Before the
Federal Communications Commission
Washington, D.C. 20554

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
	)	
	)	

ORDER ON RECONSIDERATION

Adopted: June 19, 2003 **Released:** June 25, 2003

By the Commission:

I. INTRODUCTION

1. On July 21, 2000, One Call Communications, Inc. d/b/a Opticom ("One Call") filed a petition for reconsideration and clarification[1] of the Commission's *CALLS Order*.[2] In its petition, One Call sought to apply to payphone lines the common line cost recovery mechanism for single-line business and residential subscriber lines established in the *CALLS Order*, rather than the cost recovery mechanism applicable to multi-line business lines. In this Order, we grant One Call's request to reconsider the treatment of payphone lines under our access charge rules. Specifically, we adopt a rule exempting payphone lines from the PICC, and we deny One Call's request that payphone lines be treated as single-line business lines for purposes of assessment of the subscriber line charge ("SLC").

[1] We note that One Call was not the only party to file a petition for reconsideration. The other petitions for reconsideration will be addressed in a separate order.

[2] *Access Charge Reform*, CC Docket No. 96-262, Notice of Proposed Rulemaking, 14 FCC Rcd 16872 (1999) (*CALLS NPRM*); Public Notice, 15 FCC Rcd 23204 (2000) (*CALLS Public Notice*); Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) (*CALLS Order*), *aff'd in part, rev'd and remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001). A comment or reply to the *CALLS NPRM* is identified as Comments or Reply, respectively. A comment or reply to the *CALLS Public Notice* is identified as Supplemental Comments or Supplemental Reply, respectively. A list of parties filing comments or replies to One Call's Petition for Reconsideration and Clarification, and how they are identified in this Order, is attached as Appendix A.

II. BACKGROUND

A. Access Charges for the Common Line Before CALLS

2. Prior to the *Access Charge Reform First Report and Order*,[3] interstate common line costs were recovered first through SLCs, which are flat charges assessed directly on end users by LECs. Under the Commission's rules, SLCs are capped to ensure affordability.[4] To the extent the SLC caps prevented LECs from recovering all of their interstate common line costs through the SLCs, LECs recovered the difference from interexchange carriers ("IXCs") through per-minute charges called carrier common line charges ("CCLCs"). The CCLC is an inefficient way to recover the costs associated with common line, however, because those costs do not vary by usage.[5]

3. In the *Access Charge Reform First Report and Order*, therefore, the Commission created the PICC in order to phase out the CCLC.[6] Through the PICC, price cap LECs were permitted to recover from the end user's presubscribed IXC for each line a portion of the interstate common line revenues permitted by price cap regulation. The IXC typically passed on the PICCs to its end users to pay for the PICCs assessed by the LEC.[7] The Commission established three different types of PICCs. The first one was assessed on primary residential and single-line business lines, and was used to recover the revenues that were not recovered through the residential subscriber line charge. Similarly, the other two types of PICCs, assessed on non-primary residential and multi-line business lines, were used first to recover the revenues that were not recovered for those lines through their respective SLCs. In addition, however, to the extent primary residential and single-line business SLCs and PICCs failed to recover all the interstate common line revenue requirements for those lines, the non-primary residential and multi-line business line PICCs helped recover the shortfall.[8] In order to phase out the CCLCs, the *Access Charge Reform First Report and Order* allowed the maximum amount recoverable through the PICCs to rise each year. The gradual increase in the primary residential and single-line business PICC cap was designed to result in the eventual recovery of common line revenues incurred for each line wholly through the combination of the SLC and PICC for that line, thereby eliminating the temporary subsidy provided to each of those lines by non-primary residential and multi-line business lines.[9]

B. *CALLS Order*

4. Both One Call and Operator Communications, Inc. ("OCI") filed comments in response to the *CALLS NPRM* and *CALLS Public Notice*, arguing that the application of the proposed cost recovery

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[3] *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982 (1997) (*Access Charge Reform First Report and Order*), *aff'd sub. nom. Southwestern Bell v. FCC*, 153 F.3d 523 (8th Cir. 1998).

[4] *CALLS Order*, 15 FCC Rcd at 12986-87, paras. 65-66.

[5] *Access Charge Reform First Report and Order*, 12 FCC Rcd at 15998-99, para. 37.

[6] *Id.* at 15999, 16004-06, paras. 38, 55-60.

[7] Where the end user does not presubscribe to an IXC, the price cap LEC can bill the end user directly for the PICC. *Access Charge Reform First Report and Order*, 12 FCC Rcd at 16019, para. 92.

[8] *Id.* at 16022, para. 99.

[9] *Id.* at 16021, para. 94. Under the approach adopted in the *Access Charge Reform First Report and Order*, if the price cap LEC's common line revenue requirement is $6.00 per line, eventually the PICC on single-line business and primary residential lines would increase to $2.50. This amount, together with the $3.50 SLC cap then in place for those lines, would recover the LEC's total per-line common line revenue requirement. At the time the PICC reached $2.50 for those lines, the PICCs for non-primary residential and multi-line business lines would be wholly eliminated, because the SLCs for those lines could recover the entire per-line common line revenue requirement.

mechanism for single-line business lines to payphone lines would further the Commission's policy goals.[10] In response, other parties asserted that the payphone issues were collateral to the issues raised in the *CALLS NPRM* and *CALLS Public Notice*.[11] In May 2000, the Commission adopted the *CALLS Order*, which, *inter alia*, raised SLC caps for primary residential and single-line business lines through a series of step increases, while simultaneously eliminating the PICC for all residential and single-line business lines.[12] Consequently, under current Commission rules, a price cap LEC collects its common line revenue requirement from SLCs, PICCs, and CCLCs in a cascading fashion. First, a price cap LEC collects common line revenue from the SLCs it charges to end users. To the extent the SLC cap prevents the full satisfaction of the common line revenue requirement through the SLC, a carrier next collects its common line revenue from multi-line business PICCs assessed on IXCs. To the extent the cap on the multi-line business PICC prevents the full satisfaction of the common line revenue requirement through the PICC, the carrier may collect its common line revenue requirement from CCL charges on IXCs.

5. The *CALLS Order* did not address the concerns raised by One Call or OCI in their comments. In its petition for reconsideration and clarification, One Call asks that the Commission fold the PICCs assessed on payphone lines into the SLC, "consistent with the cost causative mechanism adopted for other [single-line business] lines in the *CALLS Order*."[13] One Call proposes to implement its modification by imputing the PICC to the payphone provider (*i.e.*, the price cap LEC would "collect" the PICC for a LEC-owned payphone from the LEC's payphone unit), or by changing the Commission's rules to treat payphone lines as single-line business lines for purposes of both the SLC and PICC.[14]

III. DISCUSSION

A. Administrative Challenge of One Call's Petition

6. As a threshold matter, because this Order considers the merits of One Call's petition, we dispose of One Call's contention that the Commission acted arbitrarily and capriciously, in violation of section 553 of the Administrative Procedure Act,[15] in failing to address One Call's comments in the *CALLS Order*.[16] Because this Order considers the merits of One Call's petition and comments, to the extent there was any past error in this regard it has been corrected. Although some parties argue that One Call's (and OCI's) comments in response to the *CALLS NPRM* were outside the scope of the rulemaking,[17] we find that considering the impact on payphone providers of the proposal at issue in the *CALLS NPRM* is a logical outgrowth of that proposal. This is demonstrated by several facts. First, the

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[10] *See* One Call Comments at 9-11; OCI Comments at 6-9.

[11] *See* Coalition Supplemental Reply at 50; GTE Supplemental Reply at 43.

[12] 15 FCC Rcd at 12991, para. 76.

[13] *See* Petition at 2. OCI filed comments in support of One Call's petition.

[14] *See* Petition at 13-14. One Call also argues that assessing the PICC for LEC-owned payphones on the 0+ carrier, but on the 1+ carrier for independent payphones, is discriminatory and improperly subsidizes Bell Operating Company ("BOC") payphone operations in violation of section 276 of the Act. *See id.* at 10-12; 47 U.S.C. § 276. "The Act" refers to the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq*., as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act"). Because we find in this Order that all payphone lines should be exempted from the PICC, we need not address this assertion.

[15] 5 U.S.C. § 553.

[16] *See* Petition at 6-9.

[17] *See* Coalition Opposition at 10.

proposal specifically addressed the PICCs and SLCs.[18] Second, the *CALLS NPRM* broadly requested comment on any aspect of the proposal.[19] Third, the *CALLS NPRM* also invited commenting parties to propose alternative plans to the proposal.[20] Given this finding, we turn now to the issues raised by these proceedings.

B. The PICC for Payphone Lines

7. As set forth below, we find that payphone lines should be exempt from the PICC. Parties argue that assessing the PICC on payphone lines is inconsistent with section 276 of the Act.[21] Section 276(a) has two relevant components. First, it prohibits any BOC from subsidizing "its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations."[22] Second, it prohibits discrimination in favor of BOC payphone service.[23] In furtherance of section 276(a), the Commission has determined that payphone line rates should be set according to the cost-based new services test.[24] The multi-line business PICC, however, does not recover the costs of the lines on which it is assessed. Rather, it recovers revenues that would be recovered through charges on residential and single-line business lines, if those charges were not capped.[25] Thus, because the PICC is not cost-based, it does not comply with the new services test.

8. The Coalition argues that section 276 is designed to prevent BOCs from subsidizing their payphone services from exchange or exchange access services, but PICCs are paid to the LEC, not the LEC's payphone unit.[26] We agree that PICC revenues are not used to subsidize the LECs' payphone service, but to cover the LECs' common line revenue shortage created by the cap on the SLC for residential and single-line business lines.[27] Nevertheless, we note that, in adopting section 276(b), Congress desired to "promote the widespread deployment of payphone services to the general public."[28] We believe that this is consistent with a universal service function that payphones provide to those who cannot otherwise afford telephone service. We conclude that it is bad policy to impose a non-cost-based charge, such as the PICC, on payphone lines because doing so may limit the deployment of payphone services that serve these important functions. Given Congress's stated intent to preserve the availability of payphones, the universal service functions payphones provide, and that the PICC does not reflect costs incurred for the provision of payphone service, we find it desirable to exempt payphone lines from the PICC. Although this Order establishes that payphone lines are exempted from the PICC on a going-

[18] *CALLS NPRM*, 14 FCC Rcd at 16880-84, Appendix A at § 2.1.

[19] *Id*. at 16872, para. 1.

[20] *Id*. at 16874, para. 5.

[21] *See* Petition at 10-11.

[22] 47 U.S.C. § 276(a)(1).

[23] 47 U.S.C. § 276(a)(2).

[24] *See*, *e.g.*, *First Payphone Order*, 11 FCC Rcd at 20614, para. 146; *Wisconsin Public Service Commission, Order Directing Filings*, CPD No. 00-01, Memorandum Opinion and Order, 17 FCC Rcd 2051, 2063, para. 39 (2002) (*Wisconsin Payphone Order*). The new services test is a cost-based test that sets the direct cost of providing the new service as a price floor and then adds a reasonable amount of overhead to derive the overall price of the new service. *Wisconsin Payphone Order*, 17 FCC Rcd at 2055, para. 12.

[25] *See CALLS Order*, 15 FCC Rcd at 13004, para. 106.

[26] *See* Letter from William W. Jordan, Vice President, Federal Regulatory, BellSouth, to Magalie Roman Salas, Secretary, FCC (filed Apr. 6, 2001) at 1-2.

[27] *See CALLS Order*, 15 FCC Rcd at 13004, para. 106.

[28] 47 U.S.C. § 276(b)(1).

forward basis, we make no finding with respect to the application of PICCs to payphone lines prior to the effective date of this Order.[29]

9. Therefore, price cap LECs that still assess the PICC on multi-line business lines must adjust their rates in their October 1, 2003 tariff filings to reflect that the PICC no longer applies to payphone lines. Price cap LECs may recover the revenue previously recovered through assessing the PICC on payphone lines by adjusting their multi-line business PICCs. To the extent the PICC cap prevents such recovery, price cap LECs may recover the revenue shortfall through CCLCs.

C. The Appropriate SLC for Payphone Lines

10. We reject One Call's proposal that payphone lines be treated as single-line business lines for the purpose of assessing the SLC.[30] Although the multi-line business PICC represents a subsidy flowing from multi-line business lines to residential and single-line business lines, the multi-line business SLC is a cost-based charge.[31] The SLCs are the primary method by which incumbent LECs recover their interstate common line costs,[32] and the SLC caps ensure that the SLCs never recover more than the carrier's per-line permitted revenues.[33] Moreover, our rules prevent a LEC from subsidizing one class of customers through the SLCs assessed on another class of customers.[34] Thus, the assessment of multi-line business line SLCs on payphone lines does not result in any subsidy to other lines. In addition, to prevent a BOC from overrecovering its costs for a payphone line, the BOC must reduce the monthly per-line charge for payphone lines determined in a state proceeding under the new services test by the amount of the SLC.[35] If we were to treat payphone lines as single-line business lines, however, the amount by which a LEC's per-line revenue requirement exceeds the single-line business line SLC cap, which is lower than the multi-line business SLC cap, would then need to be recovered through increased PICCs on multi-line businesses.[36] This would result in multi-line business lines subsidizing LEC-owned payphone lines in contravention of the mandate of section 276(a) against such subsidization.[37]

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[29] *Cf.*, *Communications Vending Corp. of Arizona v. Citizens Communications Co*., 17 FCC Rcd 24201 (2002) (payphone providers are not end users for purposes of the SLC).

[30] *See* Petition at 2.

[31] *See CALLS Order*, 15 FCC Rcd at 13004, para. 106.

[32] *See CALLS Order*, 15 FCC Rcd at 12987, para. 66.

[33] *See* 47 C.F.R. §§ 69.152(d), (e) and (k).

[34] *See id*.

[35] *Wisconsin Payphone Order*, 17 FCC Rcd at 2070, para. 61.

[36] For example, if the price cap LEC's common line revenue requirement is $8.00 per line, the multi-line business SLC, with a cap of $9.20 per line, can recover the entire revenue requirement, and so there is no subsidy. Because the cap for single-line business SLCs is only $6.00 per line, however, the single-line business SLC cannot recover the entire common line revenue requirement. The shortfall in the LEC's common line revenues of $2.00 per single-line business line is therefore recovered through the multi-line business PICC, resulting in a subsidy.

[37] 47 U.S.C. § 276(a)(1). Our conclusion that payphones provide a universal service function, *see* Section III.B.2, *supra*, and so should not pay a subsidy, is distinguishable from concluding that payphones are a supported service and should receive a subsidy. This issue is being addressed by the Federal-State Joint Board on Universal Service (Joint Board) and the Commission as part of a review of the definition of services supported by federal universal service. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 25257 (2000). The Joint Board issued its recommendations on July 10, 2002. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 17 FCC Rcd 14095 (2002).

11. Petitioner argues that often there is only one payphone at a given location.[38] The definition of single-line business, however, requires that a single-line business line be the only line the subscriber takes from a particular company.[39] Given that the payphone provider, not the premises owner, is the subscriber, almost all, if not all, payphone lines cannot meet this definition. Certainly LEC-owned payphone lines cannot. Thus, a payphone provider with more than one line is a multi-line business. This is consistent with our treatment of other businesses with only one line at multiple locations, all of which are assessed the multi-line business SLC and PICC.

12. Petitioner contends that payphones manifest additional indicia of single-line business lines. Specifically, One Call states that each payphone is maintained as a stand-alone facility, with a separate line number that transmits an individual automatic number identification code; each payphone has a separate physical plant and dedicated line; each payphone is typically billed as a separate individual business line and has a separate billing cycle from other payphones maintained by the same provider; and payphones have no direct inward dialing or shared use.[40] While these indicia distinguish payphone lines from some multi-line business lines, many other business lines share a number of these indicia. For example, even though a chain of dry cleaners may have one telephone at each site, each with separate physical plant and dedicated line, and without shared use, each line will be charged the multi-line business SLC. In addition, the presence or absence of these indicia does not overcome the proscription of section 276(a) against the subsidization of LEC-owned payphone lines. For these reasons, we leave intact the Commission's current treatment of payphone lines as multi-line business lines for purposes of the SLC.

IV. PROCEDURAL ISSUES

A. Final Regulatory Flexibility Certification

13. The Regulatory Flexibility Act of 1980, as amended (RFA),[41] requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[42] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[43] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[44] A "small business concern" is one which: (1) is independently owned and

[38] *See* Petition at 11.

[39] 47 C.F.R. § 69.152(i).

[40] Petition at 11-12.

[41] The RFA, *see* 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[42] 5 U.S.C. § 605(b).

[43] 5 U.S.C. § 601(6).

[44] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[45]

14. The *CALLS Order* revised the Commission's system of common line access charges by increasing the residential and single-line business line SLC, while simultaneously eliminating the PICC for these lines. The *CALLS Order* also required annual reductions in traffic sensitive switching and trunking access rates until they reached a specified level. In addition, the *CALLS Order* also established an interstate access universal support mechanism that provides explicit support to replace support that was implicit in interstate access charges.

15. This Order responds to a petition for reconsideration that sought, for payphone lines, the application of the common line cost recovery mechanism for residential and single-line business lines established in the *CALLS Order*, rather than the cost recovery mechanism applicable to multi-line business lines. This Order grants the petition insofar as it sought the elimination of the PICC for payphone lines, and denies the request that payphone lines be subject to the SLC applicable to single-line business and residential lines.[46] The rule revision will result in a positive net impact on small entities, in that operator service providers will no longer be assessed the PICC on payphone lines. In addition, because small and rural incumbent price cap LECs[47] will be able to increase their PICCs or common line carrier charges to offset the reduction in the number of lines being assessed the PICC revenue, their overall common line revenues will not be affected. Thus, we expect that the rule revision will have a *de minimis* impact on these affected small entities. Therefore, we certify that the requirements of the *Order* will not have a significant economic impact on a substantial number of small entities.

16. The Commission will send a copy of the *Order*, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.[48] In addition, the *Order* (or summary thereof) and this final certification will be published in the Federal Register, and will be sent to the Chief Counsel for Advocacy of the U.S. Small Business Administration.[49]

B. Paperwork Reduction Analysis

17. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995, and it contains no new or modified information collections subject to Office of Management and Budget review.

V. ORDERING CLAUSES

18. Accordingly, pursuant to sections 1, 4(i) and (j), 201-209, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 201-209, and 276, IT IS HEREBY ORDERED that this Order and Order on Reconsideration IS ADOPTED.

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45 15 U.S.C. § 632.

46 *See* Sections III.B.2 and III.C, *supra*.

47 This Order does not affect rate-of-return carriers because they do not assess PICCs.

48 *See* 5 U.S.C. § 801(a)(1)(A).

49 *See* 5 U.S.C. § 605(b).

19. IT IS FURTHER ORDERED that One Call's Petition for Reconsideration and Clarification IS GRANTED to the extent indicated herein and otherwise IS DENIED.

20. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

21. IT IS FURTHER ORDERED that the provisions of this Order SHALL BE EFFECTIVE on October 1, 2003.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A
LIST OF COMMENTERS

Comments/Oppositions

Coalition for Affordable Local and Long Distance Service (Coalition)
Verizon
OCI

Replies

One Call
OCI

APPENDIX B
AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

PART 69 – ACCESS CHARGES

1. The authority citation continues to read as follows:

   Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

2. Amend § 69.153 by revising section (f) to read as follows:

Sec. 69.153 Presubscribed interexchange carrier charge (PICC)

* * * * *

(f) The PICC shall not be applicable to any payphone lines.