use the New Services Test standard, which utilizes direct costs plus reasonable overheads. And that is precisely what TELRIC computes.[50]

24. More important though, is that NYT profits from the receipt by its integrated payphone operations of bottleneck line and usage services provided at cost, while it forces its competitors to pay much higher rates.

DEAVERAGING

25. The PAL line rates NYT now charges IPANY members are uniform throughout New York State. Payphone providers pay the same monthly rate for lines in Manhattan as they do in Montauk or Plattsburgh. Similarly, IPANY members pay timed message unit rates that are the same for all business customers in the state. In considering an appropriate level of rates for network elements, the Commission stated the following on the advantages of deaveraged prices:

> "Turning to questions of policy, the arguments in favor of deaveraging are fairly clear and straightforward. They start from the premise that the public interest is served by economically efficient prices, and that, generally speaking, the closer prices are to incremental costs, the more economically efficient they are. Average-cost pricing entails a risk of uneconomic bypass in low-cost areas, where above-cost prices for unbundled elements might make it economic for a

[50] Even if TELRIC rates for payphone services were not mandated by the Telecom Act or the New Services Test, there is no reason why this Commission should not, for economic efficiency and public policy reasons, use its intrastate ratemaking authority to set wholesale payphone service rates at TELRIC costs.

competitor to build its own system even if its costs exceeded those of the LEC. Meanwhile, potential competitors who would want to purchase some elements rather than building entire new systems might be deterred from entering, impeding the development of competition, as the parties opposing New York Telephone here warn."[51]

The Commission chose to deaverage prices for network elements, with lower prices for links in the densely populated areas of New York's major cities, and lower usage rates for evening and night periods.[52] Subsequently, the Commission established an even lower link rate for Manhattan.

26. Deaveraging is as important to IPANY members as it is other competitors of NYT. But, unlike other competitors, IPANY's member companies are not able to circumvent average prices that are far above costs in low cost areas by building their own networks. Investment in a facilities network is not a sound economic choice for a small payphone business, and even a larger NYT payphone business would likely face the same dilemma under average prices if it were spun off from its parent company.

<u>MARKET IMPACT AND THE PUBLIC INTEREST</u>

27. In 1985, IPANY members began competing with the payphone operations of NYT in New York State. Despite

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[51] Opinion 97-2, at Page 129.

[52] See Opinion No. 97-2, at Attachment D, Page 1 of 2.

the subsidies flowing to NYT's payphone operations, and a $0.25 local call rate cap imposed by the Commission, IPANY members have been vigorous competitors in the New York payphone market. And, if IPANY members are able to obtain economically efficient and non-discriminatory rates for underlying services, they should be able to reinforce their competitive role in the marketplace.[53]

28. Over the last fifteen years, IPANY members have placed more than 45,000 payphones throughout the state, including more than 30,000 in the environs of New York City. This was accomplished even while NYT was in the process of removing thousands of its subsidized, but still unprofitable, payphones from many of the same locations. IPANY now has 120 member companies, 94 in the New York City area. Most of them are small businesses, which have created thousands of jobs for the New York economy. As competitors, IPANY member companies have met the challenges of NYT's subsidized payphone operations head on in the marketplace, and continue to provide a vital service to New Yorkers.

29. With that said, it is axiomatic that IPANY

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[53] See Order Establishing A Public Interest Payphone Process And Authorizing Targeted Assistance Fund Support, Case 96-C-1174, Issued and Effective September 25, 1998. At Page 4, the Commission states, "The number of payphones available for the public's use appears to be increasing. New York City, in particular, has received applications to place thousands of additional payphones on city streets, due in part to a revision of its rules which allow non-LEC payphones to be placed at curbside locations."

members are the most efficient providers of pay telephone services to New Yorkers. Unlike NYT, IPANY members receive no subsidies from New York ratepayers, have not sought to remove thousands of payphones from New York streets because they were not profitable (even with the subsidies), and have not raised coin rates despite local coin rate deregulation by the FCC two years ago.[54] IPANY members' presence as competitors to NYT has helped maintain local coin rates at $0.25, and this downward price pressure on local coin rates, provided by IPANY's presence in the market, is crucial to the preservation of the most basic of local exchange communications - the neighborhood coin telephone.

30. However, the telecommunications market for people on the move in New York is now changing, and IPANY members are experiencing 20% reductions in revenue at payphone locations. These reductions are not the result of any weakness in the New York economy, but are likely the result of growing competition from wireless services. Until recently, competition from wireless services was minimal. Wireless calling rates were high because of capacity limitations, especially in the Downstate area. However, since the conversion of older analog cellular systems to digital, which quadrupled the capacity of existing systems, and the added capacity from new digital PCS competitors, the

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[54] Report and Order, FCC 96-388, at ¶51.

per minute rates for wireless calls have decreased dramatically. Now, wireless service packages, which include unlimited free local calling at night or on weekends, and toll-free and local usage any time, anywhere in the country for $0.10 per minute or less, can be obtained from a number of wireless carriers. As a result, many consumers now have the opportunity to use wireless calling instead of payphone calling and, as evidenced by IPANY member revenue reductions, are in fact making that choice.

31. IPANY does not shy away from such competition, but its members' ability to respond in the competitive marketplace is severely hampered by NYT's usage charges to wireless carriers being based on TELRIC costs, while IPANY members are forced to pay excessive rates for bottleneck lines and usage.[55] IPANY members must have the opportunity that would be provided by cost-based rates to adjust their own rates for short or long duration calls, and for calls placed at different hours of the day, as dictated by competition. With an above-cost NYT rate structure applicable to payphone providers - but not wireless providers - IPANY is powerless against its wireless competitors.[56]

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[55] See, for example, Interconnection Agreement between New York Telephone Company and AT&T Wireless Services, Amendment of June 17, 1997, wherein the reciprocal compensation rates for exchange of local traffic is established at between $.0070 and $.009 per minute.

[56] Significantly, one of the principle providers of wireless services in New York is Bell Atlantic Mobile, NYT's affiliated unregulated company. Should NYT decide to raise local coin rates to increase payphone margins, it would

32. At the present time, the greatest impact on IPANY from wireless service competition has been in the business and higher income residential areas of New York. This is because the wireless service packages with the lowest per minute rates are not yet affordable to lower income consumers. Unfortunately, in addition to not benefiting from the lower wireless rates, lower income consumers may be further disadvantaged by the decrease in revenues received at payphones in their communities. Many payphones in these areas are marginally profitable now, and with the growing competition from wireless service, will become unprofitable sooner than those in other areas. Those payphones would likely become candidates for removal, thereby triggering a need for a Public Interest Payphone at their locations.[57] Situations such as this could be averted through changes to NYT's rate structure for payphone services that will encourage new entrants to the market and permit existing payphones to remain in use even when revenues diminish.

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capture some of the revenue movement out of payphone calling, often referred to as restriction in the Commission's economic terms, with its wireless services. Thus, NYT wins either way. In contrast, IPANY members would not benefit from such a migration because they provide no wireless services.

[57] See Order Establishing A Public Interest Payphone Process, at Page 5. The Commission states there, "that a compelling need for PIPs does not appear to currently exist in New York."

PROPOSED RATE DESIGN

33. On the basis of the above discussions on costs, rate comparisons, deaveraging, market impact and the public interest, the rates and rate structure that NYT has incorporated into its Public Telephone Services tariff should be adjusted to become based on cost. The following table provides an example of the adjusted payphone rates and structure, which more accurately reflect the cost of providing services:

Table C
Proposed Rates

	Line Rates		Usage Rates	
Cost Component	**Manhattan**	**Major Cities**	**Cost Component**	**Major Cities**
Link	$11.83	$12.49	Local Usage	
Port	2.50	2.50	Day	$0.003806
FCC EUCL[58]	0.00	0.00	Evening	$0.001837
FCC PICC[58]	0.00	0.00	Night	$0.001508
Total	$14.33	$14.99		
			Tandem Usage	
			Day	$0.001040
			Evening	$0.000548
			Night	$0.000000

[58] This Commission cannot exempt payphone operators from federally mandated EUCLs and PICCs. However, because they represent additional cost recovery to NYT, if they are imposed, then the combined link/port rate should be reduced by the amount of the EUCL and PICC.

SUMMARY AND RECOMMENDATION

34. This statement has described in detail why the rates contained in NYT's Public Telephone Services tariff fail to meet the non-discrimination provisions of Section 276 of The Telecommunications Act of 1996, and the cost-based pricing requirements of the FCC. Specifically, the revised tariff is improper because it is under inclusive, provides outdated cost support, misinterprets or ignores FCC directives, and perpetuates the above-cost prices that NYT now inflicts on its payphone competitors. NYT's pricing practices have disadvantaged NYT's payphone competitors when compared to the cost NYT incurs providing similar services to its own integrated payphone operations. As this statement has shown, the public interest does not benefit from these pricing practices.

35. For all of the above reasons, I recommend to the Commission that NYT's temporary tariff rates for payphone services be replaced, on a permanent basis, with the cost based prices and rate structure proposed herein. I also recommend that the Commission direct an accounting by NYT of the overcharges by NYT to its competitors that have accrued due to NYT's failure to apply the "New Services Test" as required by the FCC, and as NYT promised to do. NYT should refund those overcharges to its payphone competitors retroactive to the temporary effective date of the tariff.

Louis A. Ceddia

Louis A. Ceddia

Sworn to before me this
29 day of November, 1999.

Ivette Turner

Notary Public

Ivette Turner
MY COMMISSION # CC805440 EXPIRES
April 11, 2003
BONDED THRU TROY FAIN INSURANCE, INC.

EXHIBIT D

ORIGINAL

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 99-C-1684 - Petition filed by the Independent Payphone Association of New York, Inc. that the commission Modify New York Telephone Wholesale Payphone Service Rates and Award Refunds.

CASE 96-C-1174 - Proceeding on Motion of the Commission to Review Regulation of Coin Telephone Services Under Revised Federal Regulations Adopted Pursuant to the telecommunications Act of 1996.

REPLY COMMENTS OF THE INDEPENDENT PAYPHONE ASSOCIATION OF NEW YORK, INC.

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Albany, New York
March 20, 2000

Table of Contents

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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REPLY COMMENTS OF
THE INDEPENDENT PAYPHONE ASSOCIATION
OF NEW YORK, INC.

To the Commission:

The Independent Payphone Association of New York, Inc. (IPANY), through its attorneys, respectfully submits these reply comments in accordance with the Notice Requesting Comments issued herein on January 5, 2000. For the reasons set forth below, the relief requested by IPANY in its Petition of December 2, 1999, should be granted in all respects.

I. PRELIMINARY STATEMENT

This proceeding arises from Section 276 of the Telecommunications Act of 1996, which establishes a federal regulatory regime designed to promote competition among payphone service providers, and to promote the widespread deployment of payphone services for the benefit of the general public.

In implementing Section 276, the Federal Communications Commission issued a series of "Payphone Orders" which directed incumbent LECs to file tariffs for wholesale payphone services and facilities at the state level. Tariffs for those services had to include unbundled features and functions, and be cost-based, non-discriminatory, and consistent with both Section 276 of the Telecom Act and the FCC's Computer III Tariff Guidelines.

The requirement that rates for payphone services be consistent with the Computer III Tariff Guidelines requires that such rates meet the FCC's "New Services" test. In essence, the New Services test applies a direct cost standard which, as described in great detail in IPANY'S December 2 Petition, is met by the use of the TELRIC cost methodology.[1]

IPANY'S Petition asked the Commission to address and finalize issues surrounding New York Telephone's Payphone Service Tariffs which have been pending since April 1, 1997. Specifically, IPANY requested that the Commission:

(a) Establish rates for Public Access Lines (PALs) equivalent to the TELRIC cost of UNE unbundled links (geographically unbundled) <u>less</u> revenues received by New York Telephone from the End User Common Line Charge EUCL)and/the Primary

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[1]Throughout these comments, reference is made to "pay telephone rates" or "pay telephone service rates". In each case, the reference is to the underlying lines, usage, and features provided by New York Telephone to payphone service providers, and not to the retail rates (such as $.25 for a three minute local call) paid by the general public.

Inter-Exchange Carrier Charge (PICC), so as to avoid double recovery of costs.

(b) Establish rates for underlying usage services resold by Payphone Service Providers (PSPs) in accordance with TELRIC costs, and

(c) Award refunds for excessive PAL charges retroactive to April 1, 1997.

II. <u>NEW YORK TELEPHONE'S RESPONSE</u>

New York Telephone submitted comments on February 28, 2000. Essentially, NYT argued the following:

(a) IPANY had misinterpreted the meaning and reach of the FCC's New Services Test.

(b) New York Telephone's payphone related rates were "cost-based (including a reasonable level of contribution of overhead)" and were in full compliance with the FCC's requirements.

(c) Payphone Service Providers should not be allowed to "provide less contribution toward joint and common costs" than do "other business customers using identical facilities."

(d) No reason exists why Payphone Service Providers should pay rates any different from "business customers", and

(e) Refunds with respect to excessive PAL rates should not be ordered.

As will be shown below, each argument put forth by New York Telephone has been specifically rejected by a recent Order issued by the Common Carrier Bureau of the Federal Communications Commission. That FCC order supports and endorses each position and request for relief advocated by IPANY in its Petition.

Specifically, IPANY attaches to these Reply Comments, and respectfully incorporates herein, the Order released by the FCC's Common Carrier Bureau on March 2, 2000 in Docket CCB/CPD No. 00-1 (DA 00-347).[2]

As will be further referred to below, that FCC Order made the following findings with respect to tariffs for underlying pay telephone services required to be filed at the

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[2] In the Matter of Wisconsin Public Service Commission Order Directing Filings, CCB/CPD No. 00-1, adopted March 1, 2000, released March 2, 2000, DA 00-347.

state level:

(a) The tariffs subject to the FCC's requirements include both access lines and "usage-sensitive elements whether specified in the payphone line tariff or cross-referenced to another tariff as well as flat rate elements" and should include rates, terms and conditions "for other services commonly used by payphone service providers", such as call screening services. (FCC Order, para 7).

(b) To satisfy the "New Services Test", rates must not recover more than the direct costs of the service plus "a just and reasonable portion of the carrier's overhead costs". Costs must be determined by use of an appropriate forward-looking economic cost methodology that is consistent with the principles the FCC set forth in the Local Competition First Report and Order. (FCC Order, para 9). In other words, TELRIC costing and pricing principles must be used.

(c) With respect to the calculation of direct costs, ILECs must use consistent methodologies in computing direct costs for related services. Thus, to meet the New Services Test, the methodology used to calculate underlying payphone service rates must "be consistent with the cost inputs used in computing rates for other services offered to competitors". FCC Order, para 10).

(d) With respect to determining "a just and reasonable portion of overhead costs", absent justification, LECs may not recover a greater share of overheads in rates for payphone services than they recover in rates for comparable services. Overhead allocations must be based on cost and may not be set artificially high in order to subsidize or contribute to other LEC services. Under this formula, Unbundled Network Elements (UNEs) are specified as the "comparable services" to payphone line services, and thus, in general, the same overhead allocations should be used for UNE and payphone services. (FCC Order, para 11).

(e) Because the TELRIC forward-looking cost studies produce costs on an unseparated basis, in order to avoid double recovery of cost, LECs must demonstrate they have taken into account other sources of revenue, including the EUCL, the PICC, and CCL access charges, that are also used to recover the costs of the facilities involved.

Thus, each and every argument raised by New York Telephone before this Commission has been specifically rejected by the FCC.

III. ARGUMENT

POINT A: The Terms of New York Telephone's Regulatory Incentive Plan Do Not Prohibit Decreases In Pay Telephone Service Rates.

New York Telephone's first argument is that its Performance Regulation Plan adopted in 1995 froze all payphone rates, and accordingly such rates should not be increased or decreased.[3] New York Telephone is only half right. Under the Incentive Plan, the company was prohibited from increasing payphone rates, but would be obligated to decrease rates if required by regulatory order.[4] The rates set forth in, or contemplated by, the Regulatory Incentive Plan were never intended to be immune from applicable provisions of law, binding on New York Telephone and the Commission, which conferred additional benefits on competitors. Thus, to the extent that Federal legislation, and binding orders of the Federal Communications Commission, require New York Telephone to <u>lower</u> a particular rate which had been covered by the Incentive Plan, federal law must prevail. That is exactly what has occurred with respect to pay telephone service rates.[5]

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[3] See Case 92-C-0665, Opinion 95-13, "Opinion and Order Concerning Performance Regulatory Plan," August 16, 1995.

[4] While New York Tel asserts the Incentive Plan precluded any decrease or increase of payphone rates, that did not stop it from attempting to increase PAL rates through the imposition of a charge for Line Side Answer Supervision in May of 1997. That effort was rejected by the Commission on two separate occasions. See Cases 96-C-0998 and 96-C-1174, "Order Suspending New York Telephone's Line Side Answer Supervision Tariff", October 15, 1997. See also "Order Further Suspending Tariff" February 11, 1998.

[5] This is particularly true since, as discussed below, NYT received a significant benefit - the right to receive Dial-around compensation - in return for lowering its wholesale payphone service rates in accordance with the New Services test.

POINT B: Pay Telephone Service Rates Should Not Be Established On The Same <u>Basis As Regular Business Services.</u>

New York Tel argues there is no reason why pay telephone providers should pay rates that are different from those paid by regular business customers. It suggests that since the Public Access Line is essentially equivalent to a business access line, payphone service providers should be required to pay the same rates (and include the same overhead contributions and subsidies) as business customers.

That argument has no validity.

It was only payphone service rates - and not general business rates - which were made subject to specific wholesale rate treatment in Section 276 of the Telecommunications Act. And it was only payphone service rates - not regular business rates - which have been the subject of the FCC's Payphone Orders and the New Services test.

The specific purpose of setting forth rules for establishing wholesale payphone rates was to distinguish wholesale payphone rates from rates paid by general business customers. General business customers do not act as providers of service to the public at large, and do not provide critically necessary access, for the general public, to the public switched network.

Should there be any remaining question on this, the FCC Order indicates that the "comparable services" for purposes of establishing a methodology to price wholesale payphone services, are Unbundled Network Elements, purchased by ILEC competitors (CLECs and IXCs) and not general business services. (FCC Order, para 11).

POINT C: New York Telephone's Rates Do Not Meet The FCC's New Services Test.

New York Tel argues that with respect to the New Services Test for payphone services, "The FCC does not prescribe any specific costing methodology, fixed percentage of loading or pricing margin, and has held that the test is flexible." (NYT Comments, page 4). NYT therefore asserts it is free to use any methodology it wishes, and is authorized not to use TELRIC rates. The company also suggests it is free to include grossly excessive overhead margins, and subsidies, in its payphone service rates.

New York Tel's arguments can be promptly dispatched. First, IPANY demonstrated in its December 2, 1999 Petition, that principles of economic efficiency, and the need to promote widespread deployment of public pay telephone services, require use of the TELRIC methodology; require that double recovery of costs be avoided by subtracting EUCL, PICC, and other support mechanisms; and require that overhead allocations be consistent with those used to establish UNE rates.

That economic analysis is confirmed, in toto, by the FCC's March 2, 2000 Order. As described above, that Order requires that:

(a) Wholesale pay telephone service rates be established using the same TELRIC methodology as UNE rates, not business rates;

(b) Overhead allocations be comparable to the allocations utilized to develop TELRIC based UNE rates;

(c) Subsidies for other services be excluded; and

(d) From the total unseparated cost developed using TELRIC principles, additional revenues received by the ILEC for items such as the EUCL, PICC, and CCL, must be subtracted.

IPANY's proposed methodology, as set forth in its December 2, 1999 Petition, advocated each and every one of the requirements set forth by the FCC. Specifically, IPANY urged establishing PAL rates at the UNE rate for the unbundled link (on a deaveraged geographic basis), less the EUCL and PICC associated with that link. That is the precise result required by the FCC Order.[6]

[6] NYT urges the PAL rate be set at the average cost of all lines in the State, but offers no justification other than that is the way business line rates are set. But since the FCC requires that PAL rates be calculated on the same basis as UNEs,

As this Commission has found, the UNE rates established in the Loop Resale Proceeding measure the direct forward-looking unseparated total cost of an unbundled local link. The rate approved for the UNE link specifically includes a reasonable allocation of overheads - which is the same overhead allocation that the FCC confirms should be used with respect to payphone service rate.

In the Loop Resale Phase 1 Opinion, the Commission approved a UNE link overhead allocation of 10-15%.[7] In contrast, New York Tel seeks to impose an overhead markup of more than 86% (without accounting for the PICC and geographic deaveraging) and an incredible 180% when taking these factors into account.

On top of the loop cost, New York Telephone seeks to add a $1.28 cost component for the Outward Call Screening feature. The company has not, however, in any way justified its cost calculation. Indeed, it does not appear that the TELRIC methodology was utilized. And, intuitively, that cost is grossly excessive because Outward Call Screening merely involves transmitting the Automatic Number Identification (ANI) of the originating line in the stream of digits outpulsed when a call is made, along with an additional two digits (usually "70"), which

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and since UNE links are deaveraged into three geographic zones, the same approach should be applied to PAL lines. Otherwise, the goal of achieving economically efficient rates will not be realized.

[7] Opinion 97-2, Case 95-C-0657, Phase I Opinion and Order, April 1, 1997, pp. 96-99; Opinion 97-14, Phase I Order on Rehearing, September 22, 1997, at pp. 49-50.

are uniquely coded to designate the originating station as a pay telephone. The cost of outpulsing all these digits should, however, already be recovered in the local switching costs.

Specifically, what is provided is a service known as "FLEX ANI", for which pay telephone providers are separately assessed a monthly charge established by the FCC (currently $1.58 per payphone per month for a 24 month period) designed to recover the alleged costs of developing and implementing FLEX ANI service.[8] With the costs of developing and deploying FLEX ANI already accounted for, the actual cost of transmitting the additional two FLEX ANI digits on each outgoing call is essentially negligible.[9]

POINT D: The EUCL and PICC Charge Must Be Deducted From The UNE Unbundled Link Rate.

In its initial complaint, IPANY showed that, since the Commission-approved UNE link rates represented total unseparated

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[8] See NYNEX Telephone Companies tariff FCC No. 1, Transmittal No. 510, effective July 16, 1998.

[9] New York Telephone's assertion of significant costs associated with Outward Call Screening is reminiscent of its initial effort to claim costs for deploying Billed Number Screening (BNS), which is a comparable fraud protection service. BNS identifies pay telephones so that collect and billed-to-third-number calls cannot be billed to them. In its initial payphone restructuring tariff filed with this Commission, New York Tel asserted the costs of BNS were $.65 per month. However, in a subsequent "correction" filed with the FCC on June 17, 1997 (NYNEX Telephone transmittal 458), New York Telephone acknowledged that the cost, and therefore rate, for Billed Number Screening was zero.

costs (plus a reasonable allocation of overheads), requiring PSPs to also pay the federal EUCL and PICC would result in double recovery.[10] New York Tel refuses to recognize that principle, and instead insists that since payphone service providers "are to be treated as retail customers", they should be subject "to all applicable business line charges" (NYT Comments, p. 7).

The FCC's March 2 Order confirms that IPANY is correct and NYT is wrong.

First, as indicated above, payphone service providers are not to be treated in the same manner as ordinary business customers. Instead, the methodology for establishing PSP rates must be the same methodology used to establish UNE link rates. Carriers paying UNE rates do not also pay the EUCL and PICC.

Furthermore, the March 2 FCC Order specifically provides that "in order to avoid double recovery of costs", LECs must demonstrate that in setting payphone line rates they have "taken into account other sources of revenue (e.g., SLC/EUCL, PICC and CCL access charges) that are used to recover the costs of the facilities involved". (FCC Order, para. 12).[11]

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[10] For New York Telephone, the EUCL is currently $8.08 per month and the PICC is $3.48 per month.

[11] In its Complaint, fn. 46, p. 18, IPANY specifically noted that in addition to the EUCL and PICC, there are other revenue sources collected by NYT designed to recover NTS cost of the loop, including USF payments and per minute CCL components of IXC access charges. However, because of the complexity of measuring those revenue sources, they were not included in the cost offset proposed by IPANY. But, now that the FCC has made clear that these additional sources of contribution, including CCL charges, must be taken into account, the rates proposed by IPANY must be