ONCOR

ONCOR COMMUNICATIONS, INC.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Petition for Rulemaking

Dear Mr. Caton:

Pursuant to Section 1.401 of the Commission's rules, Oncor Communications, Inc. respectfully submits the enclosed Petition for Rulemaking requesting compensation for public payphone premise owners and presubscribed operator service providers. Enclosed please find an original petition plus four copies in compliance with Section 1.419(b). In addition, I have enclosed a "stamp and return" duplicate in order to ensure receipt.

Thank you for your attention.

Respectfully,

Victoria A. Schlesinger
Regulatory Attorney

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Bethesda, Maryland 20817
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Before the
Federal Communications Commission
Washington, D.C. 20554

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OFFICE OF SECRETARY

In the Matter of	)	
	)	
Compensation Provided To	)	
Public Payphone Premise	)	CC Docket No.
Owners and Presubscribed	)	
Operator Service Providers	)	
For Access Code Calls	)	

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PETITION FOR RULEMAKING PROVIDING COMPENSATION TO PUBLIC PAYPHONE PREMISE OWNERS AND PRESUBSCRIBED OPERATOR SERVICE PROVIDERS FOR ACCESS CODE CALLS

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Date: August 7, 1995

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PETITION FOR RULEMAKING PROVIDING COMPENSATION TO PUBLIC PAYPHONE PREMISE OWNERS AND PRESUBSCRIBED OPERATOR SERVICE PROVIDERS FOR ACCESS CODE CALLS

INTRODUCTION

Currently, the Commission prescribes compensation for owners of competitive public payphones when calls are routed to providers of operator services that are other than the presubscribed provider of operator services for such telephones. 47 C.F.R. §64.130(M)(a)(1994). Oncor Communications, Inc. (hereinafter "ONCOR"), pursuant to 47 C.F.R. § 1.401, petitions the Federal Communications Commission ("Commission") to amend 47 C.F.R. §64.1301(M)(a) to include compensation eligibility for public payphone premise owners and presubscribed operator service providers. A consideration of the equities will demonstrate that a compensation mechanism is necessary in order to remedy the injustices resulting from access code calls.

I. HISTORY OF THE PRESENT COMPENSATION MECHANISM

The Telephone Operator Consumer Services Improvement Act of 1990, 47 U.S.C. §226 (Supp. 1993) (hereinafter "TOCSIA"),

directed the Commission to consider the need "for compensation for competitive public payphones for calls routed to providers of operator services that are other than the presubscribed provider of operator services for such telephones." 47 U.S.C. §226(e)(2). Pursuant to this congressional mandate, the Commission issued a Report and Order, and Notice of Proposed Rule Making on August 9, 1991. In the Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, 6 FCC Rcd. 4736 (1991). This Report concluded that a compensation scheme was necessary in order to ensure that competitive payphone owners received some revenue in exchange for the benefit they were providing to the public. Id. at 4745. The Commission ruled that a consideration of the equities required the implementation of a compensation mechanism. Id.

While this Report addressed the compensation issue for competitive public payphone providers, it failed to consider the applicability of the compensation scheme to other aggregators and presubscribed operator service providers. The Commission reasoned that such a consideration was outside the scope of the proceeding. See id. at 4746 n. 131 (ruling that "the issue of whether aggregators other than competitive payphone owners should be compensated for access code calls" was outside the scope of the proceeding); In the Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, 7 FCC Rcd. 3251, 3260 at ¶57 (1992) (reiterating that compensation for

other aggregators was beyond the scope of the proceeding).[1] Consequently, the Commission acknowledged the existence of an outstanding compensation issue beyond the directive contained in TOCSIA.

In fact, the limitations of TOCSIA do not preclude the Commission from considering the need to compensate other aggregators and operator service providers when consumers place access code calls. Pursuant to The Communications Act of 1934, 47 U.S.C. §202(b)(1991), the Commission may consider the need for a compensation mechanism if such a mechanism is in the public interest. Section 202(b) directs the Commission to prescribe rules and regulations "as may be necessary in the public interest ...." 47 U.S.C. §202(b).

In defining the scope of the Commission's power to act in the public interest, courts have consistently characterized the Commission's regulatory authority as broad and expansive. See e.g., United States v. Southwestern Cable Co., 392 U.S. 157, 173 (1968)(stating that the Communications Act confers a "comprehensive mandate" upon the FCC with "not niggardly but expansive powers")(citing National Broadcasting Co. v. United States, 319 U.S. 190, 219 (1943)); see also FCC v. National Citizens Comm. for Broadcasting, 436 U.S. 775, 811

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[1]The Commission directive in TOCSIA states that the Commission "shall consider the need to prescribe compensation (other than advance payment by consumers) for owners of competitive public pay telephones...." 47 U.S.C. §226(e)(2)(Supp. 1993)(emphasis added).

(1978)(concluding that the FCC has the "ability to adapt itself to new circumstances in a flexible manner").

Several events since the enactment of TOCSIA warrant a closer consideration of the compensation issue in the public interest. The destructive effects of the AT&T "CIID" card, for example, could not be foreseen nor remedied.[2] See generally Letter of Admonishment issued to American Telephone and Telegraph Company, 7 FCC Rcd. 7529-30 (1992)(admonishing AT&T for misleading consumers into destroying otherwise valid calling cards). In addition, the increasing popularity and marketing visibility of "dial-around" has hindered the development of competition in the industry. See discussion infra p. 6-8. A consideration of the equities involved and the current events surrounding access code calling will demonstrate that compensation for public payphone premise owners and presubscribed operator service providers is in the public's best interest.

II. THE COMMISSION SHOULD CONSIDER A COMPENSATION SCHEME FOR OTHER AGGREGATORS AND PRESUBSCRIBED OPERATOR SERVICE PROVIDERS

A. Equitable Considerations

Although the substance of the issue presented in this petition is outside the scope of TOCSIA, the arguments utilized in considering the need for compensation are useful in this

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[2]Oncor has received compensation for CIID card inquiries prior to June of 1995, however, AT&T has informed Oncor that it will no longer provide this recompense. Oncor continues to receive approximately 4,000 daily inquiries regarding the use of CIID cards which are no longer compensated.

context. Both Congress and the Commission cite equitable considerations in support of the compensation mechanism.[3] In its Report and Order In the Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, 6 FCC Rcd 4736, 4745 (1991), the Commission acknowledged the injustices associated with access code calling. "By providing the equipment through which the consumer initiates the calls to the OSP of choice, the payphone owner is benefitting the public but is not guaranteed any revenue for access code calls. It is only fair that these costs be shared by consumers who benefit from the ability to make access code calls ...." Id.

There is little doubt that public payphone premise owners benefit the public by increasing the availability and access to telephone use. These public payphone owners, much like private payphone owners, provide heat, space and light, thereby incurring costs associated with the support of public payphones. Although the public payphone premise owner is sharing the expenses associated with maintaining that public payphone, they receive no revenue when calls are routed to providers of operator services which are other than the presubscribed provider.

Moreover, presubscribed operator service providers incur expenses which are not compensated when callers exercise their

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[3]See S. Rep. 439, 101st Cong., 2d Sess. 19 (1990)(citing the threat of "a significant loss of revenue" as the impetus for compensation); In the Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, 6 FCC Rcd. 4739, 4745, at ¶34 (1991) (concluding that "considerations of equity require us to prescribe compensation).

right to select an operator service provider other than the presubscribed provider. Operator service providers must supply constant reliable service to the payphones which subscribe to their company, regardless of whether a caller takes advantage of such service through presubscription. The presubscribed operator service provider, however, obtains no revenue for calls routed to the preferred carrier. Consequently, the presubscribed operator service provider is required to maintain the service they are contractually obligated to provide without the revenue necessary to maintain and support that service. The presubscribed operator service provider must then compensate for that loss though its rate charges.

The current situation, therefore, is unfair to the public payphone premise owner, the presubscribed operator service provider, and customer alike, since all parties must bear the financial burden of access code calls. The public payphone premise owner and presubscribed operator service provider are denied the revenue from the access code call, while the consumer is denied a fair rate for the services rendered. Clearly, the public interest is not served by the injustices created by access code calls. A compensation mechanism[4] would shift the burden of

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[4]The proposed compensation mechanism could be similar to that currently prescribed by the Commission for competitive public payphone owners as revised. See generally In the Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, 7 FCC Rcd. 3251 at ¶¶13, 60(1992)(concluding that public payphone owners should receive a per-phone compensation of $6.00 per month for "originating interstate interLATA access code calls.").

the expenses associated with access code calls to the appropriate party; the party receiving the benefit from access code calls.

B. The Growing Problem of Dial-Around Access Code Calls

Although there is some indication that Congress contemplated the growing use of access code calls when TOCSIA was drafted and enacted in 1990,[5] it is clear that Congress could not foresee the immense popularity of what has come to be called "dial-around." The dominant long distance companies are currently engaged in heavy promotion of dial-around access codes, creating a "swelling tide" of non-revenue calls. Margo J. Hackel, Growing Up Together: IPP providers, OSPs In It For The Long Haul?, Perspectives on Public Communication, July 1995, at 27. In fact, the Commission's own statistics indicate that of the 3 billion long-distance calls made from hotel rooms and public phones, 55% of them dialed the carrier of choice directly, dialing around the presubscribed operator provider. Del Jones, More callers dial around to avoid big bill, USA Today, July 10, 1995, at 1. This information suggests that the use of dial-around access codes will continue to grow at a rapid pace, creating a wake of uncompensated financial loss which would be passed, in part, on to the consumer.

Moreover, the resulting higher rates will only exacerbate the current discontent consumers feel toward smaller operator

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[5]"As private pay phone owners unblock these access codes, and as consumers become more educated about the use of these access codes, the independent pay telephone owners face the threat of a significant loss of revenue. " S. Rep. 439, 101st Cong., 2d Sess. 19 (1990).

service providers (sometimes called alternative operator service providers) who must already charge a higher rate for their services. Such activity discourages competition by allowing the dominant operator service providers to retain the revenue from dial-around access code calls, passing those savings to the consumer who consequently receives a lower rate for that call. Clearly, the current system results in a grossly unfair financial gain for the dominant dial-around operator service provider, thereby discouraging consumers from using an alternative operator service provider. The results of such activity are contrary to the public interest since they frustrate competition among operator service providers.

CONCLUSION

The Commission must realize that equity demands a compensation mechanism for aggregators other than private payphone premise owners and operator service providers. The rationale supporting the existing compensation scheme for competitive payphone owners is equally applicable to owners of public payphones and operator service providers. Furthermore, the growing popularity of "dial-around" frustrates competition within the telecommunication industry. For the forgoing reasons, Oncor Communications, Inc. respectfully requests grant of its Petition.

Respectfully Submitted,

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Date: August 7, 1995

CERTIFICATE OF SERVICE

I, Nancy Appel, hereby certify that I have on this 7th day of August, 1995, sent via U.S. First Class Mail, postage prepaid, a copy of the foregoing "Petition for Rulemaking" in the Matter of Compensation Provided To Public Payphone Premise Owners and Presubscribed Operator Service Providers For Access Code Calls, filed this date with the Acting Secretary, Federal Communications Commission, to the persons on the attached service list.

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