

Ruth Nettles

090528-TV

From: Charlotte Lacey [clacey@telecomcounsel.com]
Sent: Friday, December 04, 2009 11:49 AM
To: Filings@psc.state.fl.us
Cc: Toni Earnhart
Subject: Joint Petition
Attachments: FL Transfer - OPEX.pdf

Please see the attached Joint Petition filing. Thank you.



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12/4/2009

DOCUMENT NUMBER-DATE
11755 DEC-4 8
FPSC-COMMISSION CLERK

090528

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November 13, 2009

VIA ELECTRONIC FILING

Florida Public Service Commission
Commission Clerk & Administration Services
2540 Shumard Oak Blvd.
Gunter Bldg.
Tallahassee, Florida 32399-0850
(850) 413-6770

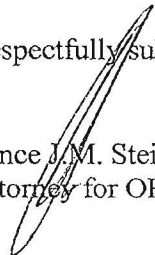
Re: Acquisition of Long Distance Customers by
OPEX Communications, Inc. (TJ173)

To Whom It May Concern:

Attached please find for filing the Joint Petition of OPEX Communications, Inc.'s ("OPEX") and Total Call International, Inc.' ("Total Call") for Authority for OPEX to Acquire Certain Assets of Total Call (TJ763) as well as a Request For Waiver of Rule 25-4.118.

Please acknowledge receipt via return e-mail.

If you have any questions regarding this matter, please do not hesitate to call me. Thank you for your attention to this matter.

Respectfully submitted,

Lance J.M. Steinhart, Esq.
Attorney for OPEX Communications, Inc.

Enclosures
cc: Mr. Mark Leafstedt

DOCUMENT NUMBER-DATE
11755 DEC-4 8
FPSC-COMMISSION CLERK

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

Joint Petition For Authority For)
OPEX Communications, Inc.)
)
To Acquire Certain Assets of)
Total Call International, Inc.)

Docket No. 090528

**JOINT PETITION FOR APPROVAL TO ACQUIRE ASSETS AND REQUEST FOR
EXPEDITED APPROVAL**

NOW COMES OPEX Communications, Inc. (“OPEX”) and Total Call International, Inc. (“Total Call”) (OPEX and Total Call sometimes collectively referred to herein as the “Parties”), by and through their attorney, pursuant to the rules and regulations of the Florida Public Service Commission (“Commission”), and hereby request that the Commission approve the acquisition by OPEX of a portion of the telecommunications customer base of Total Call and to grant such relief on an expedited basis to allow for the consummation of the transaction without undue delay. Expedient approval of this Joint Petition will allow OPEX to promptly assume responsibility for the provision of telecommunications services to the affected Florida customers and bestow the benefit to such customers from this transaction. The Parties therefore respectfully request that the approval of this Joint Petition be granted on an expedited basis and not later than December 15, 2009.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

I. The Applicants

A. OPEX Communications, Inc.

OPEX Communications, Inc. is an Illinois corporation with its principal offices located at 707 Wilshire Boulevard, 12th Floor, Los Angeles, California 90017. OPEX is a wholly owned subsidiary of Total Call. OPEX is authorized to provide interexchange telecommunications services in Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin and Wyoming.

OPEX primarily provides one plus long distance services to both residential and business customers. OPEX also has authority to provide domestic interstate and international services pursuant to FCC rules and regulations.

OPEX was issued a Certificate to Provide Interexchange Telecommunications Service in Docket No. 981091-TI on June 21, 1999.

B. Total Call International, Inc.

Total Call International, Inc. is a California corporation with principal offices located at 707 Wilshire Blvd., 12th Floor, Los Angeles, CA 90017. Total Call is authorized to provide, and is currently providing, telecommunications services in Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Iowa, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming. Total Call primarily provides prepaid calling card services but also has a customer base of one plus long distance customers. Total Call also has authority to provide domestic interstate and international services pursuant to FCC rules and regulations.

Total Call provides long distance telecommunications service both through the sale of prepaid calling cards, and through the sale of one plus long distance service. Total Call will be transferring its one plus long distance customers to OPEX, but not its prepaid calling card customers.

Total Call was issued a Certificate to Provide Interexchange Telecommunications Service in Docket No. 030107-TI on April 25, 2003.

II. Designated Contact

The designated contact for questions concerning this Joint Petition is as follows:

Lance J.M. Steinhart, Esq.
Lance J.M. Steinhart, P.C.
1720 Windward Concourse
Suite 115
Alpharetta, GA 30005
(770) 232-9200/Phone
(770) 232-9208/Fax
lsteinhart@telecomcounsel.com/Email

III. The Transaction

Pursuant to the Agreement between OPEX and Total Call, Total Call will transfer its one plus long distance customers to OPEX.

After the closing, OPEX will provide telecommunications services to Total Call's customers pursuant to its own telecommunications authorizations. After consummation of the transactions, Total Call will retain its telecommunications authorizations in order to continue to provide telecommunications services apart from the business being transferred to OPEX. Total Call does not seek to surrender its authorization. The Parties also are not requesting permission to adopt Total Call's existing tariff. OPEX will amend its existing tariff to establish rates, terms, and conditions identical to those in the Total Call's tariff for the purchased customers, thus providing a seamless transaction for existing customers of Total Call.

The proposed transfer of customers to OPEX will have no adverse impact on customers. Total Call's customers will continue to receive their existing services at the same rates, terms, and conditions that they have prior to the transfer and any future changes in the rates, terms, and conditions of service will be made consistent with Total Call's regulations. To avoid customer confusion and ensure a seamless transition, the Parties will provide advance written notice to the affected customers at least thirty (30) days prior to the transfer, explaining the change in service provider in accordance with applicable Commission and state regulations for changing a customer's presubscribed carrier. A copy of the sample notice of the transfer is attached as EXHIBIT A.

IV. Public Interest Analysis

The transaction contemplated by the Agreement will serve the public interest. OPEX is a strong company that will continue to provide high quality services to Total Call's customers. The transfer of Total Call's long distance customer base will strengthen OPEX, enable it to expand and better ensure that it remains a viable long-term competitor in the telecommunications market.

The proposed transfer does not present any competitive issues. The Parties note that there are a number of other carriers operating in each market, including the incumbent carrier, which controls a substantial market share.

Further, OPEX has extensive experience offering interexchange telecommunications services. Consequently, the former Total Call customers will continue to receive these services from an experienced and qualified carrier. These customers will also be given sufficient notification of the proposed transaction and their rights. As such, the Parties anticipate that customers will experience a seamless transition of service provider.

Approval of the Joint Petition will serve the public interest by strengthening the competitive position of OPEX without negatively impacting either Total Call customers or competition in the markets in which the Parties operate.

V. Expedited Treatment Requested

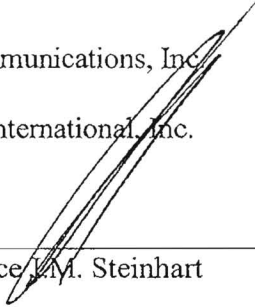
The Parties hereby respectfully requests that this Joint Petition be considered on an expedited basis.

WHEREFORE, Total Call and OPEX, for the reasons stated in this Joint Petition, respectfully request that the Commission approve the transfer of Total Call's long distance customer base to OPEX as described herein.

OPEX Communications, Inc.

Total Call International, Inc.

By:


Lance J.M. Steinhart

Lance J.M. Steinhart, P.C.
1720 Windward Concourse
Suite 115
Alpharetta, Georgia 30005
Telephone: 770/232-9200
Facsimile: 770/232-9208
Email: lsteinhart@telecomcounsel.com

Their Attorney

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

Joint Petition For Authority For)
OPEX Communications, Inc.) **Docket No.** _____)
)
To Acquire Certain Assets of)
Total Call International, Inc.)

REQUEST FOR WAIVER

Pursuant to rule 25-4.118(1), Florida Administrative Code, the local, local toll call, or long distance provider of customers shall not be changed without the customer's authorization. Rule 25-4-118(2) provides that a certified interexchange shall submit a change request only if at least one of the following actions has occurred: (a) the provider has a letter of agency; (b) the provider has received a customer-initiated call; or (c) a third party firm has verified the customer's requested change. The Parties ask the Commission to waive the conditions in 25-4.118(2) in order to allow the transfer of customers of record. The Parties have made the necessary filing with the Federal Communications Commission in accordance with the streamlined procedures currently effective.

WHEREFORE, OPEX Communications, Inc. ("OPEX") and Total Call International, Inc. ("Total Call") respectfully request that the Commission authorize the transfer of Total Call's long distance customers from Total Call to OPEX. In addition, the Parties respectfully request expedited processing of this Joint Petition so that the transaction may proceed without undue delay, and that the Commission grant such other relief deemed necessary or proper.

Respectfully submitted,

OPEX Communications, Inc.

Total Call International, Inc.

By: _____

Lance J.M. Steinhart

Lance J.M. Steinhart, P.C.
1720 Windward Concourse, Suite 115
Alpharetta, Georgia 30005
Telephone: 770/232-9200
Facsimile: 770/232-9208
Email: lsteinhart@telecomcounsel.com

Dated: _____

11/13/09

Their Attorney

VERIFICATION

VERIFICATION

I, Mark Leafstedt, am the Chief Executive Officer of Total Call International, Inc. ("Total Call") and am authorized to make this verification on its behalf. I do hereby verify that if a customer of Total Call International, Inc. files a complaint about the service provided or disputes an invoice that was received prior to the acquisition by OPEX, then OPEX will refer such customers to Total Call and Total Call will work with the customer and/or Commission to resolve the complaint within the following guidelines:

Adjustments to customers' bills shall be made to the extent that records are available and/or circumstances exist which reasonably indicate that such charges are not in accordance with approved rates or that an adjustment may otherwise be appropriate.

Liability arising out of mistakes, interruptions, omissions, delays, errors, or defects in the transmission occurring in the course of furnishing service or facilities, and not caused by negligence of its employees or its agents, in no event shall exceed an amount equivalent to the proportionate charges to the customer for the period during which the aforementioned faults in transmission occur, unless ordered by the Commission.

Executed on November 6, 2009.

Total Call International, Inc.

Mark Leafstedt

Mark Leafstedt
Chief Executive Officer

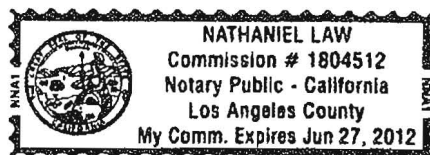
Sworn to before me, the undersigned Notary Public on this 6th day of November, 2009.

Nathaniel Law
Notary Public

Nathaniel Law
Print or Type Name

My commission expires: 6/27/12

Florida -- Total Call



VERIFICATION

I, Mark Leafstedt, am the Chief Executive Officer of OPEX Communications, Inc. ("OPEX") and am authorized to make this verification on its behalf. I do hereby verify that if a customer of Total Call International, Inc. files a complaint about the service provided or disputes an invoice that was received prior to the acquisition by OPEX, then OPEX will refer such customers to Total Call and Total Call will work with the customer and/or Commission to resolve the complaint within the following guidelines:

Adjustments to customers' bills shall be made to the extent that records are available and/or circumstances exist which reasonably indicate that such charges are not in accordance with approved rates or that an adjustment may otherwise be appropriate.

Liability arising out of mistakes, interruptions, omissions, delays, errors, or defects in the transmission occurring in the course of furnishing service or facilities, and not caused by negligence of its employees or its agents, in no event shall exceed an amount equivalent to the proportionate charges to the customer for the period during which the aforementioned faults in transmission occur, unless ordered by the Commission.

Executed on November 6, 2009.

OPEX Communications, Inc.

Mark Leafstedt

Mark Leafstedt
Chief Executive Officer

Sworn to before me, the undersigned Notary Public on this 6th day of
November, 2009.

Nathaniel Law
Notary Public

Nathaniel Law
Print or Type Name

My commission expires: 6/27/12

Florida

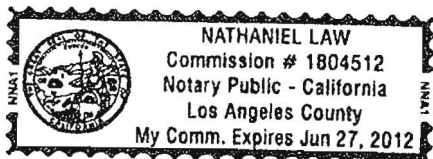


EXHIBIT A

Notice to Customers

IMPORTANT INFORMATION REGARDING YOUR LONG DISTANCE SERVICE

INFORMATION ONLY AND NO ACTION IS REQUIRED

Dear Customer,

[DATE]

In order to serve you better, Total Call International, Inc. ("TCI") will be transferring your long distance telecommunications account to its subsidiary, OPEX Communications, Inc. ("OPEX"). OPEX will continue to provide you the same exceptional level of long distance and customer service that you have been receiving from TCI. On approximately December 31, 2009, OPEX will officially become your long distance service provider.

What does this mean?

No action is required on your part and your service will not be interrupted due to this transfer. As an OPEX customer, you will continue to receive the same service at the same rates, terms and conditions that you have been receiving from TCI. Though you have the right to select a different carrier at any time, OPEX hopes to continue providing you excellent long distance service. If you have a preferred carrier freeze on your account and have not selected a different carrier before the transfer date, you will be transferred to OPEX. Any existing preferred carrier freezes on the services involved in the transfer will be lifted, and you must contact your local service provider to arrange a new freeze.

Will I be charged for this change?

There will be no charge or fee from TCI or OPEX as a result of your account transfer. However, if an inaccuracy in your billing does occur, or if you are notified of any charges being assessed by another carrier for your account transfer to OPEX, please contact OPEX for a credit.

If you have any questions regarding this information or concerns with respect to service needs, complaints, or billing issues, please contact OPEX at our toll-free number: [NUMBER]. However, prior to the transfer date, TCI will continue to be responsible for answering any questions and complaints received and can be contacted toll-free at: [NUMBER]. We thank you for your patronage and OPEX looks forward to serving your future long distance telecommunication needs.

[SIGNATURE]

Mark Leafstedt
Chief Executive Officer
Total Call International and OPEX