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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

OPERATOR COMMUNICATIONS, INC.'S REPLY TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION

Operator Communications, Inc. ("OCI"), by its attorneys, hereby replies to oppositions to petitions for reconsideration filed by Verizon and the Coalition for Affordable Local and Long Distance Service ("CALLS") in the above-captioned proceeding and states as follows:

INTRODUCTION

The petitions for reconsideration have requested the Commission to reconsider certain aspects of 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.[1] One of the petitioners for reconsideration, One Call Communications, Inc. ("One Call"), has asked the Commission to reconsider its failure to

[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).

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address in the CALLS Order an important condition to the CALLS proposal involving the treatment of pay telephone access lines under the CALLS plan. Throughout this proceeding One Call and OCI on repeated occasions have asked the Commission to clarify that pay telephone access lines are to be treated as single-line business lines for purposes of assessing the Presubscribed Interexchange Carrier charge ("PICC charge") as part of the access charge reform mechanism proposed by the CALLS Coalition and adopted in the CALLS Order.[2] Such a clarification would be within the scope of the proposal considered in this proceeding and would neither undermine nor significantly change the access reform plan adopted in the CALLS Order. Despite the fact the One Call and OCI discussed this precise issue in not less than seven pleadings between them in the course of this proceeding, the CALLS Order is totally silent on the question of classification of pay telephone access lines for PICC purposes. The Commission's failure to so much as acknowledge the existence of this important issue, let alone, resolve the matter, is arbitrary and capricious and warrants reconsideration.[3]

I. The CALLS Proceeding Is The Appropriate Forum For Clarifying That Payphone Access Lines Should Be Treated As Single-Line Business Lines For Purposes Of Assessing PICC Charges

CALLS asserts that the PICC issues relating to payphone access lines should not have been addressed in the CALLS Order because those issues are currently before the Commission in

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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] CALLS' assertion at page 3 of its Opposition that the petitions for reconsideration raise challenges that have been "fully addressed and rejected in these comprehensive proceedings" is facially false. Treatment of payphone access lines for PICC purposes was neither fully addressed or rejected. It was summarily ignored.

another proceeding.[4] This statement is incorrect. Contrary to CALLS' view, the issue of whether payphone lines are considered single-line or multiline business lines for the assessment of PICC charges is unlikely to be considered elsewhere. On May 4, 1998, the Commission released a Public Notice seeking comment on a series of filings which questioned the lawfulness of the tariffs of incumbent LECs that assess PICC charges at the multiline business line rate on presubscribed IXCs at payphones.[5] Although the Commission received numerous comments in response the Public Notice, the Commission has not resolved any issue related to the assessment of PICC charges on payphone lines. Moreover, it does not appear that the Commission is inclined to resolve these issues in the context of that public notice. Based on discussions with Commission staff, OCI understands that the Commission does not believe that in should resolve the payphone access line/PICC issues addressed in that proceeding because it is not a rulemaking proceeding. It was largely based on that information that OCI and One Call sought to have the issue addressed in the context of the CALLS proceeding which is a rulemaking proceeding. Thus, the instant proceeding is the most appropriate pending Commission proceeding for the Commission to resolve the PICC treatment of pay telephone access lines.

This rulemaking proceeding is an appropriate forum for clarifying that payphones should be treated as single-line business lines for purposes of assessing PICC charges because a significant portion of the revisions suggested by the CALLS Proposal concern the manner in

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[4] Calls Opposition at 10.

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

which LECs can recover common line costs, including PICC charges, from end users and IXCs.[6] Any change to the manner in which the PICC charge is recovered from subscriber lines, including payphone access lines, is integrally related to the CALLS Proposal and is an issue that necessarily should have been addressed in the CALLS Order.[7]

As CALLS points out, its proposal was subject to four sets of public comments. OCI requested in three separate filings in this proceeding prior to issuance of the CALLS Order that the Commission utilize the rulemaking proceeding to clarify that payphone lines should be treated as single-line business lines when being assessed PICC charges, while One Call Communications, Inc. ("One Call"), another provider of operator-assisted calling services at payphones, filed four separate comments throughout the rulemaking proceeding. Thus, the Commission received no less than seven individual comments addressing the payphone line PICC charge issue. Although the issue was thoroughly and repeatedly raised before the Commission in this rulemaking proceeding, the Commission failed to discuss, or even mention, the existence of the payphone access line/PICC charge issue in the CALLS Order. On reconsideration, the Commission should at long last resolve the questions surrounding treatment

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[6] By filing these reply comments, which address the treatment of payphone lines for purposes of recovering PICC charges, OCI does not waive or abandon its primary position that payphone lines should not be subject to PICC charges. 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.

[7] CALLS was fully briefed on the relationship of the CALLS proposal to OCI and One Call's concerns regarding the treatment of payphone access lines for PICC charge purposes on several occasions, both prior to filing the initial CALLS proposal and prior to filing the revised proposal. Although OCI was hopeful that the matter would be presented to the CALLS members, to date it has no received no response either from the coalition or from any of its members regarding the proposal other than Verizon whose opposition to One Call's petition for reconsideration is discussed below.

of payphone access lines for PICC charge purposes. A fully developed record on that issue has been established in this proceeding, and the manner in which payphone lines are classified for purposes of the PICC charge is well within the scope of the comprehensive access reform proposal offered by CALLS and adopted by the Commission.

II. Clarification That Payphone Lines Are To Be Treated As Single-Line Business Lines Under The CALLS Order Would Be Consistent With Commission Regulations And Policies

Clarification that payphone lines are to be considered single-line business lines for purposes of assessing PICC charges is necessary to ensure that the benefits of access charge reform as contemplated by the CALLS proposal, including lower consumer rates and effective competition, extend to services provided at public telephones. OCI has thoroughly explained its position in previously-filed comments that treating payphone lines as single-line business lines for PICC purposes is fully supported by the Commission's regulations and promotes the Commission's policies of facilitating competitive, affordable, and non-discriminatory service. In this reply, OCI responds to statements in Verizon's Opposition that demonstrate a misunderstanding about the proposal that payphone lines be treated as single-line business lines for the assessment of PICC charges.

First, Verizon's claim that the Commission already has resolved the treatment of pay telephone access lines for PICC purposes is incorrect.[8] The fact that the Commission has elected to classify payphone access lines as multiline business lines for purposes of subscriber line charges is neither relevant to nor dispositive of the classification of payphone access lines for PICC charges. Section 69.152 of the Commission's rules (End User Common Line for Price Cap

[8] Verizon Opposition at 2.

Local Exchange Carriers) articulates a requirement imposing end user common line charges on payphone lines.[9] As Verizon notes, the Commission has held that payphone providers should be assessed multiline business line end user charges.[10] In contrast, Section 69.153 of the Commission's rules ("Presubscribed Interexchange Carrier Charge (PICC)"), which is the only section that references PICC charges, contains no mention of payphone lines. Also, in plain contrast to the situation involving end user charges, the Commission never has stated in any order or regulation that PICC charges are to be assessed upon the presubscribed carriers serving pay telephones at the multiline business line rate. If the Commission had intended to impose PICC charges on payphone lines, or to categorize payphone lines as multiline business lines for PICC charge purposes, it could have included such language in the PICC charge rule. The Commission's silence about the applicability of PICC charges at the multiline business line rate to payphone lines in contrast to its clear expression of its intent that payphone lines be subject to subscriber line charges at the multiline business line rate demonstrates that the Commission recognizes the difference between the two charges. Subscriber line charges are assessed on payphone providers whereas PICC charges are not assessed on the payphone provider but rather on the presubscribed carrier providing 0+ service from the payphones. Certainly the Commission was mindful of this important distinction when it promulgated its rules governing PICC charges and chose not to classify payphone access lines for PICC purposes in the same manner as it classified payphone lines for subscriber line charge purposes.

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[9] See 47 C.F.R. 69.152(a).

[10] Verizon Opposition at 2, citing Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 20541, ¶ 187 (1996).

Second, Verizon incorrectly concludes that common line ratepayers, including residential customers, would be required to bear the resulting cost recovery shortfall if payphone lines were treated as single-line business lines for PICC charge purposes. This too is plainly incorrect. Under the CALLS Order, the end user is obligated to pay the PICC charge as part of a combined subscriber line charge. In the case of payphones, the payphone provider is considered to be the subscriber, not residential ratepayers or even payphone customers.[11] Assessing the PICC charge associated with payphone lines on the payphone provider comports with the principle of cost causation long embraced by the Commission.[12] A payphone provider, by installing payphones on its own initiative, causes the LEC to incur the cost of providing and maintaining the access line to connect the payphone to the public switched network. Similarly, when a premises owner requests a payphone provider to install a payphone, that owner, not the presubscribed IXC, causes the LEC to incur the cost of providing an access line. The payphone providers also collect revenues from calls placed from the payphones, so they are able to recover the PICC charge through those revenues. As described below and has OCI has demonstrated repeatedly throughout this proceeding, carriers providing 0+ calling services from payphones have no such opportunity.

Third, Verizon overlooks the fact that the assessment of the multiline PICC rate on presubscribed 0+ carriers at payphones already has had the untoward effect of reducing the availability of payphone services and, unless this inequitable situation is rectified, will continue

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[11] See, e.g., United States v. Western Elec. Co., 698 F. Supp. 348 (D.D.C. 1988).

[12] The Commission has stated that the PICC charge is "a flat-rated charge that recovers costs in a cost-causative manner." Access Charge Report, *First Order and Report*, 12 FCC Rcd 15982, ¶ 104 (1997).

to do so. As discussed in previous comments filed by OCI and by One Call, presubscribed 0+ carriers at payphones handle such low volumes of 0+ interstate calls at each payphone that in most cases the total monthly revenues received by the 0+ carriers are not sufficient to cover the PICC charge at the multiline business line rate. As a result, many 0+ carriers at payphones have discontinued operations from payphones and others will cease providing service, which will cause a reduction in the availability of 0+ services at payphones, and ultimately cause a reduction in the availability of payphones to customers who rely on payphones as their only means for making long distance calls.

Moreover, collecting the PICC charge from customers is not a viable option for presubscribed 0+ carriers. Given the low amount of revenue generated from each presubscribed payphone, a 0+ carrier would have to increase rates to customers or assess a surcharge in each call in an amount that would make 0+ services too expensive for many customers. In addition, it would be unfair for the customers of 0+ service at payphones to be required to cover the entire PICC charge assessed on a payphone line when those customers encompass an insignificant percentage of customers receiving service at a particular payphone.

CONCLUSION

For all of the foregoing reasons, OCI supports One Call's petition for reconsideration and respectfully urges the Commission to clarify that pay telephone access lines are to be treated as single line business lines under the CALLS Order and included in the combined SLC.

Respectfully submitted,

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October 11, 2000

CERTIFICATE OF SERVICE

I, Melodie Kate, a secretary in the law firm of Greenberg Traurig, LLP certify that on the 11th of October 2000, I have caused to be served by hand delivery or United States first class mail, postage prepaid, a true copy of the foregoing Operator Communications, Inc.'s Reply to Oppositions to Petitions for Reconsideration on the following:

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