

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

In the Matter of )  
 )  
Implementation of the Subscriber Carrier )  
Selection Changes Provisions of the )  
Telecommunications Act of 1996 )  
 )  
One Call Communications, Inc. d/b/a Opticom )  
Petition for Waiver )

CC Docket No. 94-129

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

PETITION FOR CLARIFICATION

On May 28, 1999, the Common Carrier Bureau ("Bureau") granted One Call Communications d/b/a Opticom ("One Call") a limited waiver of the authorization and verification requirements of the Commission's rules, which were adopted by the *Carrier Change Orders*,<sup>1</sup> "to enable One Call to change the preferred carrier of payphone aggregators whose payphones are currently presubscribed to American Network Exchange, Inc. d/b/a Amnex (Amnex) from Amnex to One Call."<sup>2</sup> One Call requested the waiver

<sup>1</sup> *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10674 (1997), Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*); *Policies and Rules Concerning Unauthorized Changes of Consumer's Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993) (*PIC Change Recon. Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C. 2d 911 (*Allocation Order*), 101 F.C.C. 2d 935 (*Waiver Order*), *reconsideration denied*, 102 F.C.C. 2d 503 (1985) (*Reconsideration Order*) (the *Reconsideration Order* denied reconsideration of both the *Allocation Order* and the *Waiver Order*).

<sup>2</sup> *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; One Call Communications, Inc. d/b/a Opticom Petition for* (footnote continued on next page)

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“to allow it to be designated the preferred operator service provider for customers of Amnexus without first obtaining the customers’ authorization and verification[,]” as required by the *Carrier Change Orders*.<sup>3</sup> The Bureau found that grant of the relief requested by One Call was in the public interest because “[w]ithout this waiver, end users of payphones that are currently presubscribed to Amnexus are at risk of being unable to make long distance calls from these payphones.”<sup>4</sup>

The American Public Communications Council (“APCC”), the national trade association of independent payphone service providers and manufacturers (“PSPs”), reads the *One Call Waiver* as affirmation that the Commission’s slamming rules apply to any carrier associated with a payphone whenever routing to that particular carrier is controlled by the local exchange carrier (“LEC”) in its central office switch. APCC is concerned, however, that the *One Call Waiver* could conceivably be misread by others as affecting issues pending in another Bureau proceeding regarding the application of the primary interexchange carrier charge (“PICC”) to the primary interexchange carrier (“PIC”) of a payphone.<sup>5</sup>

By filing this petition, APCC seeks to foreclose the possibility that others may mistakenly rely on the *One Call Waiver* to improperly advance their arguments in the

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*Waiver*, CC Docket No. 94-129, *Order* (Com.Car.Bur. DA 99-1033, released May 28, 1999) (“*One Call Waiver*”).

<sup>3</sup> *Id.* at para. 3.

<sup>4</sup> *Id.* at para. 6.

<sup>5</sup> *Commission Seeks Comment on Specific Questions Related to Assessment of Presubscribed Interexchange Carrier Charges on Public Payphone Lines*, CCB/CPD No. 98-34, DA 98-845, released May 4, 1998) (“*PICC for Payphone Proceeding*”)

*PICC for Payphone Proceeding*. APCC accordingly requests that the Bureau clarify that the *PICC for Payphone Proceeding* is not affected by the *One Call Waiver*; *One Call Waiver* holds that the *slamming* rules apply to *both* the 1+ and 0+ carriers associated with payphones where the carrier to whom the call is routed is controlled by the central office.<sup>6</sup> The clarification would continue the application of the rules and policies set forth in the *Carrier Change Orders* without inadvertently prejudging a related issue pending elsewhere in the Bureau.

In the *PICC for Payphone Proceeding*, the Commission will examine which of the two carriers associated with a payphone served by a coin line should have the PICC imposed on it. Payphones that are on a coin line have one carrier that carries 1+ calls that are paid for with coins,<sup>7</sup> and a carrier (which can be the same or a different carrier) that carries 0+ operator service calls that are billed to a calling card or third party. The Commission's inquiry is necessary, in large part, to ensure that there is an equality of treatment between how the LEC applies the PICC. The need to ensure equality of

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<sup>6</sup> Thus, the ruling applies primarily to "dumb" phones connected to "coin lines" or their equivalent. To the extent the call is route by the payphone, *e.g.*, where mechanisms internal to the payphone insert access codes, transparently, to the end user, as in "smart" payphones, the slamming rules would not apply to changes in such customer premises-equipment-based routing algorithms.

<sup>7</sup> Some independently-owned payphones have no 1+ PIC at all. As APCC has explained in its comments in the *PICC for Payphone Proceeding*. Many independent PSPs today do not PIC their payphones to IXCs. Without a PIC, an independent PSP can help reduce the possibility of being held liable for fraudulent charges that would be billed to the PSP. An independent PSP achieves this without any burden on the calling public. From the caller's point of view, nothing has changed. Callers can still place 1+ long distance coin calls on a "no-PIC" payphone without any additional effort; the call is simply routed transparently to the carrier through the payphone's use of an access code within the payphone. Callers can also continue to make 0+ calls with the use of a calling card or by other alternate billing, such as collect calling, through the presubscribed carrier.

treatment stems from differences in the technology used by independent PSPs as compared to LEC PSPs to route calls originated by payphone end users to the carriers that will carry the calls. Most independent PSPs use “smart” payphones today, which use intelligence within the payphone set to route both the 0+ and 1+ call, rather than functions located in the LEC central office (as used by “dumb” payphones). The large majority of LEC payphones, on the other hand, are “dumb” payphones that must rely on LEC central office routing.

The differences in the technological underpinnings of routing calls from independent payphones and LEC-owned payphones are the result of how competition in the payphone industry has evolved. Section 276 of the Act, however, mandated that the Commission make no regulatory distinctions between independent PSPs and LEC PSPs. The need to reconcile the differences in the technology used by the different types of providers with the statutory mandate that the providers not be treated differently, while simultaneously eradicating any residual discrimination resulting from pre-1996 Act regulatory treatment, is the basis for *PICC for Payphones Proceeding*.

While the record in the *PICC for Payphone Proceeding* contains extensive background on the dual-carrier situation for payphones and the policy issues that have arisen in such an environment, the *One Call Waiver* contains not the slightest reference to this reality of the payphone business. It is not clear from the waiver order itself or the pleading filed by One Call whether Amnex is the 1+ or 0+ carrier of the payphones in question. Nor does the *One Call Waiver* specify if the payphones for which the waiver is sought are “smart” payphones, as generally provided by independent PSPs, or “dumb”

payphones, as typically provided by LEC PSPs.<sup>8</sup> Without clarification by the Bureau about the scope of the waiver and which payphone carrier is the subject of the waiver, the *One Call Waiver* could be construed to affect issues pending in the *PICC for Payphone Proceeding*, where the Bureau has built a substantial record on the payphone carrier issue and in which the parties with the most knowledge about the issue have lent their expertise.

To avoid an unwarranted impact on the result in the *PICC for Payphone Proceeding* and to prevent the fostering of regulatory uncertainty, APCC respectfully requests that the Bureau clarify the applicability and limited scope of the *One Call Waiver*, as discussed above.

Respectfully submitted,



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<sup>8</sup> The order implies it is both resorting to outdated labels “private and public.” In using outdated, pre-1996 Act terminology such as “private payphone” and “public payphone,” the waiver order appears to apply to the payphones of both types of providers.

**CERTIFICATE OF SERVICE**

I hereby certify that on June 28, 1999, a copy of the foregoing Petition for Clarification or, In the Alternative, Reconsideration was delivered by hand or United States first-class mail, postage pre-paid to the following parties:

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