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

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CS Docket No. 96-45
	)	
	)	

COMMENTS OF OPTEL, INC.

OpTel, Inc. ("OpTel"), by its attorneys, submits these comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-referenced proceeding. OpTel, through its subsidiaries, operates private cable and telecommunications systems providing video programming and shared tenant telecommunications services ("STS") to residents of multiple dwelling units ("MDUs") in several major U.S. cities.

DISCUSSION

In the NPRM, the Commission seeks comment on a wide variety of issues related to the implementation of new Sections 254 and 214(e) of the Communications Act, which were added by the Telecommunications Act of 1996. The manner in which these sections are implemented may have a significant impact on OpTel's future business plans.

OpTel provides telephone services on a private carriage basis through STS systems. In certain cities, however, OpTel's systems are expanding toward the point at which it will be cost and service effective for OpTel to install its own dedicated switch to integrate its systems citywide and to provide a single interconnection point with the incumbent local exchange carrier ("LEC") or other alternative carriers. If, at that point, OpTel were deemed to be a "telecommunications carrier,"[1] despite the fact that it would continue to serve only residents of MDUs and private communities with which it has privately negotiated access and service agreements, it would be possible that a state may, "upon its

[1] See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) § 3(a)(49), (51) (A "'telecommunications carrier' means any provider of telecommunications services.... 'telecommunications service' means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.").

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own motion," designate OpTel an "eligible telecommunications carrier" and impose upon it universal service obligations.[2] Naturally, because of the facilities and architecture of OpTel's telephone systems, it would be impossible for OpTel to meet universal service obligations to schools, hospitals, or any other consumer who was not a resident of an MDU or private community at which OpTel provides service.

Consequently, OpTel urges the Commission to establish a federal definition, for universal service purposes at least, of "telecommunications carriers" that would expressly exclude private carriage telecommunications services of the type that OpTel's systems provide, regardless of the facilities used to provide that service. In order to be consistent with the statutory language, the Commission's definition should provide that entities providing telecommunications solely to residents of MDUs, private communities, or other residential community unit pursuant to privately negotiated access or service agreements, shall not be deemed to be providing telecommunications to "such classes of users as to be effectively available directly to the public."

This definition would be consistent with the Commission's prior policies. To begin with, the status of an STS provider never, from the Commission's viewpoint, has been a function of the technology used by the provider.[3] Thus, to the extent that OpTel's systems continue to provide STS, there is no reason that those systems should be reclassified and required to provide universal service (as common carriers) simply by virtue of a change in the facilities or network architecture used to provide service.

Moreover, whether or not systems such as those operated by OpTel continue to offer STS, as defined by the states, they will continue to be operated on a private carriage basis. As the Commission has explained on numerous occasions, "a private carrier ... does not undertake to serve all persons indifferently and, therefore has no power to influence the price or availability of services. A private carrier enters into individually negotiated medium-to-long-term contracts with a relatively stable customer base having compatible

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[2] Telecommunications Act of 1996, § 102(a)(2).

[3] See In re: Policies Governing the Provision of Shared Telecommunications Services, 3 FCC Rcd 6931 (1988) (describing STS systems that use an "unpartitioned switch"); see also In re: IBM request for Ruling re State Regulation of Shared Telecommunications Services Systems, File No. ENF-85-45, Memorandum Opinion and Order (rel. Jan. 27, 1986) ("In an unpartitioned configuration, the STS system aggregates the local service needs of all system users and connects the STS switch to the LEC's CO with the minimum number of lines required to meet overall system requirements. In addition, all calling among STS users would be switched through the STS switch and not the LEC CO."). Similarly, the Commission long has recognized that STS may provided on a private carriage basis. See, e.g., Telecommunications Access Provider Survey, PN, CCB-IAD-950119 (rel. Nov. 3, 1995) ¶ 6.

service needs with that of the carrier and its other customers."[4] The telecommunications services offered by OpTel will continue to provided on a private basis to customers in MDUs or private communities at which OpTel has individually negotiated access rights. OpTel does not hold itself out to provide service to "all persons indifferently," but will serve a "relatively stable customer base having compatible service needs with that of [OpTel] and its other customers."

Private carriers such as OpTel are providing valuable competitive choices to consumers in markets that traditionally have been dominated by the lone local exchange carrier. Private carriers, however, have nothing approaching the facilities of a traditional LEC system such that they would be capable of providing the universal service features identified in the NPRM to consumers not residing within a private community or MDU served by the private carrier. Where a private carrier's system is located in an area served by an "incumbent LEC,"[5] therefore, it is far more reasonable to require the incumbent LEC to provide universal service and for it to receive the subsidies available for providing that service. Indeed, the imposition of universal service obligations on private carriers would likely either drive them from the market or force them to configure their systems in an inefficient manner in order to avoid reclassification as "eligible telecommunications carriers." Neither result would serve the public interest.

CONCLUSION

In conclusion, whether or not OpTel expands the facilities it uses to provide private communications services, it cannot reasonably be required to provide service on demand outside of the MDUs and private communities to which it has access. OpTel urges, therefore, that the Commission adopt in this proceeding specific federal limitations, at least for universal service purposes, on the definition of a "telecommunications carrier"

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[4] In re General Telephone Co. of the Southwest, 3 FCC Rcd 6778 (1988); see also, e.g., In re Independent Data Communications Mfgs. Ass'n, 10 FCC Rcd 13717 (1995); In re National Rural Telecommunications Coop. v. Southern Satellite Systems, Inc., 7 FCC Rcd 3213 (1992).

[5] See new Section 251(h).

that would exclude STS providers and other private carriers, whatever the technology employed by these entities to deliver service to their customers.

Respectfully submitted,
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