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STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. SB266

Revision Date: \_\_\_\_\_  
Title: Interexchange Consumer  
Protection Act of 1991

Department Affected: DCED  
BRU: APUC  
Component: \_\_\_\_\_

Sponsor: Labor & Comm., Judiciary  
Requestor: Labor & Comm., Judiciary

COMPONENT SERIAL NO. 

|  |  |  |  |
|--|--|--|--|
|  |  |  |  |
|--|--|--|--|

Expenditures/Revenues: (Thousands of Dollars)

| OPERATING         | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES |       |       |       |       |       |       |
| TRAVEL            |       |       |       |       |       |       |
| CONTRACTUAL       |       |       |       |       |       |       |
| SUPPLIES          |       |       |       |       |       |       |
| EQUIPMENT         |       |       |       |       |       |       |
| LAND & STRUCTURES |       |       |       |       |       |       |
| GRANTS, CLAIMS    |       |       |       |       |       |       |
| MISCELLANEOUS     |       |       |       |       |       |       |
| TOTAL OPERATING   | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |

|         |     |     |     |     |     |     |
|---------|-----|-----|-----|-----|-----|-----|
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
|---------|-----|-----|-----|-----|-----|-----|

|         |     |     |     |     |     |     |
|---------|-----|-----|-----|-----|-----|-----|
| REVENUE | -0- | -0- | -0- | -0- | -0- | -0- |
|---------|-----|-----|-----|-----|-----|-----|

FUNDING: (Thousands of Dollars)

|               |     |     |     |     |     |     |
|---------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND  |     |     |     |     |     |     |
| FEDERAL FUNDS |     |     |     |     |     |     |
| OTHER         |     |     |     |     |     |     |
| TOTAL         | -0- | -0- | -0- | -0- | -0- | -0- |

POSITIONS:

|           |     |     |     |     |     |     |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | -0- | -0- | -0- | -0- | -0- | -0- |
| PART-TIME |     |     |     |     |     |     |
| TEMPORARY |     |     |     |     |     |     |

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

No Fiscal Impact for FY91

Prepared By: Ray Wipperman Phone: 276-6222  
Division: Alaska Public Utilities Commission Date: 5/2/91

Approved by Commissioner: \_\_\_\_\_  
Agency: Department of Commerce & Economic Development Date: \_\_\_\_\_

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

## I. INTRODUCTION

The purpose of competition is to encourage the most efficient allocation of resources, the lowest prices and the highest quality of consumer products. Competition promotes the protection of consumer interests. Sometimes, however, the pressures of competition within a particular industry to win customers and thereby increase revenues, may lead to the use of undesirable, deceptive and fraudulent marketing techniques which are not in the best interest of the consumer.

The long distance telephone industry, once considered virtually immune from the effects of recession has shown a recent decline in growth from the annual 12% per year in the late 1980's to an estimated 7% per year in 1990. Competition for market share in this \$50 billion-dollar-a-year industry has become one of the fiercest fought battles in any American business arena. With the expected advent of competition in Alaska in mid-year 1991, it is appropriate for the Legislature to examine the potential for undesirable marketing practices in the state.

## II. THE PROBLEM

Competitive pressures in the long distance industry have led to the use of deceptive sales and telemarketing methods as each long distance carrier strives to increase its revenues by increasing their market share.

Telemarketing is used extensively in the long distance industry and the industry's two largest carriers (AT&T and MCI) estimate that they make a combined 12 million calls a month to consumers. Telemarketing firms are used to solicit new business and there is some concern that these firms are being paid on a commission basis directly related to the number of new customers they develop. This may result in "slamming", the unauthorized transfer of a customer from one long distance carrier to another.

Slamming is blamed on overzealous sales people and usually occurs after a high pressure sales pitch from another long distance carrier over the telephone. Even if the consumer does not wish to change his long distance carrier he or she may find that the change has been made without his or her knowledge or consent.

During a recent Congressional subcommittee hearing to examine the issue of slamming, AT&T said it received 90,000 complaints of slamming from customers during a six month period in

Submitted by:  
PTI / Alascom

1990. Bell Atlantic, a local telephone company which is responsible for making the actual change from one long distance carrier to another, received 18,000 slamming complaints in 1988, 37,000 complaints in 1989, and estimated it received over 80,000 slamming complaints in 1990.

Concern with the problem of slamming has recently caught the attention of Congress, the Federal Communications Commission and the California State Legislature. Federal legislation to regulate changes in consumers' selection of long distance carriers has been introduced in the House. The FCC has issued a notice of proposed rulemaking that would require long distance carriers to secure written authorization, electronic authorization, or third-party oral verification from consumers before implementing a change in the selection of a long distance carrier. Last year, the California legislature passed its own anti-slamming legislation, which went into effect in January.

### III. THE ISSUES

The current FCC rules governing the transfer of long distance service were modified following the 1984 breakup of the Bell Telephone System to benefit the new alternative carriers emerging after the breakup. In an effort to help dissolve the AT&T monopoly, federal regulators decided that new carriers would need only verbal permission to sign up prospective customers.

Once verbal permission is granted for the change by the consumer, the long distance provider informs the local phone company which makes the switch. Although Federal rules require that long distance companies follow up by sending customers forms to be signed and returned, it is estimated that 70% of the forms are not returned. Still, the switch can be legally made.

Long distance customers are particularly vulnerable to potential fraudulent and deceptive sales and marketing practices by representatives of long distance carriers. Telemarketers typically prey on elderly and infirm consumers and those with language disabilities.

As a result of slamming practices the consumer is not only deprived of knowledgeable decision making but is further burdened and inconvenienced with having to ensure that his long distance service is switched back to the carrier of his preference.

Local telephone companies have typically been made to bear the burden of switching back the customer who has been slammed. This constant churn increases the overall costs of telecommunications services and reduces industry efficiency.

#### IV. THE PROPOSED LEGISLATION

Because slamming is fostered by loose regulations and the fierce competition among long distance carriers, it is necessary to protect long distance consumers by adopting appropriate rules and prescribing procedures for switching from one long distance carrier to another.

This proposed legislation is designed to protect consumers from being switched to other long distance companies without their knowledge or consent. It prescribes specific procedures and a verification process for authorized changes in a consumers selection of a long distance carrier. The existing Alaska Public Utilities Commission regulations recognize this need, but provide only a one-sentence requirement concerning the need for a written authorization for change of service. Neither the need for informed consent, nor the need for verification is addressed.

Customer solicitation must be on a fully disclosed basis. Certain relevant disclosures are required to be made. The request for a change in a consumer's selection of a long distance carrier must be verified, after solicitation and before execution, by an independent third party. The customer is given a cooling-off period, similar to laws governing door-to-door solicitation, during which he may reflect on and/or cancel any change in a long distance carrier.

The independent third party confirming the change in the selection of a consumer's long distance carrier is required to make specific disclosures to the consumer to further increase consumer awareness and provide a knowledgeable basis for decision making. A written record of all solicitations and confirmations are required to be made and maintained by each long distance carrier and made available for Commission inspection.

#### V. BENEFITS

The protection of consumers against slamming while preserving competition in the long distance industry would be the ultimate benefit of this legislation.

The consumer would receive relevant, accurate information upon which to make telecommunication services decisions. All competitors would be required to adhere to the same standards, discouraging high pressure tactics for soliciting customers. Consumers are spared the burden and inconvenience of the switching of long distance carriers without their knowledge and consent and local telephone companies can avoid the costs and inefficiencies involved with churning practices employed by long distance carriers.

The procedures and verifications proposed should substantially diminish the problem of unauthorized switching of long distance customers while continuing to encourage carriers to compete for a customer's business.

## VI. CONCLUSION

Consumers should have the right to choose their long distance carriers without being victimized by deceptive, fraudulent or unfair marketing practices. The best way to ensure consumer protection against slamming is to put the control where it belongs -- in the hands of the consumer. Written authorization is the best way to protect the consumer's freedom of choice.

Deceptive and fraudulent marketing practices inconvenience consumers and deny them basis for making informed telecommunications choices. Further, such practices defeat legislative purposes in opening Alaska to intrastate competition.

The process of choosing a long distance carrier should be driven by the informed choice of consumers and not by deceptive sales and advertising practices of long distance companies.

102D CONGRESS  
1ST SESSION

# H. R. 1039

To regulate the submission of changes in customers' selections of interexchange carriers, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 20, 1991

Mr. WISE (for himself and Mr. STARK) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To regulate the submission of changes in customers' selections of interexchange carriers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 8 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Telephone Slamming  
5 Prohibition Act of 1991".

### 6 SEC. 2. AMENDMENT.

7 Title II of the Communications Act of 1984 is amended  
8 by adding at the end thereof the following new section:

1 "SEC. 227. CONFIRMATION PROCEDURES FOR CUSTOMER  
2 CARRIER SELECTIONS.

3 "(a) DEFINITIONS.—As used in this section:

4 "(1) The term 'customer-initiated change' means  
5 an order to change a customer's primary interexchange  
6 carrier that is generated as a result of a communication  
7 to an interexchange carrier or local exchange carrier  
8 originated by a customer.

9 "(2) The term 'independent third party' means a  
10 person qualified, in accordance with Commission regu-  
11 lations, to perform large scale verification processes—

12 "(A) which is retained by an interexchange  
13 carrier to perform verification or auditing func-  
14 tions described in this section;

15 "(B) in which the interexchange carrier has  
16 no ownership interest; and

17 "(C) which performs no telemarketing, direct  
18 mail, or other sales solicitation functions for the  
19 interexchange carrier.

20 Tie defin. to AS 4205 competition  
21 "(3) The term 'interexchange carrier' includes a  
22 person (other than an independent third party) acting  
23 on behalf of an interexchange carrier.

24 "(4) The term 'local exchange carrier' means a  
25 provider of local exchange services.

26 "(b) GENERAL PROHIBITION.—No interexchange carri-  
er may submit to any local exchange carrier any order to

1 change a customer's selection of a primary interexchange  
2 carrier except in accordance with this section and regulations  
3 thereunder.

4       “(c) MANDATORY DISCLOSURES.—Any interexchange  
5 carrier that makes any solicitation seeking to change a cus-  
6 tomer's selection of a primary interexchange carrier shall—

7               “(1) identify the interexchange carrier making the  
8 solicitation;

9               “(2) state that the purpose of the solicitation is to  
10 solicit a change of the customer's primary interex-  
11 change carrier;

12               “(3) state that the customer's primary interex-  
13 change carrier may not be changed unless and until the  
14 sale is confirmed;

15               “(4) describe any charge for processing the pri-  
16 mary interexchange carrier change that may be im-  
17 posed by the customer's local exchange carrier; and

18               “(5) identify and describe the confirmation proce-  
19 dure which the carrier will use pursuant to subsection  
20 (d) to obtain confirmation that the customer has au-  
21 thorized the primary interexchange carrier change.

22       “(d) CONFIRMATION.—

23               “(1) CONFIRMATION REQUIRED.—No interex-  
24 change carrier shall submit a primary interexchange  
25 carrier change order (other than a customer-initiated

1 primary interexchange carrier change) to a local ex-  
2 change carrier unless and until it has obtained confir-  
3 mation of the order.

4 "(2) INFORMATION REQUIRED TO BE EX-  
5 CHANGED IN CONFIRMATION.—For purposes of this  
6 subsection, a confirmation is not effective unless—

7 "(A) the confirmation is solicited more than  
8 24 hours after the carrier obtains from the cus-  
9 tomer the initial authorization to submit the pri-  
10 mary interexchange carrier change;

11 "(B) the carrier provides to the customer an  
12 explanation of what occurs when a primary inter-  
13 exchange carrier is changed;

14 "(C) the carrier verifies the customer's bill-  
15 ing name and address and each telephone number  
16 to be covered by the primary interexchange carri-  
17 er change order;

18 "(D) the carrier informs the customer of the  
19 amount of and method for collecting the primary  
20 interexchange carrier change fee; and

21 "(E) the customer verifies the authorization  
22 of the primary interexchange carrier change.

23 "(8) METHODS FOR OBTAINING CONFIRMA-  
24 TION.—A carrier may obtain an effective confirmation

1 in accordance with paragraph (c) using any one of the  
2 following methods:

3           “(A) The carrier obtains the customer’s sig-  
4 nature on a written confirmation of the primary  
5 interexchange carrier change.

6           “(B) The interexchange carrier obtains the  
7 customer’s electronic confirmation, placed from  
8 the telephone number or numbers on which the  
9 primary interexchange carrier is to be changed, of  
10 the change order. A carrier electing to obtain con-  
11 firmations pursuant to this subparagraph shall es-  
12 tablish one or more toll-free telephone numbers  
13 exclusively for that purpose. Calls to such num-  
14 bers shall connect a customer to a voice response  
15 unit, or similar mechanism, that records the re-  
16 quired information regarding the primary interex-  
17 change carrier change, including automatically re-  
18 cording the originating telephone number.

19           “(C) An independent third party operating in  
20 a location physically separate from the telemar-  
21 keting representatives of the interexchange carrier  
22 obtains confirmation of the change order. No con-  
23 tract between any carrier and such a party for ob-  
24 taining confirmations under this subsection may

1 provide compensation based upon the percentage  
2 or number of changes confirmed.

3 "(e) AUDITING REQUIREMENTS.—The Commission  
4 shall prescribe auditing procedures to ensure compliance with  
5 the disclosure and confirmation provisions of this section.  
6 Such audits shall include an analysis to confirm that the in-  
7 terexchange carrier is only submitting primary interexchange  
8 carrier changes (other than customer-initiated primary inter-  
9 exchange carrier changes) that have been confirmed in one of  
10 the ways specified in subsection (d).

11 "(f) RECORDS.—The interexchange carrier shall retain  
12 all records and data pertaining to the customer's authoriza-  
13 tion for a period of 12 months after submission of the primary  
14 interexchange carrier change order. The carrier shall make  
15 available for inspection by the Commission and the Control-  
16 ler General copies of written contracts with each independent  
17 third party used to obtain confirmations pursuant to subsec-  
18 tion (d)(3)(C).

19 "(g) FRAUDULENT AND MISLEADING PRACTICES.—  
20 The Commission shall, by regulation, prohibit interexchange  
21 carriers from engaging in fraudulent or misleading practices  
22 with respect to activities soliciting primary interexchange  
23 carrier changes. The regulations shall include such proce-  
24 dures as the Commission may require to verify compliance  
25 with such regulations.

1       “(h) SCHEDULE FOR REGULATIONS.—The Commission  
2 shall prescribe the regulations required by this subsection not  
3 later than 90 days after the date of enactment of this section.

4       “(i) EFFECTIVE DATE.—This section shall take effect  
5 90 days after the date of enactment of this section.”.

○

ALASKA PUBLIC UTILITIES COMMISSION

Comments on SB 266

May 6, 1991

The Commission endorses the intent of this bill but, for several reasons, does not believe such legislation is currently necessary. To the extent legislation in this area may eventually prove to be necessary, SB 266 in its present form is overexacting and mechanically cumbersome.

The Commission is well aware that competitive pressures in the long distance telephone industry in other states have led to the use of undesirable or fraudulent marketing techniques to increase market share. One aspect of this problem concerns the unauthorized transfer of a customer from one interexchange carrier to another, or "slamming."

The Commission is not aware of any evidence that such practices have been occurring in Alaska. However, in order to control, if not prevent, the prospect of slamming, the Commission has already promulgated a regulation (3 AAC 52.390(d)) which requires written authorization from the consumer before a change in long distance telephone companies can be transacted. Therefore, the Commission has already accomplished the essential purpose of this bill. If, however, the Legislature desires to formalize this policy in law, then it is recommended that any legislation should be simple in its approach and augmented, as necessary, by specific Commission regulation. A section-by-section analysis of the bill follows:

APUC Comments on SB 266  
May 13, 1991  
Page 1 of 3

TESTIMONY - A.P.U.C.

## Section-by-Section Analysis

**Section 1:** No Comment

**Section 2:** The Commission is unaware of any evidence that slamming has been occurring in Alaska (Finding No. 4). The Legislature need not necessarily act in this regard (Finding No. 6) because the Commission has already promulgated 3 AAC 52.-390(d) which requires written authorization from the consumer before a change can be made in intrastate interexchange carriers.

**Section 3:** This section requires two separate manifestations of a consumer's desire to change his carrier: a change order and a "confirmation." Section 42.05.870(d) states that a long distance carrier may not submit a change order to a local exchange carrier until the long distance carrier has obtained confirmation of the order (p.2, lines 29-31). A change order is defined in (j) as a customer's instruction to a local telephone company to change his long distance carrier (p.4, lines 15-18). It is unclear whether the "change order" can be other than in writing. The bill is clear, however, that the second requirement of a confirmation can be satisfied by either a written authorization by the customer or oral verification of the change order by an independent third party within 72 hours of the customer's initial change order. (P. 3, lines 1-5). Section 42.05.870(d) further sets forth very exacting and detailed criteria for valid third-party verification.

The Commission has reservations about whether such compounded authorization is efficient in a competitive marketplace, much less warranted at this time. In particular, since even a change order initiated by a customer must be verified again by the customer, (p.4, lines 12-14) the bill seems excessive in its approach to ensure consumer consent.

Section 42.05.870(h) requires very broad record retention ("any record") by the long distance and local telephone companies. Additionally, this section requires record inspection, prescription of auditing procedures, and promulgation of regulations by the Commission to police marketing practices. Once instate competition begins and a track record develops, the Commission and Legislature will be in a better position to determine what, if any, records are necessary to facilitate the investigation of allegations of abuses like slamming.

**Section 4:** It is not clear whether this bill, if it were to pass and become effective this session, would impact equal access dialing decisions which the Commission has already ordered to be implemented on or after the commencement of intrastate interexchange competition in May, 1991.

Existent A.P.U.C. regulation, 3 AAC 52.390(d)

(c) A dominant carrier is responsible for providing intrastate interexchange telephone service as the carrier of last resort.

→ (d) A message telephone service subscriber of an interexchange carrier may not be transferred to another interexchange carrier unless the subscriber signs a written request for the change.

(e) No implicit modification or waiver of any statutory or regulatory requirements is intended by 3 AAC 52.350 --- 3 AAC 52.399 for either dominant or nondominant carriers; absent specific modification or waiver, all statutory and regulatory requirements remain in effect for both dominant and nondominant carriers. (Eff. \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

|            |                 |                    |
|------------|-----------------|--------------------|
| Authority: | AS 42.05.141(b) | AS 42.05.371       |
|            | AS 42.05.151(a) | AS 42.05.381       |
|            | AS 42.05.221    | AS 42.05.401       |
|            | AS 42.05.241    | AS 42.05.411       |
|            | AS 42.05.311    | AS 42.05.431       |
|            | AS 42.05.321    | AS 42.05.451       |
|            | AS 42.05.361    | AS 42.05.711(d)    |
|            |                 | AS 42.05.720(4)(B) |

3 AAC 52.399. DEFINITIONS. Unless the context indicates otherwise, in 3 AAC 52.350 -- 3 AAC 52.399

(1) "commission" means the Alaska Public Utilities Commission;

(2) "dominant carrier" means any interexchange carrier determined by the commission to have market power;

MCI TELECOMMUNICATIONS CORPORATION  
STATEMENT REGARDING SB 266

MCI Telecommunications Corporation has serious concerns about the anticompetitive nature of SB 266, the Interexchange Consumer Protection Act of 1991. The legislation in its current form would undo much of the progress made by the Legislature and the Alaska Public Utilities Commission (APUC) toward providing intrastate competition.

- o SB 266 is not in the best interest of consumers depriving them of the advantages of a competitive marketplace and subjecting them to additional delays and increased costs for telecommunications services.
- o Today consumers routinely purchase good and services over the telephone. To require another written confirmation or an independent third party verification in addition to the APUC requirement of written authorization is inconsistent with the current practices in the marketplace, is likely to cause customer confusion and denies the consumer the flexibility of easily switching companies to take advantage of lower prices or to choose a service which will better fit his/her needs.
- o The bill provides an unfair advantage to Alascom reinforcing its dominant position in the marketplace by creating additional hurdles for other carriers to overcome in obtaining new customers.
- o SB 266 is more restrictive than the current proposal being considered by the Federal Communications Commission (FCC). The FCC's Rulemaking in CC Docket No. 91-64 proposes to allow an interexchange carrier to use any of the following three actions before switching a customer's long distance service: 1) long distance carrier has on hand an authorization card signed by the customer and sent back to the carrier; 2) consumer initiates a call from home to an automated 800 number, and through a sequence of prompts, confirms the choice of the long distance carrier; or 3) consumer's choice of a long distance carrier is verified by an independent firm unaffiliated with any long distance carrier. This proposal will not undermine consumers' access to the benefits of the competitive marketplace.

FAX COVER PAGE

Date: Mon May 13, 1991 1:48 AM EDT

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Subject: MCI Comments SB 266

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

CC Docket No. 91-64

In the Matter of

American Telephone  
and Telegraph Company

RM 7245

Petition for Rule Making

### NOTICE OF PROPOSED RULE MAKING

Adopted: March 14, 1991; Released: March 25, 1991

By the Commission:

#### I. INTRODUCTION

1. Pursuant to the Modification of Final Judgment (MFJ),<sup>1</sup> the Bell Operating Companies (BOCs) were ordered to provide equal access<sup>2</sup> to their customers. Under the MFJ, the BOCs were permitted to route to American Telephone and Telegraph Company (AT&T) the calls of any customer who, by the time equal access was available, failed to select an interexchange carrier (IXC). In 1985, the Commission concluded that routing such default traffic<sup>3</sup> to AT&T was an unreasonable practice that violated the Communications Act of 1934, 47 U.S.C. § 151 *et seq.* We prescribed a uniform Allocation Plan in order to remedy that violation. The Allocation Plan established a comprehensive set of procedures, designed to ensure that customers were fully informed of the choices available to them, and that the customer's choice of a primary interexchange carrier (PIC) was implemented by the local exchange carrier (LEC).

2. Equal access, now virtually complete, encouraged the growth of vigorous competition in the interexchange market. Millions of customers selected their long distance carrier. Over time, many have decided to change carriers, often to take advantage of discounts and other plans being offered by all of the carriers. At the same time, however, some customers have found they were switched to carriers they did not select. AT&T, upon discovery that some of its customers had been switched to another carrier without the customers' permission, filed the above-captioned petition for Rule Making, asking that the Commission reinstate a written letter of agency (LOA) requirement,<sup>4</sup> a requirement which AT&T had earlier opposed. Simultaneously, AT&T filed a civil suit in Federal District Court against MCI Telecommunications Corporation (MCI), charging MCI with unfair telemarketing practices. Previously, in October 1989, AT&T and MCI had filed legal claims against each other alleging false and deceptive advertising.

3. Forty parties filed comments, letters, and reply comments in response to AT&T's request that this Commission impose an LOA requirement. Many of these parties have suggested alternative approaches to resolving

the problem of unauthorized switches in customers' long distance service.<sup>5</sup> In addition, during the months following the AT&T filing, Congress, state Public Utility Commissions (PUCs), and the news media focused their attention upon customers' complaints that their long distance carrier had been changed without the customers' authorization.

4. On December 11, 1990, AT&T and MCI informed this Commission that they had reached an out-of-court settlement of their suits, agreeing, as part of the settlement, to propose to the Commission safeguards designed to protect consumers against being switched without their permission.<sup>6</sup> AT&T has not withdrawn its petition and it remains pending before us.

5. Equal access procedures designed to increase consumer choice in telecommunications service should not be used to subvert those choices. We tentatively conclude that a modification of carrier selection procedures is necessary to protect the interests of consumers. We also conclude that the safeguards now proposed by AT&T and MCI in their settlement agreement will be more effective and less burdensome than the amendment to the carrier selection rules originally requested by AT&T in its petition for Rule Making. We seek comment on our tentative conclusion that these revised procedures will serve to diminish substantially the problem of unauthorized switching while continuing to encourage carriers to compete for consumers' business. We also invite comment regarding alternative procedures to discourage unauthorized switching, particularly alternatives suggested in comments filed in response to AT&T's petition.

#### II. BACKGROUND

6. The Commission, in its *Allocation Order* and its subsequent *Waiver Order* and *Reconsideration Order*,<sup>7</sup> set forth rules and procedures for implementing equal access and presubscription to an IXC. These Orders established, *inter alia*, the use of a LOA, to be filled out by the customer and kept on file by the IXC as evidence that the customer had selected that IXC as its carrier. *Allocation Order*, Appendix B, 101 FCC 2d at 929.

7. The original allocation plan adopted by the Commission required IXCs to have an LOA on file before submitting a PIC change order to the LEC on behalf of the customer.<sup>8</sup> In the face of vigorous objections from various IXCs, including AT&T, that this requirement would hamper competitive efforts by IXCs to market their services to consumers, particularly through telemarketing efforts, the Commission modified the LOA requirement to allow IXCs to place PIC change orders if they had "instituted steps designed to obtain signed" LOAs. *Waiver Order*, 101 FCC 2d at 942. The Commission next considered the issue in 1987, in the context of a petition filed by the Illinois Citizens Utility Board, requesting revision of the Commission's carrier selection rules. The Commission denied the petition, 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.

8. On January 10, 1990, AT&T filed a petition requesting revision of the Commission's carrier selection rules. AT&T proposed returning to the Commission's original rules, allowing an IXC to submit PIC change orders to a LEC on behalf of a customer only when the IXC has an LOA for that customer on file. AT&T alleged that there

has been an increase in the unauthorized switching of customers during the past year, causing inconvenience for customers and creating expense for LECs who must resolve the resultant disputes. AT&T Petition at 7. Comments on AT&T's petition were filed on March 2, 1990; replies were filed March 19, 1990.

#### A. AT&T Petition for Rule Making

9. The AT&T petition contends that the Commission's existing carrier selection rules were designed to facilitate the equal access process during a period in which millions of customers made IXC selections within a relatively short time. It speculates that the LECs' involvement in distributing customer information and soliciting ballots at that time helped keep the initial rate of errors in processing customer selections reasonably low. AT&T Petition at 5. AT&T claims that recently, however, there has been a sharp increase in unauthorized switching. It reports that it conducted a survey of customers whose service was changed from AT&T to other IXCs, which showed that between 10 and 15 percent of the residential customers switched away from AT&T between February and November, 1989, had not authorized the change. *Id.* at 6. These erroneous switches, AT&T charges, have resulted in inconvenience to customers and increased expense to ICs and LECs. *Id.* at 7. The remedy, it contends, is to change the Commission's rule to require that IXCs obtain written customer authorization prior to submitting customer information to the LEC for processing. AT&T emphasizes that the LOA would not be sent to the LEC, but would remain in possession of the IXC. *Id.* at 8.

10. Parties opposing AT&T's petition<sup>10</sup> assert that a change in the existing rules is not warranted by current market conditions, would be anticompetitive in its effect, and would be harmful to consumers. They argue that the current rules represent a reasonable balance between the IXCs' need for marketing flexibility and the need to protect the public against possible abuses. Opponents deny that the rules were appropriate only during the period of equal access conversions and contend that AT&T has failed to show why a more restrictive rule is necessary at this time. *See, e.g.,* Sprint Comments at 2, 5; MCI Comments at 10-14.

11. According to parties opposing AT&T's petition, AT&T would be the primary beneficiary of any rule change that would make it more difficult for consumers to switch carriers. Sprint Comments at 8; CompTel Comments at 5-7; MCI Comments at 15-16. MCI argues that requiring a signed LOA prior to submission of the customer's order would have little effect on AT&T, but would create a major burden for the rest of the interexchange industry, making it more difficult and costly for its competitors to penetrate the 80 percent of the market AT&T now serves. MCI Comments at 16-17.

12. Several commenters remark that the Commission previously considered and rejected AT&T's proposed rule in the *Wauver Order* and the *Illinois CLB Order*. They note that both MCI and AT&T, in their comments on the Illinois Club petition, supported continuation of the existing LOA rules, and opposed adoption of the signed LOA requirement. *Id.* at 6-7; CompTel Comments at 2-4; Sprint Comments at 4-6. MCI observes that AT&T also argued at that time that the inability of a carrier to provide a signed document did not prove that the conversion was unauthorized. AT&T explained that "customers frequently ignore requests for return of letters of agency, delay their

signatures, or simply fail to comprehend the significance of confirmation forms." MCI Comments at 7, quoting AT&T Comments on Petition for Rule Making, filed July 15, 1986, at 4. Sprint observes that AT&T previously argued that if a signed customer statement were required prior to the submission of a PIC change to the LEC, "telemarketing will be virtually foreclosed . . . ; customer convenience will be hindered; and customer selections can be expected to decline." Sprint Comments at 4, quoting AT&T Petition for Clarification at 6.

#### B. Alternative Proposals

13. The National Association of Regulatory Utility Commissioners (NARUC) agrees that a change is needed in the Commission's current equal access conversion procedure, but cautions that any rule change should be sensitive to the needs of consumers and competing toll carriers. In lieu of the prior authorization requested by AT&T, NARUC recommends an alternative rule which would require the IC to supply to a customer requesting a change written verification within three business days of the request. NARUC believes that this system would protect against unauthorized changes while keeping the changeover process simple for consumers. NARUC Reply Comments at 1-3. Under the NARUC proposal, the IXC would be required to send the customer a form which would contain at least the following information concerning the changes requested:

- a. The current primary interexchange carrier's name;
- b. The name of the requested PIC of choice;
- c. A complete listing of any terms, conditions, or charges that will be incurred;
- d. The name of the person ordering the change;
- e. The name, address, and telephone number of the customer and the requested carrier of choice.

*Id.* at 4. NARUC asserts that its proposal would modify the Commission's current rules only slightly, and that by standardizing what is required of an IC before it initiates a changeover, the Commission would make it more difficult for an IXC to switch a customer without authorization.<sup>11</sup>

14. On December 11, 1990, AT&T and MCI jointly advised this Commission that they had settled their civil suits alleging false and deceptive advertising and telemarketing practices.<sup>12</sup> They further informed the Commission that, as part of the settlement agreement, each had agreed to support adoption by the Commission of certain confirmation procedures designed to guard against unauthorized switching.<sup>13</sup>

### III. DISCUSSION

15. We have reviewed AT&T's petition, the comments and letters filed in response to that petition, and the Settlement Proposal submitted by AT&T and MCI. In considering the advisability of imposing a signed LOA requirement, we cannot ignore the earlier arguments made by AT&T, and echoed by other IXCs, against the very rule AT&T, in its petition, seeks to reintroduce.

The telephone is a convenient and efficient way for customers to make an affirmative choice of a [PIC]. Customers can make a decision and have that decision implemented immediately, as they are accustomed to doing, without the inconvenience of signing and returning any documents and without the delay inherent in that process.

AT&T Petition for Clarification of *Waiver Order* at 4.

However, if the language of paragraph 10 of Appendix B [of the *Allocation Order*] . . . is construed to require a physical handwriting, customers will no longer be able to place orders over the telephone. Telemarketing will be virtually foreclosed under such a restrictive reading of the Order; customer convenience will be hindered; and customer selections can be expected to decline.

*Id.* at 6.

16. The Commission, in originally imposing the LOA requirement, anticipated that the signed LOA would be filed and retrieved by the IXC to resolve disputes. In the contemporary telecommunications marketplace, this seldom happens. Both MCI and AT&T offer similar descriptions of their ordering processes: the change order for the customer is entered onto a computer tape by the telemarketer, and the LOAs, if and when they are received, are shipped to a warehouse. If the customer challenges the change, the IXC frequently finds it more cost effective to pay the applicable change charges to the LEC rather than attempt to retrieve the LOA. It is unclear, therefore, that the mandatory LOA requirement would do anything other than slow down the telemarketing process.

17. We are concerned, however, that a large number of customers appear to have been switched to long distance carriers they did not select.<sup>14</sup> Although, as Sprint suggests, it may be impossible in a competitive market to totally eliminate errors in the ordering process, some revision in the procedures IXCs must follow in submitting change orders for long distance service appears to be necessary. In deciding what action to take, we have weighed the need to prevent fraudulent or abusive sales practices against the possibility that some remedies that have been suggested would unnecessarily impede the competitive process and thereby deny consumers the benefits of this process. We have tentatively concluded that the AT&T and MCI Settlement Proposal represents a reasonable method for resolving the problem of unauthorized switching.

18. The safeguards proposed under the Settlement Agreement would require that at least one of the following actions take place before a consumer's long distance service is switched:

1. The long distance carrier has on hand an authorization card signed by the customer and sent to the long distance carrier;
2. The consumer initiates a call from home to an automated 800 number, and through a sequence of prompts, confirms the choice of long distance carrier; or
3. The consumer's choice of a long distance carrier is verified by an independent firm unaffiliated with any long distance carrier.<sup>15</sup>

The Settlement Proposal acknowledges that customers have the right, of course, to initiate changes in their long distance service by calling their local exchange carrier or long distance carrier directly.<sup>16</sup>

19. The Settlement Proposal also contains a sample script for third party confirmation and describes a "Quality Assurance Program" (QAP). This program would be managed under the direction and authority of an independent auditor selected by each IXC obligated to maintain a QAP, subject to review by this Commission. The full text of the Settlement Proposal, including the confirmation procedures, sample script, and Quality Assurance Program, is provided at Appendix A.

20. Under this proposal, a customer's order for service would be verified in any one of three ways. (Customer-initiated calls would not require verification). This proposal offers greater flexibility to the ICs than would a mandatory LOA requirement and allows competitors to select a verification procedure which best meets their needs and those of their customers.

21. Therefore, we have tentatively concluded that the letter of agency procedures set forth in Appendix B of the Commission's *Allocation Order*, as modified by the *Waiver Order*, should be revised to require IXCs which seek to submit orders to LECs on behalf of customers to certify to the LEC that they have instituted the procedures set forth at Appendix A. Unlike our current procedures, these proposals specify three specific methods to be used in verifying non customer-initiated orders for changed service. We seek comment on our tentative conclusion that these procedures will serve to reduce to a minimal level the number of unauthorized switches in customers' long distance service.

22. We seek comment regarding whether these procedures will be adequate to protect consumers from unauthorized switches in their long distance service. We invite comment regarding whether this Commission should adopt all of the procedures described in the AT&T and MCI proposal, or whether we should adopt only certain portions of the proposal. We also request comment regarding the effect of revised verification procedures on our current requirement that the IXC pay all change charges associated with changes which the customer disputes if the IXC cannot produce a letter of agency. Further, we seek comment on whether the procedures set forth in Appendix A, or alternative procedures, should apply to customer-owned payphones.

23. We also invite comment regarding whether the various alternatives proposed by NARUC and other parties who have presented their comments in this Rule Making, or any other alternatives, would be preferable to the Settlement Proposal. In particular, we seek comment on the following alternative:

- 1) Within three business days of the customer's request for a change, the IXC sends each new customer an information package containing at least the following information concerning the requested change: a) the name of the customer's current primary long distance carrier; b) the name of the newly requested long distance carrier; c) a description of any terms, conditions, or charges that will be incurred; d) the name of the person ordering the change; e) the name, address, and telephone number of both the customer and the newly requested

long distance carrier: f) a postpaid postcard which the customer can use to deny, cancel, or confirm a service order.

2) The IXC should not submit an order to the LEC for that customer until 14 days after the form is mailed to the customer.

24. Finally, we invite comment on the cost of implementation of the Settlement Proposal procedures and whether these procedures would impose undue burdens on interexchange carriers. In evaluating alternative approaches, we must weigh the need to prevent abusive sales practices against the possibility that some remedies suggested by the parties would unnecessarily impede the competitive process and thereby deny consumers its benefits. We are particularly concerned lest smaller carriers find the proposed procedures burdensome. We therefore ask for comment on whether the procedures we adopt should apply only to carriers of a particular size. We also request comment regarding whether any of the alternative approaches noted above would be more appropriate for small carriers.

#### IV. PAPERWORK REDUCTION ACT

25. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found not to impose new or modified information collection requirements on the public.

#### V. REGULATORY FLEXIBILITY ACT INITIAL ANALYSIS

26. *Reason for action.* The Commission is issuing this Notice of Proposed Rule Making to protect consumers from unauthorized switching of their long distance carriers and to ensure that consumers are fully informed of the costs associated with changes in long distance service.

27. *Objectives.* The objective of this Notice of Proposed Rule Making is to initiate a proceeding to revise the procedures interexchange carriers must follow prior to entering a change order on behalf of a consumer.

28. *Legal basis.* Sections 1, 4(i), 4(j), 201-205, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 303(r).

29. *Description, potential impact and number of small entities affected.* The proposed rules will require that interexchange carriers adopt one of three methods for verifying customer orders to change long distance carriers. The rules will also require that customers be provided information about charges and services to allow them to make informed choices. Small entities may feel some economic impact due to the proposed verification requirements.

30. *Reporting, recordkeeping, and other compliance requirements.* The proposed rules impose no reporting requirements and no new recordkeeping requirements. Carriers currently are required to obtain and retain records of customer orders.

31. *Federal rules which overlap, duplicate, or conflict with the Commission's proposal.* None.

32. *Any significant alternatives minimizing impact on small entities and consistent with stated objectives.* The Notice of Proposed Rule Making solicits comments on whether the verification requirements should be adapted to the size of the carrier.

33. *Comments are solicited.* We request written comments on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues in this Notice of Proposed Rule Making, but they must have a separate and distinct heading designating them as responses to this Regulatory Flexibility Analysis. The Secretary shall send a copy of the Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act. See 5 U.S.C. § 601, *et seq.*

#### VI. EX PARTE REQUIREMENTS

34. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. See generally Section 1.1206(a) of the Commission's Rules, 47 C.F.R. § 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of the public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f) of the Commission's Rules, 47 C.F.R. § 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203 of the Commission's Rules, 47 C.F.R. § 1.1203.

35. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.202(b) of the Commission's Rules, 47 C.F.R. § 1.1202(b). Any person who makes or submits a written *ex parte* presentation shall provide on the same day it is submitted two copies of same under separate cover to the Commission's Secretary for inclusion in the public record. The presentation (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding to which it relates and the fact that two copies of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation.

36. Any person who is making an oral *ex parte* presentation presents data or arguments not already reflected in that person's written comments, memoranda, or other previous filings in that proceeding shall provide on the day of the oral presentation an original and one copy of a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. The memorandum (as well as any transmittal letter) must clearly indicate on its face

the docket number of the particular proceeding and the fact that an original and one copy of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation. Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206.

37. All relevant and timely comments and reply comments will be considered by this Commission. In reaching our decision, this Commission may take into account information and ideas not contained in the comments, provided that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of this Commission's reliance on such information is noted in the Order.

#### VII. ORDERING CLAUSES

38. Accordingly, IT IS ORDERED that NOTICE IS HEREBY GIVEN of the proposed regulatory changes described above, and that COMMENT IS SOUGHT on these proposals.

39. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 U.S.C. §§ 1.415, 1.419, comments SHALL BE FILED with the Secretary, Federal Communications Commission, Washington, D.C. 20554 on or before May 1, 1991. Reply comments should be filed no later than May 31, 1991. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. In addition, parties should file two copies of any such pleadings with the Tariff Division, Common Carrier Bureau, Room 518, 1919 M Street N.W., Washington, D.C. Parties should also file one copy of any documents filed in this docket with this Commission's copy contractor, Downtown Copy Center, room 246, 1919 M Street, N.W., Washington, D.C. 20554.

40. IT IS FURTHER ORDERED that the Secretary shall mail a copy of this Notice of Proposed Rule Making to the Chief Counsel for Advocacy of the Small Business Administration.

#### FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy  
Secretary

#### APPENDIX A

#### AT&T AND MCI SETTLEMENT AGREEMENT PROPOSAL

#### CONFIRMATION PROCEDURES

*PIC Changes.* No interexchange carrier may submit orders to change a customer's primary interexchange carrier (PIC) except in accordance with the provisions of this section.

#### A. Definitions

- "customer means a person with two or fewer residential telephone lines;
- "customer-initiated PIC change" means an order to change a customer's PIC that is generated as a result of a communication to an IC or LEC originated by a customer;
- "independent third party" means an appropriately qualified (*i.e.*, capable of performing large scale verification processes as specified herein) person retained by an IXC to perform verification or auditing functions described in this section and in which the IXC has no ownership interest and which performs no telemarketing, direct mail, or other sales solicitation functions for the IXC;
- "IXC" means an interexchange carrier or a person (other than an independent third party) acting on behalf of an interexchange carrier;

B. *Mandatory Disclosures.* Any IXC telemarketing solicitations seeking to change a customer's PIC must include the following disclosures:

- 1) identification of the IXC placing the call;
- 2) the purpose of the call is to solicit a change of the customer's PIC;
- 3) the customer's PIC may not be changed unless and until the sale is confirmed, together with a description of the confirmation process to be used;
- 4) a description of any charge for processing the PIC change that may be imposed by the customer's LEC; and
- 5) the IXC will send the customer a form that meets the requirements of subsection (c)(1) that authorizes the carrier to submit the PIC change, with a request that the customer sign and return the form to the IXC.

C. *Confirmation.* No IXC shall submit a PIC change order (other than a customer-initiated PIC change) to a LEC unless and until the order has first been confirmed in accordance with the following procedures:

- 1) the IXC has obtained the customer's written authorization to submit the order that explains what occurs when a PIC is changed and confirms:
  - a) the customer's billing name and address and each telephone number to be covered by the PIC change order.
  - b) the decision to change the PIC to the IXC, and
  - c) the customer's understanding of the existence of the PIC change fee; or
- 2) the IXC has obtained the customer's electronic authorization, placed from the telephone number(s) on which the PIC is to be changed, to submit the order that confirms the information described in subsection (1) above to confirm the authorization.

IXCs 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 customer to a voice response unit, or similar mechanism, that records the required information regarding the PIC change, including automatically recording the originating ANI; or

3) an appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative has obtained the customer's oral authorization to submit the PIC change order that confirms and includes appropriate verification data (e.g., the customer's date of birth or social security number). The independent third party will use a script substantially similar to the form attached. The IXC must retain the independent third party's services pursuant to a written contract that will be available for inspection by the FCC and that does not provide compensation based upon the percentage of sales confirmed.

4) Regardless of which of the above confirmation procedures is used, the IXC must retain all records and data pertaining to the customer's authorization for a period of 12 months after submission of the PIC change order.

**D. Auditing Requirements.** IXCs shall implement auditing procedures to ensure that the disclosure and confirmation provisions of this section are followed. Such audits will include an analysis to confirm that the IXC is submitting only PICs (other than customer-initiated PIC changes) that have been confirmed in one of the ways specified above. Audits must be performed by a qualified third party at least once every month. If any such audit reveals (1) non-compliance in any material respect with the confirmation requirements of Section C, or (2) a rate of non-compliance in excess of two percent (at a 98 percent level of confidence plus or minus 1 percent) plus the upper bound of the confidence interval, the IXC shall immediately implement corrective measures specified by the auditor, and submit the auditor's report to the FCC.

#### QUALITY ASSURANCE PRINCIPLES

**A. Quality Assurance Program.** The Quality Assurance Program ("QAP") to be adopted by the FCC is intended to ensure that interexchange carriers ("IXCs") which make more than outbound telemarketing calls per year are not making blatantly false and misleading claims (as defined in Section D below) in their telemarketing sales practices. The QAP is to be managed under the direction and authority of an independent auditor ("QAP Director") selected by each IXC obligated to maintain a QAP, subject to review by the FCC. The QAP Director shall have full and complete access to all items subject to review.

**B. QAP Director's Responsibilities.** The QAP Director shall conduct a quality assurance audit quarterly (1) to determine whether an IXC is making blatantly false and misleading claims ("blatant falsehoods") in its telemarketing practices, and (2) where such blatant falsehoods have been found to occur, to certify when the problem that caused the blatant falsehoods has been corrected. The QAP Director is only to evaluate and report

on cases of blatant falsehoods and is expressly prohibited from disclosing to any IXC the marketing claims being made by any other IXC.

**C. Items Subject To Review.** Any IXC subject to the QAP shall provide the QAP Director with any and all information, reports, methods and practices, guidelines, training materials and cooperative assistance requested by the QAP Director for the purpose of making an independent evaluation of (1) scripts and (2) the conduct of telemarketing by the IC. The QAP Director may examine all management controls, including, but not limited to the following:

1. remote monitoring with random selection of monitored representatives;
2. on-site monitoring; and
3. recordkeeping and retention.

**D. Blatant Falsehoods.** Blatant falsehoods are representations that seriously and substantially misstate the nature, characteristics, qualities and geographic boundaries of a competing IXC. Examples include:

1. "[IXC] is going out of business."
2. "[IXC #1] is, by its own choice, no longer providing your services and [IXC #2] has instead been designated as your new long distance carrier."
3. "[IXC #1] and [IXC #2] are part of the same company and/or [IXC #1] has merged with [IXC #2] (or any other similar misrepresentation of a corporate relationship)."
4. "You have no choice about your long distance service" and must change to [IXC]."
5. "Your long distance company or your LEC have authorized the switch to [IXC]."
6. "[IXC] and your local phone company are one and the same."

**E. Corrective Measures.** On a quarterly basis, the QAP Director will monitor a sufficient number of telephone calls in progress to achieve a 98 percent (plus or minus 1 percent) level of confidence that the percentage of calls in which blatant falsehoods are occurring does not exceed 2 percent. If that level is exceeded, the IXC must implement corrective measures immediately. The QAP Director shall then commence monitoring of the IXC on a monthly basis until the IXC reduces the percentage of blatant falsehoods below 2 percent. A report on the non-compliance shall be submitted to the FCC until the corrective measures are effective.

**F. Costs.** Costs of each IXC's QAP will be borne by the IXC subject to the QAP.

#### SAMPLE SCRIPT FOR THIRD PARTY CONFIRMATION

Hello, my name is \_\_\_\_\_ from \_\_\_\_\_ an independent verification company. I'm calling to confirm your order for [IXC] long distance service.

Q1. I'd like to confirm your name, address and telephone number(s). IF AVAILABLE ON SCREEN, READ BACK. Is that correct? TAKE ANY CORRECTIONS. IF NOT ON SCREEN, ASK FOR EACH ITEM AND RECORD.

Q1A. Did you or another person in your household recently receive a call asking you to select [IXC] as your long distance company?

Q2. I'd like to confirm that you have decided to select [IXC] to carry long distance calls from this (these) telephone(s). Is that correct?

Q3. I'd like to confirm that you are an adult resident of this household. Is that correct? IF QUESTIONED BY CUSTOMER, MAY STATE THAT PURPOSE IS TO DETERMINE IF YOU ARE A DECISION MAKER FOR LONG DISTANCE SERVICE FOR THE HOUSEHOLD.

Q4. I'd like to confirm that you were advised that the local telephone company may charge a fee for switching to [IC]. Is that correct? IF CUSTOMER ASKS HOW MUCH, VERIFIER MAY STATE AMOUNT FROM LEC TARIFFS.

Q5. Finally, to show that I've spoken to you, please give me the last four digits of your Social Security Number. RECORD INFORMATION; IF CUSTOMER REFUSES, TRY DATE OF BIRTH OR MOTHER'S MAIDEN NAME.

I will now process the order. Thank you and goodbye.

IF RESPONSE IS NEGATIVE ON ANY ITEM, INFORM CUSTOMER THAT YOU CANNOT PROCESS THE ORDER AND THAT THE CUSTOMER MAY SPEAK DIRECTLY WITH IXC OR MAY CALL THE LOCAL PHONE COMPANY TO ORDER THE SWITCH IN SERVICE TO THE IXC. ANY QUESTIONS (EXCEPT THOSE IN THE Q AND A) ABOUT THE LONG DISTANCE SERVICES OR RATES ARE TO BE REFERRED BACK TO THE IXC.

Would you like me to return you to an IXC representative? IF YES, THE CALL CAN GO BACK TO THE IXC REPRESENTATIVE.

#### APPENDIX B

Pleadings Filed in Rule Making No. 7245

Petition for Rule Making, filed January 10, 1990 by American Telephone and Telegraph Company

Comments, filed March 2, 1990

Ameritech Operating Companies (Ameritech)

Competitive Telecommunications Association (CompTel)

General Communications, Inc. (GCI)

MCI Telecommunications Corporation (MCI)

Pennsylvania Office of Consumer Advocacy and the National Association of State Utility Consumer Advocates (PAOCA/NASUCA)

Southwestern Bell Telephone Company (Southwestern Bell)

US Sprint Communications Company Limited Partnership (Sprint)

Replies, filed March 19, 1990

AT&T

America's Carriers Telecommunications Association (ACTA)

MCI

National Association of Regulatory Utility Commissioners (NARUC)

Nebraska Public Service Commission (Nebraska PSC)

Operator Service Providers of America (OSPA)

Southwestern Bell

Sprint

United States Telephone Association (USTA)

#### Letters

California Public Utilities Commission

CFW Telephone Company

Citizens Telephone Cooperative

City of Charleston, West Virginia

Consumer Action

State of Colorado

Conference of Consumer Organizations

Dubois Telephone Exchange, Inc.

Illinois Commerce Commission

Iowa Network Services, Inc.

Iowa State Utilities Board

Lincoln Telephone Co.

Louisiana Consumers League

Maryland Public Service Commission

Minnesota Department of Public Service

Minnesota Public Utilities Commission

Office of Minnesota Attorney General

Montana Public Service Commission

Nebraska Public Service Commission

Ohio Public Service Commission

Oklahoma Corporation Commission

Roosevelt County Rural Telephone Cooperative, Inc.

South Carolina Public Service Commission

United Refining Co. of Pennsylvania

Virginia State Corporation Commission  
 West Virginia Public Service Commission  
 Western New Mexico Telephone Co., Inc.  
 Wisconsin Public Service Commission (Wisconsin  
 PSC)

#### FOOTNOTES

<sup>1</sup> See *United States v. American Tel. & Tel.*, 553 F. Supp. 131 (D.D.C. 1982) *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

<sup>2</sup> Equal access is that which is equal in type, quality, and price to access to local exchange facilities provided to AT&T and its affiliates. *Id.* at 227.

<sup>3</sup> Default traffic refers to the interexchange telephone calls of any customer who failed to make a selection of an interexchange carrier.

<sup>4</sup> A letter of agency is a document, signed by the customer, which states that a particular carrier has been selected as that customer's long distance carrier. In its petition, AT&T seeks a requirement that an IXC have a customer's LOA on file before submitting an order to the local exchange carrier to switch that customer to the IXC's service.

<sup>5</sup> AT&T describes the unauthorized switching of customers as "slamming." MCI describes such switches as SWOPs (switched without permission).

<sup>6</sup> See Letter from James L. Lewis, MCI Telecommunications Corporation, to Secretary, Federal Communications Commission, Dec. 12, 1990 (MCI Letter).

<sup>7</sup> Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 FCC 2d 911 (1985) (*Allocation Order*), *recon. denied*, 102 FCC 2d 503 (*Reconsideration Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 FCC 2d 935 (1985) (*Waiver Order*). See also *Illinois Citizens Utility Board Petition for Rule Making*, 2 FCC Rcd 1725 (1987) (*Illinois CUB Order*).

<sup>8</sup> Customers may also order service directly from the LEC.

<sup>9</sup> AT&T later refined this figure, alleging that 13.9 percent of the end users switched away from AT&T are unauthorized PIC changes. AT&T Reply at App. I.

<sup>10</sup> A list of parties filing pleadings in this matter appears at Appendix B.

<sup>11</sup> Alternative approaches to the problem of unauthorized switching were also suggested by MCI, Sprint, Ameritech, Bell Atlantic, and Comptel.

<sup>12</sup> See MCI Letter, n.4. *supra*.

<sup>13</sup> On February 12, 1991, MCI and AT&T formally filed a joint request that the Commission adopt the proposal contained in Attachment A of this NPRM.

<sup>14</sup> In recognition of the problems consumers have encountered, the Commission issued a Public Notice on November 2, 1990, informing consumers of their rights and describing steps they might take to protect themselves against unauthorized switches.

<sup>15</sup> At the present time, AT&T's own supervisors verify telemarketing orders for long distance service; MCI reports that it has initiated a system of third party verification, which is not yet complete.

<sup>16</sup> See Settlement Proposal, Confirmation Procedures, at Section C.