BELLSOUTH

BellSouth Telecommunications, Inc.
333 Commerce Street
Suite 2101
Nashville, TN 37201-3300

guy.hicks@bellsouth.com

Guy M. Hicks
General Counsel

615 214-6301
Fax 615 214-7406

REC'D TN
REGULATORY AUTH.
'00 OCT 17 PM 3 19
OFFICE OF THE
EXECUTIVE SECRETARY

October 17, 2000

VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

RE: *All Telephone Companies Tariff Filings Regarding Reclassification Of Pay Telephone Service As Required By Federal Communications Commission (FCC) Docket 96-128*
Docket No. 97-00409

Dear Mr. Waddell:

Enclosed please find 14 copies of an Order issued by the New York Public Service Commission on October 12, 2000. The Order, which (1) rejects the New York payphone owners' request that rates be set at TELRIC; and (2) finds that Verizon's 1997 rates meet the new services test and approves them on a going-forward basis, is directly related to the issues currently before this Authority. Copies of the enclosed have been provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH/jem

Enclosure

232521

POSTED
10/18/00

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on August 16, 2000

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman
Thomas J. Dunleavy
James D. Bennett
Leonard A. Weiss
Neal N. Galvin

CASE 99-C-1684 - Petition filed by the Independent Payphone Association of New York, Inc. that the Commission Modify New York Telephone Company's 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.

ORDER APPROVING PERMANENT RATES AND DENYING PETITION FOR REHEARING

(Issued and Effective October 12, 2000)

BY THE COMMISSION:

BACKGROUND

On December 12, 1999, the Independent Payphone Association of New York, Inc. (IPANY) filed a petition seeking: establishment of a permanent reasonable rate for: public access line (PAL) service provided by Verizon New York, Inc. f/k/a New York Telephone Company (Verizon), refunds from April 1, 1997; and establishment of prospective rates for public access lines and rates for usage.

A Notice Requesting Comments was issued on January 5, 2000 seeking comments on the appropriate level of permanent rates for PALs, features and usage. In response to the notice, Verizon filed comments on February 28, 2000. IPANY filed reply comments on March 20, 2000. Verizon filed rebuttal comments on April 6, 2000 and IPANY filed a response to the rebuttal on April 21, 2000.

COMMENTS

IPANY's Petition and Reply

In its petition, IPANY contends that rates for certain PALs were permitted to go into effect on a temporary basis and that permanent rates were never approved. It argues that under the FCC payphone orders, tariffs for payphone services must be cost-based, consistent with Section 276 of the Telecommunications Act of 1996 (the Act), nondiscriminatory, and consistent with Computer III tariffing guidelines.[1]

IPANY argues that the rates must meet the "new services test" in 47 CFR § 61.49(g)(2). It says the new services test applies a direct cost standard, which it argues, is met by use of Total Element Long Run Incremental Cost (TELRIC) methodology.

IPANY concedes that:

> [i]ndependent payphone providers are not telecommunications carriers within the definition of the Telcom Act. Accordingly, the provisions of the Act which require that services, facilities and Network Elements be priced at TELRIC rates do not, by themselves, strictly govern the rates for underlying payphone service provided to IPANY members.... However, simply because TELRIC rates are not automatically

[1] IPANY's petition at 3, citing, Implementation of the Payphone Reclassification and Compensation Provision of the Telecommunications Act of 1996, CC Docket 96-128, Order released April 4, 1997, DA 96-678 (Payphone Clarification Order).

> mandated by §251 and §252 for payphone operators, does not mean that TELRIC and TELRIC-like rates, which encompass the same cost efficient and non-discriminatory purposes, should not be used under authority of §276. That, in fact, is exactly the result that follows from the FCC's requirement that the 'New Services Test' be applied to the facilities and services purchased by pay telephone providers.[2]

In further support of its arguments, IPANY points to the FCC Common Carrier Bureau Order, released March 2, 2000 in CCB/CPD No. 00-01 (FCC order).[3] In that order, the FCC's Common Carrier Bureau directed the four largest Wisconsin local exchange companies (LECs) to file tariffs with the FCC for intrastate payphone rates, with cost justification studies. The FCC order states that the rates for payphone services must satisfy the new services test. The order continues:

> To satisfy the new services test, an incumbent LEC filing payphone line rates must demonstrate that the proposed rates do not recover more than the direct costs of the service plus 'a just and reasonable portion of the carrier's overhead costs' [footnote omitted].... Given that the new services test is a cost-based test, overhead allocations must be based on cost, and therefore may not be set artificially high in order to subsidize or contribute to other LEC services. For purposes of justifying overhead allocations, UNEs appear to be 'comparable services' to payphone line services...the LEC must demonstrate that in setting its payphone line rates it has 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.... At this time, this Order only applies to the LECs in Wisconsin specifically identified herein.[4]

---

[2] IPANY Petition, p. 9.

[3] 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.

[4] FCC Order, pages 4-5.

IPANY argues that the FCC order provides that Unbundled Network Elements (UNEs) are comparable to payphone line services and the same overhead allocation should be used for both. IPANY contends that the FCC has distinguished payphone rates from other business rates. As an example, IPANY argues that only payphone service rates are subject to the new services test. IPANY continues that Verizon's rates do not meet the new services test because they include "grossly excessive overhead margins and subsidies.[5]

IPANY requests that the rate for PALs as of April 1, 1997 be set on a permanent basis at $12.49, less the federal End User Common Line charge (EUCL), and subsequently less both EUCL and the Primary Interexchange Carrier Charge (PICC). It requests that refunds be issued to independent payphone providers (IPPs) from April 1, 1997.

On a prospective basis, IPANY requests that the rate for PALs be established at TELRIC for unbundled links, as deaveraged by the Commission, less any EUCL charge and any PICC imposed with respect to the PAL line. Finally, IPANY requests that on a prospective basis, usage service be provided at rates equivalent to TELRIC.

<u>Verizon's Comments and Rebuttal</u>

Verizon comments that its payphone-related rates are cost-based, including a reasonable contribution to overhead, in compliance with the FCC's new services test and the Commission's regulatory policies and decisions.

Verizon states that its PAL rates have been in effect on a permanent basis since 1992; it argues that only the Public Access Smart-Pay Line (PASPL) rates were approved on a temporary basis in 1997, and that IPANY has not contested PASPL rates in

---

[5] IPANY's Reply at 10.

its petition. Verizon argues that its rates are well within the range of pricing margins, which the FCC has ruled is reasonable.

Verizon states that in the original 1997 filing, the direct cost of $21.59 was inappropriately labeled "TELRIC". It argues that TELRIC is not the appropriate economic standard for developing long run incremental costs for retail service offerings.

Verizon also argues that EUCL and PICC charges should not be subtracted from the cost of the loop to calculate a cost-based PAL rate. Verizon notes that the EUCL and PICC are federally imposed charges that Verizon is required to assess on all business lines. Verizon continues that the FCC is clear that payphone service providers (PSPs) are to be treated as retail customers, not telecommunication carriers. It emphasizes that the new services test does not require use of TELRIC to price payphone services provided to PSPs. Verizon contends that providing PALs to PSPs is more costly than to CLECs. It must provide retail functions, such as marketing, billing and customer service to PSPs. Therefore, it argues, TELRIC is an inappropriate standard because it does not reflect these additional costs.

Verizon argues that the new services test does not apply to usage rates because they are not payphone specific. It also claims that refunds for PAL rates are inappropriate because the rates have been permanent since 1992.

In its Rebuttal, Verizon contends that the Commission should give no weight to the FCC Common Carrier Bureau Order because it directly contradicts long-standing FCC precedent. It notes that a coalition of LECs has sought a stay of the order pending full FCC review.

DISCUSSION

On March 31, 1997, an Order Approving Tariff on a Temporary Basis was issued in Case 96-C-1174.[6] In the order, Public Access Smart-Pay Line (PASPL) services were introduced and PASPL rates were approved on a temporary basis because the PASPL rates had not been tested in the coin telephone marketplace. It appears from the Order that no revised tariffs for PAL services[7] were filed in 1997 and the existing PAL service rates were left in place. Thus, as Verizon indicates, only the PASPL rates were set on a temporary basis in 1997.

IPANY is seeking review of all rates being charged by Verizon to independent payphone providers, including PALs, features and functions and usage. The current rates for Verizon's payphone services recover direct embedded cost plus a reasonable contribution toward common costs and overhead. Traditionally, under the new services test, the FCC allowed rates one to two times above direct embedded costs. Verizon's payphone rates include common costs and overhead at 30% above direct embedded costs. The Commission approved the rates as including a reasonable contribution toward common costs and overhead.

Although competitive local exchange companies (CLECs), as carriers, are entitled to TELRIC rates for PALs as UNEs under the Telecommunications Act of 1996, payphone service providers (PSPs), as end user subscribers, are not entitled to the same treatment under the Act. As Verizon points out, providing PALs

---

[6] Case 96-C-1174 - Proceeding on Motion of the Commission to Review Regulation of Coin Telephone Service Under Revised Federal Regulations Adopted Pursuant to the Telecommunications Act of 1996.

[7] PAL services are used by IPPs to provide the vast majority of existing payphone services via "smart" coin and coinless pay telephone terminal equipment. The basic PAL rate is $15.47.

to CLECs is less costly than providing them to PSPs. Verizon explains that CLECs receive only raw billing data and bill their own customers. CLECs handle their own customer complaints and are responsible for end-user billing questions, service requests, testing end user lines, and isolating trouble prior to reporting it to Verizon. In contrast, Verizon notes that retail PSPs are responsible for none of these obligations. Rather they are served by the Verizon billing manager, provided with detailed bills and assisted with billing inquiries and service requests.

IPANY's reliance on the FCC Common Carrier Bureau order is misplaced. First, by its terms it only applies to the named Wisconsin LECs. Therefore, it is not binding on us in reviewing Verizon's payphone rates. Second, the approach used in that order does not establish that the rates set by the Commission do not satisfy the new services test. We find that Verizon's payphone rates do satisfy the FCC's new services test. Finally, given the retail functions involved in providing service to PSPs (as opposed to CLECs), it is not clear that UNEs are 'comparable services' to payphone line services.

IPANY also argues that lower rates are needed because the payphone business has been reduced by use of cellular phones. There is little or no indication that the payphone market is shrinking in New York, or that there is any shortage of payphones in the State.[8] We will continue to watch the market

[8] Verizon has reported a reduction in the total number of payphone access lines it is providing to both its own and independent payphones of about 3% over the last six months. However, it appears that during that same period, the number of payphone UNE-P loops that the company is selling to CLECs, who are in turn using these elements to serve payphone providers, is up by at least an equal amount. In addition, during that same period, it is anticipated that growth occurred in the provision of payphone access lines by facilities based CLECs.

closely for any indication of a shortage of payphones to meet user demands.

If it is found in the future that the payphone business is becoming unprofitable and phones are not available in geographic areas where they are needed, public interest payphones may be put in place. So far, we have not received any requests for public interest payphones.

Under the 1997 order, PAL service rates were continued at the same level. The tariff filing for PASPL rates was approved on a temporary basis in 1997 and is now made permanent. Rates for all other payphone services are continued at current levels on a permanent basis. No refunds will be issued because temporary rates set in 1997 are being made permanent without change.

CONCLUSION

Verizon's rates for PAL, PASPL and other payphone services are reasonable. Verizon's PASPL rate, set on a temporary basis in 1997, is made permanent. PAL rates and the rates for other payphone services will continue at current levels. IPANY's petition is denied.

The Commission orders:

1. The rates for Public Access Smart-Pay Line of Verizon New York, Inc. f/k/a New York Telephone Company, set on a temporary basis in the March 31, 1997 order in Case 96-C-1174, are allowed to become effective on a permanent basis.

2. Verizon New York, Inc. f/k/a New York Telephone Company's rates for public access line and other payphone services are continued at current levels.

3. The petition of Independent Payphone Association of New York, Inc. is denied.

4. These proceedings are continued.

By the Commission,

(SIGNED) JANET HAND DEIXLER
Secretary

CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2000, a copy of the foregoing document was served on the parties of record, as follows:

[ ] Hand [✓] Mail [ ] Facsimile [ ] Overnight	Cynthia Kinser, Esquire Consumer Advocate Division 426 5th Avenue, N., 2nd Floor Nashville, TN 37243
[ ] Hand [✓] Mail [ ] Facsimile [ ] Overnight	T. G. Pappas, Esquire Bass, Berry & Sims 315 Deaderick Street, Suite 2700 Nashville, TN 37238-0002
[ ] Hand [✓] Mail [ ] Facsimile [ ] Overnight	James Wright, Esquire United Telephone - Southeast 14111 Capitol Blvd. Wake Forest, NC 27587
[ ] Hand [✓] Mail [ ] Facsimile [ ] Overnight	Richard Tettlebaum, Esquire Citizens Telecommunications 1400 16th St., NW, #500 Washington, DC 20036
[ ] Hand [✓] Mail [ ] Facsimile [ ] Overnight	Jon Hastings, Esquire Boult, Cummings, et al. P. O. Box 198062 Nashville, TN 37219-8062
[ ] Hand [✓] Mail [ ] Facsimile [ ] Overnight	Val Sanford, Esquire Gullett, Sanford, Robinson & Martin 230 Fourth Ave., N., 3d Fl. Nashville, TN 37219-8888
[ ] Hand [✓] Mail [ ] Facsimile [ ] Overnight	Henry Walker, Esquire Boult, Cummings, et al. P. O. Box 198062 Nashville, TN 37219-8062

[ ] Hand
[✓] Mail
[ ] Facsimile
[ ] Overnight

Guilford Thornton, Esquire
Stokes, Bartholomew, et al.
424 Church St., #2800
Nashville, TN 37219-2323