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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Low-Volume Long Distance Users	)	CC Docket No. 99-249
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

**COMMENTS OF OPERATOR COMMUNICATIONS, INC.
IN SUPPORT OF ONE CALL COMMUNICATIONS, INC.'S
PETITION FOR RECONSIDERATION AND CLARIFICATION**

Operator Communications, Inc. ("OCI"), by its attorneys, hereby submits comments in support of the petition filed by One Call Communications, Inc. d/b/a Opticom ("One Call") requesting the Federal Communications Commission ("Commission") to reconsider and clarify the Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket no. 99-249 and Eleventh Report and Order in CC Docket No. 96-45 (the "CALLS Order") released on May 31, 2000 in the above-captioned proceedings.[1] OCI fully agrees with One Call that the Commission should reconsider the CALLS Order and clarify that payphone lines are to be treated as single-line business lines for purposes of assessing the Presubscribed Interexchange

[1] Access Charge Reform, *Sixth Report and Order in CC Docket Nos. 96-262 and 94-; Report and Order in CC Docket no. 99-249; Eleventh Report and Order in CC Docket No. 96-45*, FCC 00-193, 2000 FCC LEXIS 2807 (rel. May 31, 2000).

Carrier charge ("PICC charge") under the access charge reform mechanism adopted in the CALLS Order.[2]

OCI, like One Call, is a provider of presubscribed operator-assisted (*i.e.*, 0+) interexchange calling services from payphones throughout the United States. As noted in One Call's petition, the Commission failed to address significant issues regarding the application of PICC charges to payphone lines that One Call (and OCI) raised in comments on the CALLS Proposal, and the Commission's failure to address that important issue has resulted in the continuation of LECs' unlawful and discriminatory assessment of PICC charges on payphone PICs. In addition, One Call proposes two alternative minor adjustments to the CALLS Order that would resolve One Call's issues with the application of the PICC charge to payphones. OCI concurs with One Call that reconsideration of the CALLS Order and a clarification that payphone lines are to be treated as single-line business lines for PICC charges are necessary to promote the Commission's policies of facilitating competitive, affordable, and non-discriminatory service. By supporting One Call's petition, OCI does not waive or abandon its primary position that payphone lines should not be subject to PICC charges.[3] OCI maintains its previously stated position that if PICC charges are to be assessed on payphone lines, then the lines should be treated like single-line business lines under the CALLS Proposal, and thus, the charge should be

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[2] The CALLS Order was the result of a rulemaking proceeding in which the Commission addressed a proposal for interstate access charge and universal service reform submitted by the Coalition for Affordable Local and Long Distance Services ("CALLS Proposal").

[3] See Access Charge Reform, Comments of Oncor Communications, Inc. on Notice of Proposed Rulemaking and Request for Clarification, November 12, 1999, at 4 & n.6.

bundled with the Subscriber Line Charge and paid by payphone location provider, not the payphone PIC.

I. The Commission Failed to Address Significant Issues Raised by Commenters.

The Commission, without any explanation, has ignored significant issues raised repeatedly by One Call and OCI in this proceeding regarding the application of PICC charges to payphone access lines under the CALLS Proposal. The Commission claims that the access charge reforms adopted in the CALLS Order will bring lower rates to customers and support effective competition.[4] Under the scheme established by the CALLS Order, the residential and single-line business line end user common line charge (also known as the subscriber line charge ("SLC")) and the PICC charge are combined into a single charge paid by the end user. In contrast, the multiline business line SLC charge is paid by the end user and the PICC charge is assessed on the presubscribed interexchange carrier ("IXC"). Without a clarification that payphone lines are considered single-line business lines for purposes of assessing PICC charges, none of purported benefits of the access charge reform set forth in the CALLS Order will be realized by presubscribed 0+ carriers at payphones or by their customers.

OCI agrees with One Call that the unique circumstances of presubscribed 0+ carriers at payphones raise important issues that should have been considered by the Commission and mandate the conclusion that payphone lines should be treated as single-line business lines for purposes of assessing a PICC charge under the current Commission rules. Requiring a presubscribed 0+ carrier to pay the PICC charge associated with a payphone violates the purpose of the PICC charge, which is to permit a LEC to recover the costs of providing access to the

[4] CALLS Order, ¶¶ 1-3.

public switched network in a cost-causative manner.[5] First, the presubscribed 0+ carrier at a payphone does not request a local access line or connect the payphone to that line, and thus, does not cause the LEC to incur any costs. Rather, the payphone provider or a premises owner that requests a payphone provider to install a payphone causes a LEC to incur the cost of providing an access line. Second, a presubscribed 0+ carrier at a payphone, unlike the presubscribed IXC at residential and business telephones, handles only an insignificant fraction of the interexchange traffic generated by the telephone for which it is the presubscribed IXC. The assessment of a PICC charge on the presubscribed 0+ carrier at a payphone effectively requires that carrier to subsidize the majority of the long distance calls made from that payphone, while not being able to collect any revenue from the majority of calls made from those calls.

In addition, treating payphone lines as multiline business lines, and thereby imposing a PICC charge on the presubcribed IXC of a payphone line, impedes the Commission's goals of providing competitive and affordable service. As One Call noted, and as OCI noted in its comments in the initial phases of this proceeding, the presubscribed 0+ carriers at payphones handle such low volumes of calls at each payphone that the total monthly revenue received from a payphone by the presubscribed 0+ carrier is often less than the amount of the multiline business line PICC charge. In the case of OCI, approximately eighty percent of the payphones for which OCI is the presubscribed 0+ carrier generate no monthly interstate revenues for OCI. Of those payphones served by OCI which are used to originate some 0+ interstate calling, almost half of those payphones do not generate sufficient revenues to absorb the PICC charges being assessed on OCI at the current multiline business line PICC rates. Smaller carriers such as One Call and

[5] See Access Charge Reform, *First Report and Order*, 12 FCC Rcd 15982, ¶ 104 (1997).

OCI who are primarily 0+ carriers serving payphones are especially financially harmed if they are directly subject to PICC charges at the multiline business line rate.[6] The imposition of the PICC charge on presubscribed 0+ carriers, especially at the multiline business line rate, will cause many of those carriers to cease providing service, thereby decreasing the availability of 0+ services at payphones and eventually reducing the availability of payphones at many locations where such public phones are most needed.

Moreover, recovering the PICC charge from end users is not a viable or just solution for presubscribed 0+ carriers at payphones. Presubscribed 0+ carriers, as small IXCs, do not generate sufficient traffic volume to spread the cost of the multiline business line PICC charge among a broad base of users. Although a 0+ carrier could increase rates to consumers or assess a surcharge on each 0+ call to recover the PICC charge, such increases would make 0+ service too expensive for many consumers. Indeed, in order to recover the current PICC charges for multiline business lines being assessed, OCI would need to impose a per call charge in the amount of $4.32 on each completed interstate 0+ call.[7] In addition, given the fact that 0+ calls comprise only an insubstantial percentage of interexchange calls placed from a payphone, it would be patently unfair to require the few 0+ consumers at payphones to shoulder the entire

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[6] The Small Business Administration recently concluded that the Commission did not comply with its statutory duty to consider small business issues and concerns in the CALLS Order. Final Regulatory Flexibility Analysis Review, United States Small Business Administration, Office of Advocacy, Sept. 12, 2000, at 2 ("SBA Review"). The SBA Review stated that given the disadvantageous effect of assessing the multiline business line PICC rate on small carriers, the Commission should have addressed comments of parties that urged the Commission to eliminate the disparate treatment of single-line and multiline business lines by requiring LECs to combine the multiline business line PICC charge with the subscriber line charge and to collect a single charge directly from end users. Id. at 8-9.

[7] See Reply Comments of Oncor Communications, Inc., December 3, 1999, at 4.

PICC charge while the majority of the customers at payphones who receive the benefit of being connected to the public switched network pay nothing for that benefit.

OCI also agrees with One Call that the Commission's failure to utilize this proceeding to clarify whether payphone lines are considered single-line or multiline business lines when assessing the PICC charge perpetuates the LECs' discriminatory assessment of PICC charges. LECs have a practice of assessing the PICC charge on the presubscribed 1+ carrier at independently-owned payphones (*i.e.*, non-LEC owned payphones), while assessing the PICC charge on the presubscribed 0+ carrier at LEC-owned payphones. A presubscribed 1+ carrier at an independently-owned payphone is chosen by the payphone provider and can pass the PICC charge onto the payphone provider in its monthly bill. However, a presubscribed 0+ carrier does not have a business relationship with the LEC payphone provider and is unable to pass the PICC charge onto the LEC payphone provider. Therefore, as One Call explains in detail in its petition, the LECs' discriminatory practice causes presubscribed 0+ carriers at LEC owned payphones to pay a disproportionate amount of PICC charges.

Despite receiving comments stressing the importance of the treatment of payphone lines in the CALLS Proposal to providers of 0+ payphone calling services, the CALLS Order did not address whether payphone lines are considered single-line or multiline business lines for purposes of assessing PICC charges.[8] Whether payphone lines should be treated as single-line or multiline business lines in the context of PICC charges is not new to the Commission; the Commission has been aware of the issue for over two years. Based in part the questionable lawfulness of LECs' access tariffs that treat payphone lines as multiline business lines for PICC

[8] The CALLS Order contains no mention of the payphone line/PICC issue despite the fact that OCI and One Call raised the issue in not less than seven pleadings.

charge purposes, the Commission released a public notice on May 4, 1998 that requested comment on issues related to the assessment of PICC charges on payphone lines.[9] The Commission received numerous comments in response to the notice, but has not yet determined any issues regarding the assessment of PICC charges on payphone lines.[10] This proceeding, which implemented substantial revisions to common line costs, including PICC charges, should have been, and is on reconsideration, an ideal forum for clarifying that payphone lines should be treated as single-line business lines when assessing PICC charges.

II. One Call's Proposed Solutions Would Have Little or No Impact on LECs' Revenues.

One Call sets forth two ways to alter the Commission's rules, as adopted in the CALLS Order, to remedy its concerns with the application of PICC charges to payphone lines. First, One Call suggests that payphones be treated like multiline business line local exchange subscribers that have not selected a presubscribed IXC. Under that scenario, the LEC would receive the multiline business line PICC rate for each payphone line from the payphone provider, rather than from the presubscribed 0+ carrier at a payphone. Although OCI favors a regulatory change that would transfer responsibility for the PICC charge to the payphone provider, OCI does not support a position that payphone lines are multiline business lines.

Second, One Call proposes that payphone lines be treated like other single-line business lines for assessing the PICC charge. Under that approach, which is favored by OCI, a LEC

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[9] Public Notice - Commission Seeks Comment on Specific Questions Related to Assessment of Presubscribed Interexchnage Carrier Charges on Public Payphone Lines, 13 FCC Rcd 9333 (rel. May 4, 1998).

[10] One LEC which had been assessing PICC charges at the single-line business line rate on payphone lines presubcribed to OCI converted those lines to multiline business lines for PICC purposes in the first billing cycle following implementation of the CALLS Order.

would charge the end user a combined PICC charge and SLC and the presubscribed 0+ carrier at a payphone would not be subject to any PICC charge. LECs would incur a slight negative adjustment to revenue by receiving the single-line business line PICC rate instead of the multiline business line PICC rate for each payphone line served by the LEC. However, payphone lines comprise less than one percent of all switched access lines in the United States.[11] Therefore, LECs receive a de minimus portion of their revenue from payphone lines and the financial impact on LECs of treating payphone lines as single-line business lines when assessing the PICC charge would be negligible.

[11] Preliminary Statistics of Communication Common Carriers, Federal Communications Commission, May 1999, at 24.

CONCLUSION

For all of the foregoing reasons, OCI supports One Call's Petition for Reconsideration and Clarification and respectfully requests the Commission to clarify that PICC charges will be assessed on payphone lines at the single-line business rate, and included in the combined SLC.

Respectfully submitted,

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September 21, 2000

CERTIFICATE OF SERVICE

I, Melodie Kate, a secretary in the law firm of Greenberg Traurig, LLP certify that on the 21st of September 2000, I have caused to be served by hand delivery or United States first class mail, postage prepaid, a true copy of the foregoing Comments of Operator Communications, Inc. in Support of One Call Communications, Inc.'s Petition for Reconsideration and Clarification on the following:

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