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ELECTRONIC EX PARTE FILING

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, DC 20554

Re: Coalition for Affordable Local and Long Distance Services
CC Docket Nos. 96-262; 94-1; 99-249; and 96-45

Dear Ms. Salas:

This letter responds to an *ex parte* letter submitted on behalf of the CALLS Coalition in connection with the above-referenced proceedings ("CALLS Letter")[1] and follows up on questions raised by the Competitive Pricing Division staff[2] relating to the petition for reconsideration of the *CALLS Order*[3] filed by One Call Communications, Inc. ("One Call"). In its petition, One Call requests that the Commission apply, in the case of

[1] Letter from W.W. Jordan, BellSouth, to Magalie Roman Salas, Federal Communications Commission, at 1 (April 6, 2001) ("CALLS Letter").

[2] *See* letter from Frank W. Krogh to Magalie Roman Salas, Federal Communications Commission (Feb. 9, 2001).

[3] *Access Charge Reform*, 15 FCC Rcd 12962 (2000).

payphones, the common line cost recovery mechanism established in the *CALLS Order* for all other single line business subscriber lines.[4]

Certain issues raised by the CALLS Coalition in its letter and by Commission staff require further clarification of the record. In particular, questions have been raised concerning One Call's argument that the manner in which local exchange carriers ("LECs") assess the presubscribed interexchange carrier charge ("PICC") on payphone lines -- against the "1+" presubscribed interexchange carrier ("PIC") for private payphones and the "0+" PIC for the LECs' own payphones -- is discriminatory and violates Section 276 of the Communications Act. The relief sought by One Call would remove this source of discrimination by eliminating the PICC now improperly assessed against payphone PICs. It has also been suggested that such relief is unnecessary because payphone PICs can afford to pay the PICC, and other parties would have to make up for such relief in the form of higher access charges. Such comments are factually incorrect, however, and fail to address the disproportionate burden of the LECs' current access charging practices on payphone PICs, which were arbitrarily omitted from the common line cost recovery policy applied in the *CALLS Order*.

A. The LECs' PICC Charging Practices Constitute Discrimination

With respect to the Section 276 discrimination issue, the CALLS Coalition repeats in its *ex parte* filing its previous argument that there is only one PIC at any given payphone and that there is therefore no discrimination.[5] Notably, however, in a related proceeding, GTE acknowledged that LEC payphones "are capable of supporting different 1+ and 0+ presubscribed interexchange carriers."[6] Moreover, irrespective of the LECs' internal classification policies, at most LEC payphones, a long distance carrier, usually AT&T, provides 1+ service, while another carrier serves as the 0+ PIC. As One Call has explained previously, because 1+ PICs are better positioned than 0+ PICs to pass the PICC on to the payphone provider, the LECs' asymmetrical application of the PICC -- against the 0+ PIC at the LECs' own payphones and the 1+ PIC at private payphones -- favors the LECs' payphone operations at the expense of private payphone operations and subsidizes the former by effectively relieving them of an access charge burden that is

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[4] Petition for Reconsideration and Clarification, *Access Charge Reform*, CC Docket No. 96-262, *et al.* (July 21, 2000) ("One Call Petition").

[5] CALLS Letter at 1.

[6] Comments of GTE at 7, *Questions Related to Assessment of Presubscribed Interexchange Carrier Charges on Public Pay Phones*, CCB/CPD No. 98-34 (May 26, 1998).

borne ultimately by the latter, thereby violating Section 276(a) of the Communications Act.[7]

Following an analogous rationale, the Michigan Public Service Commission found that Ameritech's asymmetrical treatment of payphone 0+ carriers and 1+ carriers unfairly insulated Ameritech's payphone operations from competitive pressures and ordered it to assess the intrastate PICC against the 1+ carrier for all payphones, rather than assessing it against the 0+ carrier in the case of its own payphones and the 1+ carrier for private payphones.[8] How LECs label payphone PICs thus is irrelevant to One Call's discrimination and Section 276 analysis.

On a related matter, contrary to the staff's suggestion that the discrimination alleged by One Call is becoming moot because private payphone providers typically choose to have no PIC, they have continued to select 1+ PICs. One Call is the 1+ PIC at 4,662 private payphones for which it is not the 0+ PIC, and it is assessed the PICC at those payphones. There are no doubt thousands of additional private payphones for which the providers have selected a 1+ PIC that is assessed the PICC. On the other hand, One Call also is assessed the PICC at all of the LEC payphones for which it is the 0+ PIC. The relief One Call seeks would end such discrimination.

B. There Is No Rational Basis On Which Payphone PICs May Be Excluded From The Benefit Of The Common Line Cost Recovery Policy Applied In The *CALLS Order*

The staff and CALLS Coalition assert incorrectly that operator service providers' pricing for long distance payphone calls allows them to recover the PICC.[9] In fact, however, due to declining call volumes at payphones, the monthly 0+ revenue at a given payphone, if there is any, often is insufficient to cover the PICC and, in even more cases, is insufficient to cover the combined burden of the PICC, the commission to the payphone location provider (which is paid on the total revenue from 0+ calls, before the

[7] The CALLS Coalition also argues that, because the PICC is paid to the LEC and not to the LEC's payphone operations, the assessment of the PICC cannot constitute a subsidy of the LEC's payphone operations. CALLS Letter at 1-2, Attachment. That response, however, fails to address One Call's point that by arranging the assessment of the PICC such that it is borne ultimately by private payphones, which are billed monthly by the 1+ PIC, but not by the LECs' own payphones, which have no relationship with, and are not billed by, the 0+ PIC, the LECs' PICC assessment practices effectuate a subsidy of their own payphone operations, in violation of Section 276.

[8] *AT&T Communications of Michigan, Inc., Against Ameritech Michigan*, Opinion and Order, 1998 Mich. PSC LEXIS 279 at *49-50 (Oct. 26, 1998) ("*Mich. PICC Order*"), Order Denying Rehearing, Reconsideration, and Clarification, 1999 Mich. PSC LEXIS 88 (March 8, 1999).

[9] CALLS Letter, Attachment.

PICC is paid), usage-based access charges, payphone compensation to the payphone provider and other costs.

Moreover, the cost recovery scheme that is required for 0+ calls is vastly more inefficient than the relatively minor cost recovery inefficiency that persuaded the Commission to fold the PICC into the subscriber line charge ("SLC") for all other single line business lines in the *CALLS Order*. There, the Commission found that the recovery of common line costs through the SLC, which is borne directly by the cost-causer -- the subscriber -- is more efficient than recovering them through the PICC, which is levied initially on the cost-causer's carrier and then passed on by the carrier to the cost-causer.[10] For most single line business PICs, the inefficiency being remedied was not overwhelming; PICs typically added a PICC pass-through charge in their monthly bills to the subscriber. Yet, that pass-through process, and the "transaction costs" generated thereby, were viewed as so inefficient as to require remedial action.[11]

In the case of the 0+ payphone PIC, however, there is no monthly bill to the subscriber cost-causer -- the payphone provider. In fact, there is no business relationship at all between the 0+ PIC and the payphone provider or between the 0+ PIC and the transient end users of payphone services.[12] In order for the 0+ PIC to recover the PICC at all, therefore, requires a multi-step process that is not only extremely inefficient in its most ideal form but also often does not work at all. Assuming that a given payphone has generated sufficient revenue to cover the PICC, the 0+ PIC must subtract the PICC from the commission it pays to the payphone location provider. The location provider then has to try to recoup the amount held back in its negotiations with the payphone provider.

Each one of these steps is extremely inefficient because of the significant delay and uncertainty in the recovery of the PICC caused thereby and generates substantial transaction costs. Taken together, they serve to insulate the cost-causer from normal market mechanisms more than they permit recovery from the cost-causer, thereby imposing a tremendously unfair burden on 0+ PICs. Failure to apply the same cost recovery efficiency rationale to payphone PICs that was applied to the much less inefficient scheme for all other single line business lines that was remedied by the *CALLS Order* thus would be arbitrary and capricious. That One Call may survive the double

[10] *See CALLS Order*, 15 FCC Rcd at 12990-91. *See also id.* at 12970, 12974.

[11] *Id.* at 12990-92.

[12] The CALLS Coalition assertion that payphone PICs "have business transactions with end users, location providers, [payphone providers] and other carriers" (CALLS Letter, Attachment), sidesteps One Call's point that it has no ongoing business relationship with end users or payphone providers that enable it to recover the PICC in an efficient, cost-causative manner. The complex series of transactions suggested in the same bullet of the attachment to the CALLS Letter underscores One Call's inefficiency argument.

onslaught of the PICC and declining call volumes accordingly does not undercut its claim or justify an otherwise irrational distinction. Bankruptcy has never been a requirement for standing to request reconsideration of a deficient order.

The CALLS Coalition raises a variety of additional issues that have been rebutted in previous filings. The arguments that the application of the PICC should follow the application of the SLC, that the relief One Call seeks would raise access charges for other users or payphone providers and that the multiline PICC is declining were all addressed in One Call's December 20, 2000 *ex parte* letter filed in the above-referenced dockets. As explained in One Call's December 20 *ex parte* letter, and in previous filings, payphone lines should be treated like all other single line business lines for PICC purposes,[13] and the tremendous burden imposed on 0+ PICs by the multiple inefficiency of the PICC is far greater than the relative burden that would be incurred by LECs, other users or payphone providers if either of One Call's remedial measures were to be applied. The CALLS Coalition has offered nothing new on these points.

Pursuant to the Commission's Rules, this letter is being submitted for filing in each of the above-referenced dockets. Please direct any questions or concerns to the undersigned.

Respectfully submitted,

/s/ Frank W. Krogh
Frank W. Krogh

Counsel for One Call Communications, Inc.

cc: Jane Jackson
Rich Lerner
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[13] *See Mich. PICC Order* at *50-51, cited in the One Call Petition at 11-12.