirm that negative option LOAs represent an abusive practice that impermissibly interferes with customer's valid PIC selections. See MCI, p. 2 (negative option LOAs "clearly have no place in the marketplace and should be outlawed" because they are not based on customer choice); see also ACC, p. 2; Allnet, p. 10; California, p. 3; Hi-Rim, p. 3; HOLD, p. 7, LDDS, p. 5; MIDCOM, p. 11; NAAG, p. 4; NYDPS, p. 2; Sprint, p. 1; TRA, p. 13.

party seriously questions the appropriateness of the NPRM's proposal (¶ 18) to require that LOAs be completely translated into a foreign language if any part of the instrument is in that language.<sup>10</sup> AT&T urges the Commission to move promptly to adopt these revisions to the presubscription rules.

In like manner, no commenter contests the Commission's tentative conclusion (NPRM, ¶ 10) that LOAs must set forth the Commission-prescribed disclosures "in clear and unambiguous language."<sup>11</sup> There is also

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<sup>10</sup> See AT&T, p. 11; Allnet; p. 14; California, p. 4; MCI, p. 18; NYDPS, p. 5; Sprint, p. 13. One Call (p. 10) contends that an IXC "should be allowed to publish a LOA in any language it chooses," but ignores the NPRM's finding (¶ 18) that "consumers may not fully understand" incompletely translated LOAs.

Both CA (p. 3) and NAAG (p. 10) also suggest that translation of the LOA be required if other accompanying marketing literature is in a foreign language. Compliance with such a requirement should not be onerous for IXCs; AT&T already fully translates both its LOAs and related marketing materials into foreign languages. See AT&T Comments, p. 11 n.20 and Exhibit A. It should also pose no undue burden for IXCs to use equal size type for the foreign language and English portions of their documents, as AT&T already does. See id. CompTel's proposal (p. 7 n.10) that the translation may appear in a smaller typeface should thus be rejected.

<sup>11</sup> See AT&T, pp. 9-10; ACC, pp. 3-4; Allnet, pp. 8-9; California, p. 3; CTS, p. 7; Hi-Rim, p. 1; HOLD, p. 5; LDS, p. 2; NAAG, p. 6; NYDPS, p. 2; Touch 1, p. 4; TRA, p. 7. No party questions AT&T's showing (p. 10 n.18) that the current disclosure concerning the consequences of selecting multiple IXCs should be eliminated (except in areas undergoing interLATA equal access conversion) to avoid confusing customers making

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widespread agreement that the Commission should prescribe a uniform, non-technical caption for carriers' LOA forms, as proposed in the NPRM (¶ 18).<sup>12</sup> However, there is broad recognition that, in light of these measures, there is no necessity for the Commission to prescribe either the precise wording or style and size of the typeface for LOAs.<sup>13</sup> As AT&T showed (p. 10), the NPRM recognizes that IXCs' good faith compliance efforts are sufficient to assure that the Commission's standards of clarity for LOAs will be satisfied.

Commenters across a broad spectrum of interests, including IXCs, LECs, regulators and consumer representatives, endorse the Commission's proposal (NPRM, ¶ 14) that LOAs be restricted to identifying the IXC that

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intraLATA carrier selections which may differ from their choice of interLATA carrier.

<sup>12</sup> See AT&T, pp. 10-11; ACTA, p. 7; CA, p. 2; HOLD, p. 5; Missouri, p. 5; NAAG, p. 5; NYNEX, p. 3. The few commenters who object to this proposal fail to explain how the uniform caption would in any way impede carriers' legitimate marketing efforts. See Hi-Rim, p. 1; Sprint, pp. 13-14; TRA, pp. 7-8.

<sup>13</sup> See ACC, p. 6; California, p. 3; CTS, pp. 5-6; Hi-Rim, pp. 1, 4; LDS, pp. 2, 6-7; MIDCOM, pp. 6, 7; NYDPS, p. 3; One Call, p. 5; Touch 1, pp. 4-5; TRA, pp. 7-8. Commenters who suggest that business customers' LOAs be required to specify the title of the person signing those documents (e.g., Missouri, pp. 4-5) ignore the fact that IXCs generally still would not know whether the named position is authorized to direct a PIC change.

will set the rates charged to end users.<sup>14</sup> The carrier-customer presubscription relationship is with that entity, and not an IXC that provides underlying transmission service used by the ratesetting IXC. Like the Commission, these parties recognize that naming multiple IXCs on an LOA is calculated only to confuse customers regarding the identity of the carrier to whom they have agreed to presubscribe.

Predictably, the only opposition to this proposal comes from resellers and some of their trade associations, who claim that the Commission's proposal would somehow adversely affect their ability to compete successfully.<sup>15</sup> They fail, however, to provide any support for this implausible claim, or to explain how identification of multiple carriers on the LOA form could

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<sup>14</sup> See AT&T, pp. 16-17; CA, p. 3; Frontier, p. 3 n.8; GCI, p. 5; LDDS, p. 4; MCI, p. 17; NAAG, pp. 6-7; NYNEX, p. 4; NYDPS, p. 4.

<sup>15</sup> See ACC, p. 6; CTS, p. 6; CompTel, pp. 7-8; MIDCOM, p. 7; One Call, p. 10; Touch 1, p. 5; TRA, p. 8. However, commenting on behalf of its "switchless reseller" membership, ACTA acknowledges (p. 9) that identification of an underlying carrier on the LOA is improper:

"As the LOA constitutes a contractual arrangement between the billing IXC and the end user, and the billing IXC is responsible for all marketing practices, billing, customer service and other responsibilities relating to providing the end user with telecommunications service, no other carrier name is necessary to be listed."

serve any legitimate purpose.<sup>16</sup> Because the only apparent result of that practice would be to mislead end users, the Commission is well justified in calling a halt to this abusive tactic.

With these consumer protection measures in place, end users should be readily able to determine both that a document is in fact an LOA authorizing a change in their PIC, and the identity of the carrier that has solicited them to make such a change. AT&T's Comments demonstrated (pp. 12-15) that, with those revisions, there is no justification for further prohibiting carriers from combining LOAs with inducements such as checks, as proposed in the NPRM (§ 11). AT&T's showing is confirmed by the overwhelming majority of commenters in this proceeding, who likewise point out that a ban on combined LOA/inducements goes far beyond what is necessary to prevent deception and customer confusion.<sup>17</sup> As MCI, for example, correctly points out (p. 10),

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<sup>16</sup> The resellers' claims of competitive injury are especially attenuated here because the Commission proposes only to limit LOAs to listing the ratesetting IXC. Those carriers would still be permitted, consistent with other applicable legal requirements, to describe truthfully their relationship with an underlying carrier.

<sup>17</sup> See ACC, pp. 2-5; ACTA, p. 7; Allnet, p. 7; CTS, p.2; Hi-Rim, p. 2; HOLD, p. 7; L. D. Services, pp. 2, 6; MCI, p. 3; MIDCOM, pp. 8-9; One Call, p. 6; TELCAM, pp. 1-2; TRA, p. 9; Touch 1, p. 6.

combined LOA/inducements are not inherently misleading, provided that their purpose is clearly described to customers -- as they must be under the Commission's proposed rule revisions.

Those parties that support barring combined LOA/inducements fail to explain why this drastic relief is required to protect consumer interests in light of the Commission's proposed rule requiring LOAs to disclose their purpose in "clear and unambiguous language" and in a "clearly legible" typeface.<sup>18</sup> Indeed, to the limited extent that these commenters attempt to document their claim that combined LOA/inducements cause customer confusion,<sup>19</sup> their arguments only underscore the absence of basis for an outright ban. For example, California (p. 2) cites LOA/checks sent by an unnamed IXC on which "critical sections discussing switching carriers were

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<sup>18</sup> See California, p. 3; CA, p. 2; CompTel, p. 2; GTE, p. 4; Missouri, p. 3; NAAG, pp. 2-3; NYDPS, p. 3; NYNEX, p. 4; SWBT, p. 3; Sprint, pp. 4-5. Sprint's newly-proclaimed opposition to combined LOA/inducements is especially surprising, since Sprint itself has made extensive use of combined check/LOAs.

<sup>19</sup> As some commenters also point out, mere reference to the raw numbers of complaints about a specific practice received by the Commission or other agencies is, standing alone, an unreliable basis for decisionmaking because it does not reflect any fact-finding concerning the merits of those claims, or attempt to place them in context with the immensely larger numbers of unobjectionable transactions between IXCs and consumers. See ACC, p. 3 n.3; Lexicom, p. 2.

completely illegible," a practice that would be prohibited under subsection (d) of the Commission's proposed new rule. Similarly, the few complaints regarding combined LOA inducements in NAAG's Appendix involve instruments which omitted or concealed the presubscription disclosures already mandated under the Commission's rules.<sup>20</sup>

Where these disclosures are provided in a legible and understandable manner, there is no basis for concern that customers will be misled by a combined inducement/LOA. For example, AT&T's Comments showed (p. 14) that, although it mailed millions of combined check/LOAs during 1993 and 1994, it did not receive a single informal complaint from the Commission asserting that a customer erroneously changed his PIC through one of those instruments. Customers also appear to be well-satisfied with the ease and convenience of devices such as a combined check/LOA. On this record, those who support entirely prohibiting combined inducement/LOAs

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<sup>20</sup> See NAAG Appendix at pp. 14-15 (required disclosures omitted); 21-22 (customer complaint notes that "none of [FCC-required disclosures] was displayed at time of" combined contest/LOA solicitation; pp. 23-35 (required disclosures omitted); pp. 41-43 (disclosures on back of check/LOA "cannot be read unless held up to a strong light").

have failed to demonstrate that resort to this step is necessary to prevent customer confusion.<sup>21</sup>

Parties supporting an outright ban on combined inducement/LOAs also fail to recognize the important role that such instruments play in furthering the competitiveness of the interexchange marketplace. For example, according to a recent published report, last year combined inducement/LOAs accounted for almost 10 percent of all the PIC changes by residential subscribers.<sup>22</sup> The pro-competitive benefit of these inducements, which the NPRM (¶ 12) itself recognizes are "proper and effective marketing devices," would in many cases be effectively foreclosed by a ban on combining

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<sup>21</sup> These parties also have failed even to acknowledge the potential Constitutional issue raised by such a ban. See MCI, pp. 9-13; One Call, pp. 7-8. As these commenters point out, to sustain a prohibition on combined inducement/LOAs under a "commercial free speech" analysis the Commission must demonstrate (i) a substantial interest in restricting the speech; (ii) that the restriction directly advances that interest, and (iii) that the restriction is no broader than necessary to achieve the governmental purpose. See Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n, 447 U.S. 557 (1980). It is questionable whether the Commission's proposed ban could satisfy the third prong of that test, because the requirement that the purpose of such LOAs be clearly and unambiguously disclosed on those instruments would obviate any reasoned concern over misleading consumers.

<sup>22</sup> See Smart Money, February 1995, p. 69 (reporting findings of residential market study by the Yankee Group).

them with LOAs. In sum, the record demonstrates that the Commission should not prohibit combining LOAs with other inducements to customers to change their PIC selections.

III. CUSTOMERS WHO HAVE BEEN SLAMMED SHOULD BE PROVIDED APPROPRIATE BILLING ADJUSTMENTS.

Commenters generally support the Commission's proposal (NPRM, ¶ 16) that customers who subscribe to optional calling plans ("OCPs") should be absolved of liability for their monthly charges if those subscribers are converted without authorization to another IXC.<sup>23</sup> Those parties who suggest that the slamming carrier instead be required to reimburse the affected customers (or, in some cases, the originally designated IXC) ignore the fact that this procedure would be cumbersome, time-consuming, and potentially confusing for customers.<sup>24</sup> It is more appropriate, as AT&T showed, for IXCs immediately to terminate a customer's participation in an OCP upon notification from the LEC of a change in that subscriber's PIC.<sup>25</sup>

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<sup>23</sup> See AT&T, pp. 18-19; CA, p. 3; MCI, p. 15; NAAG, p. 9; NYDPS, p. 5; Sprint, pp. 10-11.

<sup>24</sup> See Allnet, p. 12; MIDCOM, p. 12; Touch 1, p. 10; TRA, p. 15.

<sup>25</sup> No party, however, disputes AT&T's showing (pp. 19-20) that this relief should be limited to domestic OCPs of residential customers, whose benefits under such plans are usually confined to direct dialed calls. Residential customers with international OCPs, and business OCP customers, typically receive benefits

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The comments also clearly recognize that absolving slammed customers of any liability for charges rendered by the unauthorized IXC goes far beyond what is required to make those subscribers whole, and would invite fraud and abuse by some customers. There is general agreement among the parties, however, that customers should be liable to that IXC only for the amounts they would have paid to their originally designated carrier.<sup>26</sup>

As Sprint correctly points out (p. 12), however, accurately replicating the charges that would have been rendered by the original carrier may often be a "practical impossibility," given the wide range and frequent changes in pricing plans in the competitive interexchange market. AT&T's proposal (p. 21) that the

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under those plans for calling (such as calling card and operator-assisted calls) regardless of the PIC for their direct dialed calls. It is therefore inappropriate -- and harmful to consumers -- to terminate these subscribers' OCPs when they have been slammed.

<sup>26</sup> See Allnet, p. 11; California, p. 3; HOLD, p. 9; MCI, pp. 14-15; MIDCOM, p. 12; One Call, p. 12. Those commenters who contend that the IXC should remit all charges to the customer (e.g., CA, p. 3; NAAG, p. 9) fail to recognize that, as the Commission has previously found, "[c]omplete forgiveness of charges exceeds the damages suffered" by a slammed customer. See Franks v. U.S. Telephone, Inc., File No. E-86-11, Mimeo 4620, released May 7, 1986 (¶ 12).

Commission prescribe specific percentage reductions (such as 20 percent for domestic calls and 40 percent for international calls) in the slamming IXC's charges will obviate this problem and assure that slammed customers are appropriately compensated.<sup>27</sup>

IV. THE COMMISSION SHOULD PREEMPT CONFLICTING STATE REGULATIONS GOVERNING THE PRESUBSCRIPTION PROCESS.

The comments also provide a compelling showing of the need for the Commission to preempt inconsistent state regulation of presubscription requirements, including (although not solely limited to) the form and content of LOAs.<sup>28</sup> As these parties point out, under present network arrangements the IXC selected by customers for their interstate service necessarily also serves their intrastate, interLATA calling.<sup>29</sup> Thus, it

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<sup>27</sup> Additionally, no party disputes AT&T's showing (p. 21 n.31) that customers should be required to apply to an IXC for an adjustment within two billing cycles after an alleged slamming incident, a period which provides adequate time for subscribers to detect and correct the change in their PIC.

<sup>28</sup> See ACC, p. 2; ACTA, p. 12; CompTel, p. 11; CTS, p. 4; Hi-Rim, pp. 5-6; LDDS, p. 3; L. D. Services, p. 2; One Call, p. 5 n.12.

<sup>29</sup> Exceptions to this arrangement exist, but are very limited. GCI states (p. 2) that in Alaska the PUC has implemented regulations requiring LECs there to provide customers the capability to select different IXCs for their intrastate/interexchange and interstate calls. GTE also notes (p. 3) that in Hawaii the presubscription process permits customers to designate

is not possible effectively to separate the interstate PIC selection from an intrastate designation of an IXC.

In these circumstances, conflicting state regulation of presubscription requirements should give way to prevent those rules from impeding the federal antislamming policy and procedures promulgated by the Commission, or from otherwise thwarting the important federal interest in preserving and promoting robust competition in interstate telecommunications.<sup>30</sup> The Commission only recently applied these principles in reaffirming its finding that state rules requiring default blocking of intrastate 900 calls were inconsistent with, and thus preempted by, the Commission's rules prohibiting such blocking of interstate pay-per-call numbers.<sup>31</sup> Adherence to those

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different IXCs for their international and interstate calls.

- <sup>30</sup> See Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. 355 (1986); North Carolina Util. Comm'n v. FCC, 537 F.2d 787 (4th Cir), cert. denied, 429 U.S. 1027 (1976); North Carolina Util. Comm'n v. FCC, 552 F.2d 1036, 1044-50 (4th Cir), cert. denied, 434 U.S. 874 (1977); Maryland Pub. Serv. Comm'n v. FCC, 909 F.2d 1510, 1514-15 (D.C. Cir. 1990).
- <sup>31</sup> See Petition for an Expedited Declaratory Ruling Filed by National Association of Information Services, Audio Communications, Inc. and Ryder Communications, Inc., Memorandum Opinion and Order on Reconsideration, FCC 94-358, released January 24, 1995. There, as here, the state regulation would have negated the exercise of federal authority because interstate and intrastate

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same legal standards here will assure that the Commission's presubscription procedures will not be frustrated by conflicting state rules, and that IXCs and their marketing agents will not be confronted with mutually inconsistent sets of presubscription rules.<sup>32</sup>

#### CONCLUSION

For the reasons stated above and in AT&T's comments, the Commission should revise its antislamming rules to require more prominent and legible disclaimers on LOAs and to prohibit deceptive practices such as "negative option" LOAs, but should refrain from adopting

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(footnote continued from previous page)

900 calls (like intrastate and interstate ICs) were inseverable. Id., ¶ 14.

<sup>32</sup> This possibility is scarcely theoretical in the absence of a Commission decision preempting state rules. Already, South Carolina and Florida have instituted proceedings to adopt rules regulating IXCs' solicitations of PICs in those states. See Docket No. 94-559-C (S.C. PSC); Docket No. 941190-TT (Fla. PSC). These proceedings could well result in rules that conflict with the Commission's presubscription requirements. For example, in South Carolina the staff has proposed to prohibit IXCs from submitting customers' verbal PIC change orders, even when independently verified as expressly permitted by the Commission's rules. The proposed Florida rule not only would prohibit combined LOA inducements (which as shown above is unneeded and thus constitutionally suspect) but would also require LOAs to bear a specific legend in a particular type size, despite the overwhelming record here showing that the Commission need not mandate these changes for interstate PIC selections.

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an unwarranted and anti-competitive ban on combining LOAs with other inducements. The Commission should also take vigorous action to enforce the existing and revised antislamming rules against violators of those provisions, and should preempt inconsistent state regulation of slamming to assure that carriers and their marketing agents acting in good faith to compete for customers will be able to conform their actions to applicable legal standards.

Respectfully submitted,

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