Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

## VI. CONCLUSION

113. We seek comment on the foregoing issues regarding implementation of Section 258 of the 1996 Act and PC-change verification procedures to deter slamming as discussed herein. Any party disagreeing with our tentative conclusions should explain its position with specificity in terms of costs and benefits. We also reaffirm, with minor modifications, our verification procedures adopted in the *1995 Report and Order*.

## VII. ORDERING CLAUSES

114. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4, 201-205, 215, 218, 220 and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, 215, 218, 220, and 258, the Petitions for Reconsideration of Allnet Communication Services, Inc., AT&T Corporation, Frontier Communications International, Inc., MCI Telecommunications Corporation, National Association of Attorneys General, and Sprint Communications Company ARE GRANTED to the extent described herein and ARE DENIED in all other respects.

115. IT IS FURTHER ORDERED that the Petition for Rule Making filed by MCI Telecommunications Corporation on March 18, 1997, RM-9085, and all responsive pleadings ARE INCORPORATED and made a part of the record of the captioned proceeding.

116. IT IS FURTHER ORDERED that the Petition for Clarification filed by the Telecommunications Resellers Association, on December 11, 1995, in File No. ENF-94-05, and all responsive pleadings, ARE INCORPORATED and made a part of the record of the captioned proceeding.

117. IT IS FURTHER ORDERED that the Petition for Clarification of the Telecommunications Resellers Association IS GRANTED to the extent described herein and IS DENIED in all other respects.

118. IT IS FURTHER ORDERED that 47 C.F.R. Part 64 is amended as set forth in the Appendix B.

119. IT IS FURTHER ORDERED that the policies, rules and requirements set forth in this MEMORANDUM OPINION AND ORDER are effective one hundred fifty (150) days after publication in the Federal Register, except for the collections of information which are contingent upon approval by the Office of Management and Budget.

120. IT IS FURTHER ORDERED that a FURTHER NOTICE OF PROPOSED RULE MAKING IS ISSUED, proposing the amendment of 47 C.F.R. Part 64 as set forth in the Appendix C.

121. IT IS FURTHER ORDERED that the Chief of the Common Carrier Bureau is delegated authority to require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

122. IT IS FURTHER ORDERED that the Secretary shall send a copy of this FURTHER NOTICE OF PROPOSED RULE MAKING, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.* (1981).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

## Appendix A

### PARTIES FILING PETITIONS FOR RECONSIDERATION AND RESPONSIVE PLEADINGS CC DOCKET NO. 94-129

**Petitioners**
Allnet Communication Services, Inc. (Allnet)
AT&T Corporation (AT&T)
Frontier Communications International, Inc. (Frontier)
MCI Telecommunications Corporation (MCI)
National Association of Attorneys General (NAAG)
Sprint Communications Company (Sprint)

**Parties Filing Responsive Pleadings**
Airtouch Communications (Airtouch)
AT&T Corporation
Competitive Telecommunications Association (CompTel)
General Communication, Inc. (GCI)
GTE Service Corporation (GTE)
MCI Telecommunications Corporation
Southwestern Bell Telephone Company (SWBT)
Sprint Communications Company
Telecommunications Resellers Association (TRA)

### PARTIES FILING PETITIONS FOR CLARIFICATION AND RESPONSIVE PLEADINGS RELATING TO FILE NO. ENF-94-05

**Petitioners**
Telecommunications Resellers Association

**Parties Filing Responsive Pleadings**
AT&T
WATS International Corporation (WIC)
Telecommunications Resellers Association

### PARTIES FILING PETITIONS FOR RULEMAKING AND RESPONSIVE PLEADINGS

**Petitioners**
MCI Telecommunications Corporation

## APPENDIX B

## RULES AMENDED

Part 64 of the Commission's Rules and Regulations, Chapter I of Title 47 of the Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 64 continues to read as follows:

**AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 48 Stat. 1070, as amended, 1077; 47 U.S.C.201, 218, 226, 228, unless otherwise noted.**

2. Part 64, Subpart K, is amended by amending Section 64.1100(a) to read as follows:

**§ 64.1100 Verification of orders for long distance service generated by telemarketing.**

*****

(a) The IXC has obtained the customer's written authorization in a form that meets the requirements of § 64.1150; or

*****

3. Part 64, Subpart K, is amended by amending Section 64.1150(e)(4) to read as follows:

**§ 64.1150 Letter of Agency Form and Content**

*****

(4) That the subscriber understands that only one interexchange carrier may be designated as the subscriber's interstate or interLATA primary interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional primary interexchange carriers (e.g., for intrastate, intraLATA or international calling), the letter of agency must contain separate statements regarding those choices. Any carrier designated as a primary interexchange carrier must be the carrier directly setting the rates for the subscriber. One interexchange carrier can be both a subscriber's interstate or interLATA primary interexchange carrier and a subscriber's intrastate or intraLATA primary interexchange carrier; and

*****

4. Part 64, Subpart K, is amended by amending Section 64.1150(g) to read as follows:

**§ 64.1150 Letter of Agency Form and Content**

*****

(g) If any portion of a letter of agency is translated into another language, then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

*****

## APPENDIX C

## PROPOSED RULE CHANGES

Part 64 of the Commission's Rules and Regulations, Chapter I of Title 47 of the Code of Federal Regulations, is proposed to be amended as follows:

1. The authority citation for Part 64 continues to read as follows:

**AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 258, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228, 258, unless otherwise noted.**

2. The title of Part 64, Subpart K, is proposed to be amended to read as follows:

**Subpart K - Verification of Changes in Telecommunications Service**

3. Part 64, Subpart K, is further proposed to be amended by modifying Section 64.1100 to read as follows:

**§64.1100 Verification of orders for telecommunications service generated by telemarketing.**

No telecommunications carrier shall submit a primary carrier change order generated by telemarketing unless and until the order has first been confirmed in accordance with the following procedures:

(a) The telecommunications carrier has obtained the subscriber's written authorization in a form that meets the requirements of § 64.1150; or

(b) The telecommunications carrier has obtained the subscriber's electronic authorization, placed from the telephone number(s) on which the primary carrier is to be changed, to submit the order that confirms the information required in paragraph (a) of this section to confirm the authorization. Telecommunications carriers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the primary carrier change, including automatically recording the originating automatic numbering identification; or

(c) An appropriately qualified independent third party operating in a location physically separate from the telemarketing representative has obtained the subscriber's oral authorization to submit the primary carrier change order that confirms and includes appropriate verification data (e.g., the subscriber's date of birth or social security number); or

(d) Within three business days of the subscriber's request for a primary carrier change, the telecommunications carrier must send the subscriber an information package by first class mail containing at least the following information concerning the requested change:

(1) An explanation that the information is being sent to confirm a telemarketing order placed by the subscriber within the previous week;
(2) The name of the subscriber's current carrier;
(3) The name of the newly-requested carrier;
(4) A description of any terms, conditions, or charges that will be incurred;
(5) The name of the person ordering the change;
(6) The name, address, and telephone number of both the subscriber and the soliciting carrier;
(7) A postpaid postcard which the subscriber can use to deny, cancel or confirm a service order;
(8) A clear statement that if the subscriber does not return the postcard the subscriber's long distance service will be switched within 14 days after the date the information package was mailed by [name of soliciting carrier];
(9) The name, address, and telephone number of a contact point at the Commission for consumer complaints; and
(10) Carriers must wait 14 days after the form is mailed to subscribers before submitting their primary carrier change orders. If subscribers have cancelled their orders during the waiting period, carriers cannot submit the subscribers' orders.

4. Part 64, Subpart K, is further proposed to be amended by modifying Section 64.1150 to read as follows:

**§64.1150 Letter of agency form and content.**

(a) A telecommunications carrier relying on a written authorization for a primary carrier change must obtain a letter of agency as specified in this section. Any letter of agency that does not conform with this section is invalid.

(b) The letter of agency shall be a separate document (or an easily separable document) containing only the authorizing language described in paragraph (e) of this section having the sole purpose of authorizing a telecommunications carrier to initiate a primary carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the primary carrier change.

(c) The letter of agency shall not be combined on the same document with inducements of any kind.

(d) Notwithstanding paragraphs (b) and (c) of this section, the letter of agency may be combined with checks that contain only the required letter of agency language as prescribed in paragraph (e) of this section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a primary carrier change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

(e) 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 carrier change order;

(2) The decision to change the primary carrier from the current telecommunications carrier to the soliciting telecommunications carrier;

(3) That the subscriber designates [name of submitting carrier] to act as the subscriber's agent for the primary carrier change;

(4) That the subscriber understands that only one telecommunications carrier may be designated as the subscriber's interstate or interLATA primary interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional primary interexchange carriers (e.g., for intrastate, intraLATA or international calling), the letter of agency must contain separate statements regarding those choices. One telecommunications carrier can be both a subscriber's interstate or interLATA primary interexchange carrier and a subscriber's intrastate or intraLATA primary interexchange carrier; and

(5) That the subscriber understands that any primary carrier selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's primary carrier.

(f) Any carrier designated in a letter of agency as a primary carrier must be the carrier directly setting the rates for the subscriber.

(g) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current telecommunications carrier.

(h) If any portion of a letter of agency is translated into another language then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

5. Part 64, Subpart K, is proposed to be amended by adding Sections 64.1160 and 64.1170 to read as follows:

**§ 64.1160 Changes in Subscriber Carrier Selections**

(a) Prohibition. No telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telecommunications service except in accordance with the verification procedures prescribed in this Subpart. Nothing in this section shall preclude any State commission from enforcing these procedures with respect to intrastate services.

(1) Where the submitting carrier submits a verification that fails to comply with § 64.1160(a), the executing carrier will be liable where there has been some wrongdoing or malfeasance on the part of the executing carrier; otherwise the submitting carrier will be solely liable for violating § 64.1160(a).

(2) Where the submitting carrier has complied with § 64.1160(a), but the executing carrier executes the change inconsistent with the subscriber carrier change selection, the executing carrier

will be solely liable for violating § 64.1160(a).

(3) When a dispute arises between the submitting and executing carriers regarding liability, the carriers must pursue private settlement negotiations prior to requesting that the Commission institute proceedings to resolve any such dispute.

(b) Carrier Liability for Charges. Any telecommunications carrier that violates the verification procedures prescribed by the Commission and that collects charges for telecommunications service from a subscriber shall be liable to the subscriber's properly authorized carrier in an amount equal to all charges paid by such subscriber after such violation. The remedies provided by this subsection are in addition to any other remedies available by law.

**§ 64.1170 Reimbursement Procedures**

(a) Upon receiving notification from the subscriber that the subscriber's carrier selection was changed without authorization, the properly authorized carrier must, within ten days, request from the unauthorized carrier the following:

(1) An amount equal to the charges paid by the subscriber to the unauthorized carrier; and,

(2) An amount equal to the value of any premiums to which the subscriber would have been entitled if the subscriber's selection had not been changed.

Where a subscriber notifies the unauthorized carrier, rather than the properly authorized carrier, of an unauthorized subscriber carrier selection change, the unauthorized carrier must, within ten days, notify the properly authorized carrier.

(b) Upon notification of a violation of § 64.1160(a), the unauthorized carrier must remit to the affected subscriber's properly authorized carrier the total charges collected from the subscriber and the value of any premiums to which the subscriber would have been entitled if the subscriber's selection had not been changed.

(c) Restoration of Premium Programs. Upon receiving from the unauthorized carrier the value of premiums to which the subscriber would have been entitled if the subscriber's selection had not been changed, the properly authorized carrier must provide or restore to the subscriber any premiums to which the subscriber would have been entitled if the subscriber's selection had not been changed. Where a particular premium cannot be restored, the properly authorized carrier may substitute an equivalent premium or dollar amount as reasonably determined by the properly authorized carrier.

(d) Dispute Resolution. Carriers must pursue private settlement negotiations regarding the transfer of charges and the value of lost premiums from the unauthorized carrier to the properly authorized carrier prior to requesting that the Commission institute proceedings to resolve any dispute regarding such transfer of charges and the value of lost premiums.