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

In the Matter of	)	
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	**CC Docket No. 96-128**
	)	
Oklahoma Independent Telephone Companies Petition for Declaratory Ruling	)	**CCB/CPD No. 99-31**

To: Chief, Competitive Pricing Division, Common Carrier Bureau

REPLY COMMENTS

The Oklahoma Independent Telephone Companies ("Oklahoma Independents" or "Independents"),[1] by counsel, hereby file these reply comments[2] in response to the comments of the American Public Communications Council and the Oklahoma Payphone Association (the "Payphone Associations")[3] and the comments of the Corporation Commission of the State of Oklahoma ("OCC")[4] filed in this proceeding. The sole issue raised in the Independents' Petition

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[1] The Oklahoma Independents are: Chickasaw Telephone Company, EagleNet, Inc., KanOkla Telephone Association, Inc., Oklahoma Telephone & Telegraph, Inc., Pine Telephone Company, Santa Rosa Telephone Cooperative, Inc., and Valliant Telephone Company.

[2] See Public Notice, DA 99-2061, released October 4, 1999; see also See Petition for Declaratory Ruling, CC Docket No. 96-128, filed September 22, 1999 (the "Petition").

[3] See Joint Comments of American Public Communications Council and the Oklahoma Payphone Association, CCB/CPD No. 99-31, filed November 4, 1999 ("Payphone Associations' Comments").

[4] The OCC has informed the Independents that it filed comments on the Petition and that the OCC comments consisted of the "Staff's Second Brief" filed in the underlying OCC proceeding. See Comments of the Oklahoma Corporation Commission, CCB/CPD No. 99-31, dated November 2, 1999, attaching "Staff's Second Brief, Cause No. PUD 970000024, et al., filed October 29, 1998" ("OCC Comments/Staff's Brief"). The Staff's Second Brief was part of the record upon which the April 16, 1999 Final Order ("Final Order") was issued by the OCC. The Final Order, which is the subject of this proceeding, was attached to the Petition.

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is "whether a state can refuse to allow a local exchange carrier ('LEC') to file cost-based rates."[5] It is clear that the answer to this question is "no." The Payphone Associations agree.[6] Accordingly, because the OCC failed to follow extant FCC pricing directives regarding payphone access lines ("PALs") in the OCC's Final Order, the Independents request that the Federal Communications Commission ("FCC" or "Commission") grant the Petition and declare that the Independents have the right to establish cost-based PAL rates in order to ensure that payphone line services provided by them are tariffed in accordance with the Commission's directives.[7]

The Independents respectfully submit that the OCC Comments/Staff Brief provide no basis for FCC action other than a grant of the Petition. The OCC Comments/Staff Brief merely reiterate the flawed conclusion of the OCC that LECs do not have the right to file cost-based rates for PALs.[8] Moreover, the OCC Comments/Staff Brief fail to address how the OCC's position is consistent with the FCC's directives, including the unambiguous statement that the FCC "will rely on the states to ensure that the basic payphone line is tariffed by the LECs in

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[5] See Petition at 1-2 (footnote omitted). The resolution of this issue requires the application of the FCC's decisions regarding the implementation of Section 276 of the Communications Act of 1934, as amended (the "Act"). See generally In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, 11 FCC Rcd 20541 (1996) ("Report and Order"); Order on Reconsideration, 11 FCC Rcd 21233 (1996) ("Reconsideration Order") (collectively "Payphone Orders").

[6] See Payphone Associations Comments at 3.

[7] See also Petition at 7-8.

[8] Compare Final Order at 2 and OCC Comments/Staff Brief at 1 and 2-3.

accordance with the requirements of Section 276."[9] Accordingly, the Independents request that the FCC disregard the OCC Comments/Staff's Brief as inconsistent with the Payphone Orders.

The Independents also request that the Commission confine itself to the narrow and specific request made by the Independents. The efforts by the Payphone Associations to expand unnecessarily and inappropriately the scope of this proceeding should be disregarded. Contrary to the Payphone Associations' position, the Commission is not "being asked to make determinations regarding how the elements of its four-part standard are to be applied to small, rate of return regulated LECs."[10] As indicated above, this proceeding addresses the discrete issue of whether a state commission can preclude a LEC from making a cost-based showing for its PAL rate.[11] Accordingly, the Independents request that FCC disregard the positions advanced by the Payphone Associations that are outside of the narrow scope of this proceeding. Consistent with existing FCC decisions, the Payphone Associations will be provided an opportunity to raise their theories before the OCC at the time that it conducts further proceedings arising from a FCC grant of the Petition.

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[9] Reconsideration Order, 11 FCC Rcd at 21308, ¶ 163 (emphasis supplied); see also Petition at 5.

[10] Payphone Associations' Comments at 9. The tariffing requirements were stated by the Independents as follows:

> Tariffing for these LEC payphone services must be: (1) cost based; (2) consistent with the requirements of Section 276 with regard, for example, to the removal of subsidies from exchange and exchange access services; and (3) nondiscriminatory. States must apply these requirements and the Computer III guidelines for tariffing such intrastate services. (emphasis supplied).

Petition at 7, citing Reconsideration Order, 11 FCC Rcd at 21308 (¶ 163).

[11] See, e.g., id. at 1-2.

Assuming, arguendo, that the Commission should address the Payphone Associations' request for "clear guidance,"[12] that request should be rejected. The bases that the Payphone Associations offer to justify the need for "guidance" lack any factual, public policy or legal basis, and otherwise attempt to have the Commission reconsider issues previously addressed and dismissed. For example, there is no factual basis for Payphone Associations' suggestion that "guidance" is necessary to address their concerns over potential discrimination.[13] The Independents proposed one PAL rate applicable to all Payphone Service Providers ("PSPs"), regardless of their use of a "smart" or "dumb" payphone or their affiliation to one of the Independents. Accordingly, any claims of PAL pricing discrimination are baseless; all PSPs are charged the same rate.

The Payphone Associations' suggestion that "guidance" is necessary to ensure the advancement of the underlying policies of Section 276 is equally flawed. In effect, the Payphone Associations offer the notion that, to be consistent with Section 276, a PAL rate must be based on "Total Service Long Run Incremental Cost" ("TSLRIC")[14](which, in turn, has been construed by the FCC as consistent with its use of "Total Element Long Run Incremental Cost" ("TELRIC")).[15] This notion, however, has previously been addressed and dismissed by the

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[12] See Payphone Associations' Comments at 9.

[13] See, e.g., id. at 8-9, 14-15.

[14] See id. at 12-14.

[15] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Radio Service Providers, First Report and Order, CC Docket Nos. 96-98 and 95-185, 11 FCC Rcd 15499(1996)("Interconnection Order") at 15844(¶672). Although subject to current judicial review, TELRIC pricing principles were used by the FCC in implementing certain directives contained in Sections 251 and 252 of the Act.

FCC. In the Payphone Order, the FCC clearly indicated that the Independents, as rate of return carriers, could utilize the tariffing rules embodied in, among other sections, Section 61.39,[16] which, in turn, rely on the historical costs of the carrier. Moreover, the FCC has already declared that it would

> decline to require, as proposed by AT&T, that the pricing regime under Sections 251 and 252 apply to all Section 276 payphone services offered by incumbent LECs. Section 276 does not refer to or require the application of Sections 251 and 252 to LEC payphone services. In addition, the elements and services to be offered under Sections 251 and 252 are not available to entities that are not telecommunications carriers, and many PSPs are not telecommunications carriers.[17]

Conspicuously absent from the Payphone Associations' Comments is any effort to reconcile their position with these pronouncements. Accordingly, there is no basis for the notion that use of Section 61.39 tariffing rules would frustrate the further development of the payphone industry, and, thus, no "guidance" as that term is construed by the Payphone Associations is necessary or appropriate.

The Payphone Associations also base their request for "guidance" on their incorrect suggestion that the existing Universal Service Fund ("USF") procedures are "an inherently arbitrary allocation process designed to accomplish a fundamentally different objective than that of justifying rates"[18] while, at the same time, suggesting that it is appropriate to rely on future USF procedures as a proper costing methodology for PALs.[19] As an initial matter, the USF

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[16] See, e.g., Report and Order, 11 FCC Rcd at 20614 (¶146).

[17] Id., 11 FCC Rcd at 20615(¶147) citing Interconnection Order, 11 FCC Rcd at 15936 (¶876); see also Petition at 2, n.4.

[18] Payphone Associations' Comments at 10.

[19] See id. at 12; see also id. at 19.

procedures in place for rural telephone companies are based on tested, FCC-prescribed costing procedures. Thus, there is no basis to support the Payphone Associations' position that the current USF procedures used by the Independents are an "inherently arbitrary allocation process."[20] Equally flawed is the Payphone Associations' reliance on non-rural LEC USF procedures.[21] The Payphone Associations' position directly conflicts with the FCC's policy that rural telephone companies such as the Independents are not required to follow such forward-looking models until the FCC determines otherwise.[22]

Finally, the Payphone Associations suggest that "guidance" is necessary to ensure that the OCC undertakes proper rate development.[23] The Payphone Associations are wrong. The only appropriate forum to raise concerns regarding the pricing of PALs by the Independents at this time is the OCC. The Independents did not request the FCC to prescribe PAL rates,[24] nor,

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[20] Id. at 10.

[21] See id. at 12. Each of the Independents is a "rural telephone company" under the Act. See 47 U.S.C. § 153(37); see also Public Notice, DA 98-1205, released June 22, 1998. The approximate number of access lines that each operates is as follows: Chickasaw Telephone Company (6799), EagleNet, Inc. (8156), KanOkla Telephone Association, Inc. (1308), Oklahoma Telephone & Telegraph, Inc. (2085), Pine Telephone Company (6303), Santa Rosa Telephone Cooperative, Inc. (699), and Valliant Telephone Company (2248). Accordingly, there is no basis for the Payphone Associations to suggest that expansion of this proceeding is necessary because this proceeding is involves pricing of PALs by "mid-size and large LECs." Payphone Associations' Comments at 20. It is plain that none of the Independents is a mid-size or large LEC.

[22] See, e.g., In the Matter of Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45, FCC 99-306, released November 2, 1999 at para. 118.

[23] See, e.g., Payphone Associations' Comments at 16-18 (PAL rates need to avoid "double recovery" of costs).

[24] See Petition at 3, n.7.

under existing FCC rulings, is such action appropriate where the state commission has not undertaken the proper tariff review. "We will rely on the states to ensure that the basic payphone line is tariffed by the LECs in accordance with the requirements of Section 276."[25] The Payphone Associations provide no basis to justify the abandonment of this approach in the instant proceeding. Reliance on the OCC to establish cost-based PAL rates is entirely appropriate particularly where: (1) the Payphone Associations have demonstrated no facts to sustain their implicit assumption that the OCC is incapable of conducting a proper rate proceeding; and (2) as the Petition indicated,[26] the OCC has not had an opportunity to review the pricing information provided by the Independents because of the OCC's erroneous conclusion that PALs need not be cost-based (an error that will be rectified by a grant of this Petition). In short, the OCC is the proper venue for the Payphone Associations' to address their theories of PAL pricing.

Conclusion

As demonstrated in the Petition, the OCC's Final Order precludes the filing of cost-based PAL rates. Such a result is contrary to the Commission's Payphone Orders. Accordingly, the Independents seek a Declaratory Ruling that they have the right to establish cost-based PAL rates in order to ensure that their payphone line services are tariffed in accordance with the Commission's directives. Because the OCC Comments/Staff Brief fail to address the relevant FCC directives, the Independents request that the position of the OCC be disregarded.

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[25] Reconsideration Order, 11 FCC Rcd at 21308(¶ 163)(emphasis added); see also Petition at 5.

[26] See id. at 7.

Moreover, to the extent that the Payphone Associations' Comments go beyond the discrete issue raised in the Petition, those Comments should be rejected. Further, for the reasons provided herein, the Payphone Associations have failed to demonstrate the need for an unnecessary and inappropriate expansion of the narrowly tailored issue raised in the Petition. Consistent with existing Commission policies, the Payphone Associations will be provided an opportunity to raise their theories before the OCC at the time the OCC undertakes further proceedings arising from a grant of the Petition.

Respectfully submitted,

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November 19, 1999

CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Reply Comments" of the Oklahoma Independent Telephone Companies was served on this 19th day of November, 1999, by first class, U.S. mail, postage prepaid to the following parties:

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