BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: TARIFF FILINGS BY LOCAL EXCHANGE COMPANIES TO COMPLY WITH FCC ORDER 96-439 CONCERNING THE RECLASSIFICATION OF PAY TELEPHONES

DOCKET NO. 97-00409

PETITION OF TPOA FOR CLARIFICATION AND RECONSIDERATION

The Tennessee Payphone Owners Association ("TPOA") requests clarification and reconsideration of the TRA's "Interim Order" issued February 1, 2000, in the above-captioned proceeding.[1] Specifically, TPOA asks for clarification regarding (1) whether BellSouth can effectively increase the monthly PTAS rate by 20% by charging payphone owners an additional $3.00-a-month for "Touch-Tone" functionality and (2) whether BellSouth, in the absence of a TRA ruling in Docket 97-07641, may now begin charging payphone providers for directory assistance calls.[2] TPOA also asks that the Authority reconsider its decision to use a 25%

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[1] Because the TRA Order of February 1, 2001 does not directly address the Touch-Tone and directory assistance issues, TPOA has styled this motion as both a petition for clarification and reconsideration.

[2] In reviewing the revised payphone tariffs filed by BellSouth, TPOA focused on those issues which were addressed by the TRA: the line charge, usage charges, and blocking and screening charge. Since the Touch-Tone and Directory Assistance issues were not addressed at the hearing or in the Initial Order, the TPOA did not notice, until February 6, 2001, that these charges for Touch-Tone and Directory Assistance were still included in BellSouth's revised payphone tariffs. Otherwise, TPOA would have raised these issues prior to the agency's consideration of the tariff.

Regardless, however, of the parties' failure to address these issues sooner,
(continued...)

allocation factor to separate BellSouth's interstate costs. Instead, TPOA submits that the Authority should subtract BellSouth's SLC/EUCL revenue from the carrier's total, non-traffic sensitive cost of providing payphone service and set intrastate rates based on the remaining, unrecovered costs.

I. Touch-Tone

The purpose of this ongoing proceeding is to establish payphone rates that are: "(1) compliant with the new services test; (2) consistent with § 276 of the [federal Telecommunications] Act;(3) nondiscriminatory; and (4) cost-based." Initial Order, at 17. The agency has also determined that rates for payphone services should be consistent with the goals of Section 276 which are to "promote competition and the widespread deployment of payphone services." *Id.*, at 23. Pursuant to these directions, the Initial Order sets rates for BellSouth's payphone services that are based on the total cost of each of the network components necessary to provide that service.

There was no dispute in the hearing concerning the network components needed to offer payphone service. As described in the testimony of BellSouth witness, Doanne Caldwell, (Direct Testimony, at 6) those network elements are: "the local loop, the non-traffic sensitive ("NTS") line termination in the switch, central office blocking and screening, and local usage." As she further explained, the NTS line termination is "the facility used to connect the local loop to a BellSouth end office" (*i.e.*, the port) and "includes the connection on the Main Distribution Frame ("MDF"), the jumper to the switch, and the non-traffic sensitive termination in the switch." *Id.*, at 7. As the TRA is aware, Touch-Tone functionality or DTMF (dual tone multi-frequency

[2](...continued)
the TRA itself has recognized that it has an independent obligation, delegated by the FCC, to insure that intrastate payphone charges are consistent with federal and state law. See Interim Order, at 7.

signaling) is built into all modern telephone switches and automatically provided once the loop is connected to the switch. For that reason, there is no separate "network component" or "cost" associated with Touch-Tone functionality, and Ms. Caldwell did not mention any such component or cost in her testimony.

In the absence of any evidence concerning Touch-Tone charges, the Initial Order neither addresses or approves any such charge. Nevertheless, the company's revised payphone tariffs continue to assess payphone owners a separate charge for "Touch-Tone Calling Service." The payphone tariff does not include a specific rate but states that Touch-Tone service may be provided "at the request of the [coin telephone service] subscriber" at the rates in "Section A13 of this Tariff." According to Section A13, the rate is $3.00 per month.

For both practical and legal reasons, all payphone providers require Touch-Tone functionality. As a practical matter, Touch-Tone is like central office blocking and screening. Although it may be termed an "optional" service by BellSouth, no payphone owner can provide service without it. Customers would be unable to make calling card, credit card, or dial around calls. In the absence of Touch-Tone, no customer could reach his long distance carrier without first dialing "O," connecting with an operator, and incurring additional charges for operator assistance. As a legal matter, charges for intrastate, operator- assisted long distance calls are capped both by state law (T.C.A. § 65-5-206) and by the TRA's payphone rules (Rule 1220-4-2-.45(8). If a payphone customer could not make a credit card or calling card call without using operator assistance — and incurring an additional charge for operator assistance — the TRA would presumably find the payphone in violation of both the statute and rule.

Furthermore, the Tennessee General Assembly has recognized the importance of Touch-Tone service by including Touch-Tone in the definition of "basic local exchange services," along with an "access line, dial tone," and "usage." T.C.A. §65-5-208(l). Thus, Touch-Tone functionality is a legal and practical necessity for payphone providers in Tennessee. And, as described above, payphone providers are already paying for Touch-Tone functionality under the PTAS rates established by the TRA. By continuing to separate charges for Touch-Tone, BellSouth has, in effect, raised the monthly PTAS charge from $13.78 to $16.78 — a 20% increase — without TRA approval.

Until reviewing BellSouth's tariff, TPOA had assumed that the Touch-Tone charge had been incorporated in the PTAS rates set in the Initial Order. After all, the purpose of the proceeding is to set cost-based rates for payphone service; Touch-Tone functionality is an essential element of payphone service; and — in the absence of any proof to the contrary — the cost of Touch-Tone is included in PTAS rates established in the Initial Order. TPOA believes that the TRA may have shared the same assumption and that the Authority did not intend for BellSouth to continue applying the Touch-Tone charge to payphone providers.

At this time, TPOA does not argue that the Touch-tone charge must comply with the FCC's " New Services" test. There is language in the FCC's payphone order of April 4, 1997 (DA 97-678), paragraph 18, suggesting that features and functions which are "only incidental to payphone service, such as touchtone services and various customer calling features" are not covered by the New Services test. TPOA disagrees with that language and believes that the issue may be clarified when the FCC issues a new payphone order in the *Wisconsin* proceeding. In the meantime, however, TPOA bases its objections to the Touch-Tone charge on Section 276, which "prohibits payphone rates from including subsidies to or from other telecommunications services" (Initial Order, 16) and is intended to "promote the widespread deployment of payphone services." Initial Order, 15. The continuation of these fictional Touch-Tone charges is inconsistent with both of those statutory provisions. The charges also violate T.C.A. 65-5-208(c) which prohibits "cross-subsidization." Given BellSouth's failure to affirmatively demonstrate that its Touch-Tone charge as applied to payphone providers is consistent with state and federal law and the fact that the Initial Order does not approve such a charge, BellSouth should be ordered to remove it from the payphone tariff and make appropriate refunds to payphone owners.

II. Directory Assistance

In 1997, BellSouth filed a tariff to begin charging payphone providers for intrastate Directory Assistance calls made from payphones. *See* TRA docket 97-07641. In January, 1998, however, the TRA ordered that the Directory Assistance issue be consolidated with TRA docket 97-00409. Furthermore, in March, 1998, the parties to this proceeding specifically agreed that the directory assistance issue would be addressed in this case. See "Agreed Motion" (attached), footnote 3.

Thus, the Directory Assistance issue is one that all parties agreed should be incorporated into this payphone proceeding and addressed by the TRA. But BellSouth apparently forgot about that agreement (as did TPOA) and, therefore, the Initial Order does not address the Directory Assistance issue. In the absence of approval of these charges by the TRA, BellSouth should not be allowed to begin charging payphone owners for Directory Assistance. Nevertheless, the revised payphone tariffs filed by BellSouth and orally approved by the agency on February 6, 2001, include charges for Directory Assistance. See footnote 2, *supra*.

TPOA recognizes that the provision of Directory Assistance, unlike Touch-Tone functionality, creates additional costs for BellSouth and that the carrier should be allowed to recover those costs from payphone providers. Therefore, TPOA does not oppose initiating proceedings for the purpose of allowing BellSouth to introduce evidence concerning the costs of Directory Assistance. [3]

III. Allocation of Interstate Costs

As the Initial Order recognized (at 17-18). BellSouth's TSLRIC cost study produced "jurisdictionally unseparated costs," *ie.*, the total costs, both interstate and intrastate, of providing payphone service.[4] Therefore, the TRA declared, "setting rates based on jurisdictionally unseparated costs" while, at the same time, allowing BellSouth "to assess the federal charges," *ie.*, the SLC/EUCL and PICC charges, on payphone providers "would result in double recovery."

Although the Authority recognized that BellSouth should not be allowed to recover the same costs twice, the methodology used by the TRA to separate BellSouth's interstate and intrastate costs does not accomplish the agency's goal.

In the Interim Order, the TRA allocated 25% (or $2.06) of BellSouth's total non-traffic sensitive costs to the interstate jurisdiction. But BellSouth collects $7.85 each month from

[3] Since BellSouth has never charged payphone providers for intrastate directory assistance, this issue does not affect the size of BellSouth's refund.

[4] Unlike a separations study conducted in accordance with Part 36 of the FCC's rules, a TSLRIC cost study shows total, unseparated costs. As the FCC's "Wisconsin Order" stated (at paragraph 12), "We also note that the forward-looking cost studies we have required in the context described above produce cost estimates on an 'unseparated' basis."

the interstate SLC/EUCL charge.[5] If the TRA had "taken into account" this interstate "source of revenue," as the FCC's *Wisconsin Order* requires,[6] rather than trying to estimate interstate costs through the use of a 25% average allocation factor, the resulting PTAS line rate would be $6.60 per month instead of $13.78 and the TRA would have accomplished its goal of preventing the "double recovery" of payphone costs.[7]

As the TRA noted in the Interim Order (at 18), the 25% factor is used by the FCC to allocate outside plant costs between the federal and state jurisdictions. *See* 47 C.F.R. § 36.154. It is also widely used in the industry as a rough estimate of a carrier's interstate costs. But it is merely an average figure, not specific to any carrier.

In this case, however, the TRA knows exactly the amount of NTS costs that BellSouth has allocated to the interstate jurisdiction: $7.85 per access line, per month. That is the SLC/EUCL rate BellSouth presently charges and collects from payphone providers. Therefore, instead of using an industry average allocation factor to separate payphone costs, the Authority should instead adopt BellSouth's SLC/EUCL charges as a more precise, company specific calculation of BellSouth's interstate costs.

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[5] The company is collecting $7.85 in SLC/EUCL charges and an additional amount in PICC charges. But the PICC charges are being phased out under the FCC's recent "CALLS" order. *See, Sixth Report and Order in Docket 96-262*, et seq. released May 31, 2000. Therefore, TPOA has addressed only the SLC/EUCL charges.

[6] The *Wisconsin Order* states, "In order to avoid double recovery of costs, therefore, 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."

[7] $12.25 (total costs) minus $7.85 (SLC/EUCL revenue) equals $4.40, which is then multiplied by 1.50 (overhead allocation) to arrive at a PTAS intrastate rate of $6.60 for non-traffic sensitive costs.

As the FCC wrote in the *Wisconsin Order,* "other sources of revenue," such as the SLC/EUCL charges, "must" be "taken into account" in setting payphone line rates. That means that each LEC's interstate revenue should be "taken into account," *ie.*, deducted from total cost, in order to arrive at intrastate costs. As TPOA's expert witness, Don Wood, explained, "It is essential that the total cost of the local loop be reduced by the amount of the SLC/EUCL and PICC in order to calculate the cost based rates for payphone access line." Direct Testimony, at 21. The Massachusetts regulatory commission also reached the same conclusion in a recent order: "In determining whether payphone charges as properly set to recover the TSLRIC of payphone service, the Department will include revenues that Verizon receives from the SLC."[8]

(TPOA's proposal is the same as the "residual" or "total company" ratemaking methodology which the TRA has used for many years to set rates for so-called "average schedule" telephone companies. Under this method, the TRA calculates a carrier's total cost of service, subtracts the carrier's interstate revenue, and sets intrastate rates to cover all remaining costs. The use of residual ratemaking in Tennessee has been specifically upheld by the FCC and the United States Court of Appeals. See *Crockett Telephone Company, et al.*, *v. FCC*, 963 F.2d 1564 (D.C. Cir., 1992)) .

By separating intrastate and interstate costs based on the use of an average allocation factor, instead of directly subtracting BellSouth's SLC/EUCL revenue from the total NTS cost, the TRA has fixed an intrastate rate that allows BellSouth to recover substantially more

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[8] Order of the Massachusetts Department of Telecommunications and Energy, docket 97-88, 97-18 (Phase II), issued November 28, 2000. (A copy of the order is attached.) As recommended by TPOA, the Massachusetts regulators decided that "the PICC charge is moot because of a recent FCC Order;" but recognized that the SLC/EUCL charge, which is "designed to recover the residual portion of the costs that are not recovered by the intrastate loop charge" must be decucted from total costs to establish intrastate costs. Order at 17.

than its total costs of service. That is wrong as a matter of policy and wrong as a matter of law. The TPOA therefore asks the Authority to reconsider using the 25% interstate allocation factor and adopt instead the approach proposed by Mr. Wood and described in the *Wisconsin Order*.

Finally, adoption of TPOA's position on this issue would moot BellSouth's argument that the 25% allocation figure is "wholly without basis in the record" and that "no specific precedent is even cited [in the Initial Order] for the proposition that such a factor can be logically transplanted from other contexts into the New Service Test context." *Memorandum of BellSouth in Support of Motion to Stay*, filed in the Court of Appeals, December 29, 2000, at p. 9.

While TPOA has argued, and will continue to argue, that the TRA is entitled to rely on its own expertise and that using a 25% allocation factor is within the agency's discretion, TPOA also submits that the agency's legal position would be stronger if the Authority adopted an allocation methodology which was recommended by an expert witness at the hearing, has been adopted by other states, and is supported by the FCC's *Wisconsin Order*. BellSouth could no longer claim that the allocation method recommended by Mr. Wood is "without basis in the record" or that this method is unrelated to the New Services Test.

CONCLUSION

BellSouth's artificial and unsupported charge for Touch-Tone functionality is neither cost-based nor likely to promote the widespread deployment of payphone services. It is, however, a cross-subsidization of other telephone services. Such cross-subsidization is prohibited both by Section 276 of the federal Telecommunications Act and by T.C.A. § 65-5-208(c). BellSouth bears the burden of proof in this proceeding to establish that its payphone rates are consistent with state and federal law. Since the company has made no such showing, the TRA should direct BellSouth to delete that rate from the payphone tariff and make appropriate refunds.

In regard to directory assistance, TPOA does not dispute that there are costs associated with that service and that BellSouth should be able to recover them consistent with the FCC's rules. Therefore, TPOA suggests that the TRA, in the exercise of its federally delegated responsibilities over intrastate payphone rates, investigate the directory assistance issue and set rates accordingly on a going forward basis.

Finally, BellSouth has acknowledged that the SLC/EUCL charge "serves the purpose of recovering regulated costs associated with payphones" and that "the application of a SLC to payphone lines is necessary for LECs to recover regulated costs assigned to the interstate jurisdiction." Sandy Sanders Rebuttal, at 7. In other words, BellSouth itself agrees that the SLC/EUCL charge represents the interstate portion of the carrier's NTS costs. Therefore, the TRA should use BellSouth's SLC/EUCL charge as a surrogate for BellSouth's interstate, NTS costs rather than the 25% allocation factor.

Respectfully submitted,

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ATTACHMENT

D.P.U./D.T.E. 97-88/97-18 [Phase II]

Investigation by the Department of Telecommunications and Energy on its own motion regarding (1) implementation of Section 276 of the Telecommunications Act of 1996 relative to Public Interest Payphones, (2) Entry and Exit Barriers for the Payphone Marketplace, (3) New England Telephone and Telegraph Company, d/b/a NYNEX's Public Access Smart-Pay Line Service, and (4) the rate policy for operator service providers.

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I. INTRODUCTION

On April 17, 1998, the Department of Telecommunications and Energy ("Department") issued its decision in Entry and Exit Barriers and OSP Rate Cap, D.P.U./D.T.E. 97-88/97-18 [Phase II] ("Order"), ordering the removal of barriers to entry and exit of the payphone marketplace and modifying the existing operator service provider ("OSP") rate cap. In the Order, the Department (1) required registered payphone providers to disclose their rates for local coin calls, (2) classified OSPs as non-dominant carriers authorized to charge market-based rates, and (3) required OSPs to notify customers orally of the long-distance rates those customers would be charged. Order at 11-12.

On December 12, 1997, the Department issued a Procedural Notice requesting comments concerning Verizon - Massachusetts' ("Verizon") tariff filing to implement Public Access Smart-Pay Line ("PASL") Service. In particular, the Department requested comment on "whether [Verizon]'s PAL and PASL services comply with FCC requirements" as set forth In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 12 FCC Rcd 20, 997, 20, 998 (para. 2)(Com. Car. Bur. 1997)(Procedural Notice at 2). The New England Public Communications Council ("NEPCC") and Verizon filed comments on January 16, 1998, and January 26, 1998, respectively, at which time the Department took the comments filed by the parties under advisement.

On December 7, 1998, NEPCC, pursuant to 220 C.M.R. §1.104 (5), (7) and (8), petitioned the Department to reopen the record and conduct evidentiary hearings ("NEPCC

Motion to Reopen") in D.P.U./D.T.E. 97-88/97-18 (Phase II) for the purpose of permitting the development and consideration of additional evidence on the compliance of Verizon existing tariffed rates for Public Access Line ("PAL") service with the Federal Communications Commission's ("FCC") requirements for state payphone tariffs, including the "new services test."[1] NEPCC contends that since Verizon's January 26, 1998 filing, decisions in West Virginia, Delaware, and Pennsylvania addressing the "new services test" have been handed down and their content and deliberations are directly relevant to the issues pending before the Department (NEPCC Motion to Reopen at 6).

On December 23, 1998, Verizon submitted its opposition to NEPCC's Motion to Reopen, citing the provision of ample documentation to the Department through both its original filing and its January 26, 1998, comments supporting the tariffed rates for PAL service.

NEPCC filed its reply on February 8, 1999. The Department granted NEPCC's Motion to Reopen the Record on May 14, 1999. An evidentiary hearing was held at the

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[1] **Under FCC guidelines, the requirements for state payphone tariffs state that they must be "cost-based, consistent with Section 276, nondiscriminatory, and consistent with <u>Computer III</u> tariffing guidelines." <u>In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996</u>, 12 FCC Rcd 20, 997, 20, 998 (para. 2) (Com. Car. Bur. 1997). In an order issued on April 4, 1997, the FCC further clarified the "new services test" as set forth in the above payphone reclassification proceeding. The test requires that the rates for local exchange carrier ("LEC") payphone services be based on the direct cost of the service and recover a reasonable portion of overhead costs.**

Department on September 13, 1999. The evidentiary record consists of 180 exhibits and eight record requests. The parties filed briefs on October 12, 1999 and reply briefs on October 29, 1999.[2]

II. STANDARD OF REVIEW

Section 276(a) of the Telecommunications Act of 1996 ("Act") provides that "any Bell operating company that provides payphone service (1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations; and (2) shall not prefer or discriminate in favor of its payphone service." 47 U.S.C. §276(a).

Section 276(b) of the Act directs the FCC to prescribe regulations "[i]n order to promote competition among payphone service providers ("PSPs") and promote the widespread deployment of payphone services to the benefit of the general public." In In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 20, 541 (1996) ("Report and Order"), 11 FCC Rcd 21, 233 (1996) ("Order on Consideration"), In the Matter of Implementation of the Pay

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2 Pursuant to 220 C.M.R. § 1.10(2), the presiding officer may allow for official notice to be taken of such matters as might be judicially noticed by the courts of the United States or of this Commonwealth. On March 2, 2000, NEPCC filed In the Matter of Wisconsin Public Service Commission Order Directing Filings, CCB/CPD No. 00-1, DA 00-347 (March 2, 2000) with the Department. On October 20, 2000, Verizon filed the findings of the New York Public Service Commission in 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, 99-C-1684 and 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, 96-C-1174 (Order Approving Permanent Rates and Denying Petition for Rehearing) (October 12, 2000). Both parties have commented on these filings to supplement the record. In accordance with 220 C.M.R. § 1.10(2), the Department will take administrative notice of these filings.

Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 12 FCC Rcd 20, 997 (Com. Car. Bur. 1997)("First Bureau Clarification Order"), and 12 FCC Rcd 21, 370 (Com. Car. Bur. 1997) ("Second Bureau Clarification Order") (collectively referred to as the Payphone Orders), the FCC unbundled payphone services from payphone equipment and required that local exchange carriers ("LECs") provide PSPs with basic payphone lines that can be used for "smart" or "dumb" payphones on an unbundled basis. Report and Order, at ¶ 146; Order on Reconsideration, FCC 96-439, Released November 8, 1996 at ¶¶ 162-163 ("Reconsideration Order"). The FCC stated that "tariffs for these LEC payphone services must be: (1) cost-based; (2) consistent with the requirements of Section 276 with regard, for example, to the removal of subsidies from exchange and exchange access services; and (3) non-discriminatory." Reconsideration Order at ¶ 163. These three enumerated components, coupled with the requirement that the tariffs for payphone service be consistent and non-discriminatory regarding the FCC's Amendment of Section 64.702 of the Commission's Rules and Regulations' ("Computer III") tariffing guidelines create what has been referred to by the FCC and the parties as "the new services test." See First Bureau Clarification Order at ¶ 2. The FCC further ordered that "[s]tates must apply these requirements and the Computer III guidelines for tariffing such intrastate services." Reconsideration Order at ¶ 163.

III. POSITIONS OF THE PARTIES

A. Compliance with Section 276 of the Act and FCC's New Services Test

1. NEPCC

NEPCC claims that Verizon's PAL rates are not cost-based within the meaning of the FCC standard (NEPCC Initial Brief at 10). NEPCC argues that the current PAL rates were originally established using rate-of-return regulation, a criterion that has little to do with the forward-looking economic costs of providing the PAL service (id. at 10-11). NEPCC notes that the Delaware Public Service Commission, faced with a similar situation, ordered Bell Atlantic-Delaware to lower its rates because it found that the business dial tone rate that applied to payphone lines was established as a residual rather than a cost-based rate (id. at 11). Accordingly, NEPCC argues that Verizon's PAL rates should be treated similarly because the rates are set on the same residual basis as that of Bell Atlantic-Delaware (id.).

NEPCC indicates that the Department did not use the new services test in reviewing and approving the present PAL rate structure. NEPCC states that although Verizon has the burden to demonstrate that each PAL service element recovers the direct cost and a reasonable portion of overhead costs, it chose not to present a PAL-specific cost study. Rather, NEPCC contends that Verizon relied on the unbundled network element ("UNE") results determined in the Department's Consolidated Arbitrations for its direct costs, and on the direct costs-to-rate ratio that the FCC previously approved or allowed to go into effect to justify its overhead cost (id. at 12-13). NEPCC argues that the link rate should be adjusted to reflect PAL-specific link characteristics, especially since PAL subscribers generally place their phones at business locations using links with business line characteristics and that UNE rates are based on statewide average combining both business and residential customers (id. at 14). NEPCC indicates that applying this calculation in 42 states has shown that the cost of a link with business characteristics is roughly 80 percent the cost of the link developed with a mixture of residence and business characteristics (id. at 15). Accordingly, NEPCC wants Verizon to adjust its statewide average link cost to reflect that difference (id.). NEPCC states that BellSouth, GTE and United have made this type of adjustment to their UNE rates (id. at 15-16).

Moreover, NEPCC argues that Verizon had made no demonstration of the reasonableness of the cost-to-rate ratio analysis of its overhead cost (id. at 17). NEPCC argues that Verizon's reliance on the FCC's previously allowed cost-to-rate ratio is unfounded because: (1) allowing a tariff to take effect does not constitute the FCC's endorsement or sanction of the appropriateness thereof; (2) the FCC never approved such an approach in its new services test; and (3) the fact that a cost-to-rate ratio may fall within a range approved for one set of services is irrelevant with respect to a different set of services (id. at 17-18). NEPCC states that in In the Matter of Local Exchange Carriers' Payphone Functions and Features, 12 FCC Rcd 17, (1997)("Payphone Features Order"), the FCC specifically stated that its determination of overhead loadings for Verizon's provision of payphone features and functions will not necessarily be determinative in evaluating overhead loadings for other services (id. at 18). Absent any specific analysis provided by Verizon, NEPCC recommends that Verizon apply overhead loadings already found by the Department to be reasonable in

D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94, collectively referred to as the Consolidated Arbitration proceedings (id. at 22).[3]

Furthermore, NEPCC argues that, contrary to Verizon's claim, the FCC payphone standard also applies to local usage (id.). NEPCC states that local usage is not an optional feature or function and further contends that a payphone cannot make use of a payphone line unless it also pays usage (id.). According to NEPCC, Verizon is trying to justify its high markup for its monthly local usage charges by arguing that local usage is not a payphone-specific feature or function, therefore negating the applicability of FCC requirements in this regard (id. at 22-23). NEPCC contends that similar arguments made by Verizon in Pennsylvania and Maryland were rejected (id. at 23-24). Moreover, NEPCC claims that the FCC's policy statement, in a letter dated October 5, 1999 from the FCC's Common Carrier Bureau to the Deputy Attorney General of New Jersey, confirms that the payphone standards apply to the local usage component of PAL services (RR-DTE-3, October 7, 1999 Supplement). According to NEPCC, the FCC indicated that it "drew no distinctions based on rate structure; nor did it make any other exceptions to the cost requirements. Thus, any payphone service rate, flat or usage based, must be justified by cost support materials as

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3 Consolidated Petitions of New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts, Teleport Communications Group, Inc., Brooks Fiber Communications, AT&T Communications of New England, Inc., MCI Communications Company, and Sprint Communications Company, L.P., pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of interconnection agreements between Bell Atlantic-Massachusetts and the aforementioned companies.

prescribed in 47 C.F.R. § 61.49(g), and must satisfy the price caps new services test" (id. at 25-26).

NEPCC also argues that Verizon's failure to establish cost-based rates has undermined the non-discriminatory requirement of the FCC's four-part standard (id. at 30-31). Accordingly, NEPCC recommends that the Department require Verizon to lower its monthly PAL line rate to $16.71 and local usage rate to $0.0158. Furthermore, NEPCC requests that the Department retroactively apply this rate effective April 15, 1997, with the appropriate refunds to be made within 30 days of the date of this order (id. at 32).

2. Verizon

Verizon argues that it presented substantial evidence to demonstrate that its existing tariffed rates for PAL, PASL and unbundled payphone features comply with the FCC's requirements implementing § 276 (Verizon Initial Brief at 4). Verizon claims that the FCC's new services test established in Computer III requires that rates be based on the direct cost of providing the new service as a price floor and recover a reasonable level of contribution toward the recovery of joint and common fixed costs (id. at 5). Verizon argues that the FCC declined to require that the total element long-run incremental cost ("TELRIC") pricing regime of §§ 251 and 252 of the Act apply to § 276 retail payphone services because payphone service providers are not telecommunications carriers (id.). Verizon argues that, in applying its new services test, the FCC did not quantify a reasonable level of overhead costs or require a uniform or specific contribution level in establishing rates for basic payphone services (id. at 6). Verizon indicates that the FCC has previously approved rates ranging from two to fifty times their direct costs, greatly exceeding Verizon's rates for payphone services in Massachusetts and falling between 1.30 and 1.73 times the direct costs for PAL and PASL services, respectively (id.).

Moreover, Verizon claims that the issue of whether PAL service should be set at business rates was previously litigated, resulting in a Department determination that PAL lines are business exchange lines and that the cost of services provided to payphone service providers are the same as the costs to serve other business customers (id. at 7-8, citing D.P.U. 89-300, D.P.U. 91-30, D.P.U. 92-100, and D.P.U. 93-125 (collectively "NYNEX Transition Filings")). Verizon contends that other state regulatory commissions, such as the Michigan and Colorado Commissions, have adopted the same rates for a payphone line and business line in proceedings established to investigate compliance with § 276 and related FCC payphone orders implementing the Act (id. at 8). Verizon finds fault with NEPCC's claim that the cost of providing loops to payphone service providers is less than for other customers because it is not supported by studies or cost data and, moreover, amounts to cost de-averaging based on customer classification (id. at 10).[4] Verizon argues that even if one accepts NEPCC's argument and adjusts the payphone loop costs by 20 percent, resulting in a reduction of $2.42 per PAL, no change in payphone rates would be required under the FCC's new services test because the existing payphone rates would be well within the range determined by the FCC as a reasonable level of contribution or overhead for payphone services (id. at 11). Moreover, Verizon contends that its cost-to-rate ratios for payphone services are within the range

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4 While rates are currently based on a statewide average, de-averaging would establish customer-specific rates based on class of service.

approved by the FCC on previous filing (id. at 13). Verizon claims that NEPCC has failed to demonstrate why there should be a departure from established FCC precedent in the Department's consideration of PAL rates in this proceeding (id.).

Furthermore, Verizon argues that the local usage in this tariff is not payphone-specific and, therefore, is not subject to the payphone orders implementing the Act (id. at 19). According to Verizon, the FCC made it clear that the unbundled features to be tariffed are payphone-specific, network-based features and functions such as call-blocking, coin supervision, signaling and rating, originating line number screening and IDDD-blocking (id. at 19-22). Verizon argues that none of the FCC's payphone orders indicate that the FCC intended for usage to be included as a payphone line or an unbundled payphone feature subject to the FCC's new services pricing requirements (id. at 20). Contrary to NEPCC's claim, Verizon asserts that the letter from the FCC's Common Carrier Bureau staff is consistent with the Company's reading of the FCC's payphone orders (id. at 22). According to Verizon, the FCC drew no distinctions based on rate structure, nor made any exceptions to the cost requirements that any payphone service rate, flat or usage based, must satisfy the price caps new services test. The FCC does determine, however, whether a service was payphone-specific and subjects only those that are to the new services test scrutiny (id.). Verizon states that if it had chosen to offer a special rate plan for payphone services or had structured its usage prices differently for payphones as opposed to other services, then those services would be payphone-specific and the FCC's special rules would apply (id.). However, according to Verizon, it did not do this, and as a result, its usage charges are not payphone-specific and thus, not subject to the new services test (id.). Verizon indicates that, even if usage were included, the margin of local usage over direct costs does not show an unreasonable level of contribution or overhead, as compared with FCC-approved filings, which range between 2.0 and 4.8 times the direct cost (id.). Verizon notes that the direct cost of the usage component of flat-rated PAL is $7.57 and the effective rate is $26.77, producing a rate that is 3.5 times the direct cost, which is well within the FCC's range of reasonableness for contribution level (id. at 22-23). Similarly, Verizon indicates that the margins for measured local usage rates over their direct cost and resulting overhead contribution are not unreasonable compared to those found to be reasonable by the FCC (id. at 23). Furthermore, Verizon argues that since the Department has always applied business usage rates to payphone lines, there is no basis for the Department to depart from its longstanding policy regarding PAL usage rates that have been found just and reasonable (id.). As to NEPCC's claim that PAL and PASL rates are discriminatory, Verizon contends that its payphone services are not discriminatory since all payphone-service providers, including its own payphone-service provider, are subject to the same tariffed rates and charges (id. at 24).

B. Subscriber Line Charges and Primary Interexchange Carrier Charges

1. NEPCC

NEPCC states that, in addition to the monthly PAL line rate of $13.00, payphone providers also pay a monthly Subscriber Line Charge ("SLC") charge of $8.13 and Primary Interexchange Carrier ("PICC") charge of $4.38, adding up to a total payment of $25.41 per PAL per month (id. at 26). NEPCC argues that Verizon is engaged in double recovery of its

PAL costs because a cost-based or fully-compensatory UNE link is only $14.98 (id.). NEPCC states that it is not asking the Department to exempt PAL subscribers from the payment of SLC and PICC charges but to take into consideration such monthly payments in setting PAL service rates (id. at 27). NEPCC claims that West Virginia Public Service Commission, faced with the same situation, required that SLC payment must be considered in setting PAL service rates (id. at 27). NEPCC states that competitive local exchange carriers ("CLECs") do not pay SLC and PICC charges on top of the full-compensatory UNE rates and that under the terms of § 276 and the FCC's payphone orders, PAL subscribers cannot be treated any differently (id. at 30).

2. Verizon

Verizon indicates that SLC and PICC are federal charges that apply to all payphone service providers, including Verizon's own payphone operations, on a nondiscriminatory basis and under the same rates, terms and conditions (Verizon Initial Brief at 17). Verizon argues that the Department should not eliminate the charges because the FCC is very clear that payphone services providers are to be treated as retail customers, not telecommunications carriers and, therefore, should be subject to all applicable business line charges (id. at 18). According to Verizon, contrary to NEPCC's claim, there is no double recovery since those charges recover interstate embedded costs, not intrastate embedded costs (id.). Verizon indicates that both the Michigan PSC and the Colorado Commission have rejected similar arguments by the payphone associations (id.)

IV. ANALYSIS & FINDINGS

A. Compliance with § 276 and FCC's New Services Test

The FCC, in its Reconsideration Order at ¶163, released November 8, 1996, required that LECs file tariffs for the basic payphone lines at the state level only, and that unbundled features and functions be tariffed at both state and federal levels and that the tariffs for these services be (1) cost-based; (2) nondiscriminatory; (3) consistent with § 276;[5] and (4) consistent with the FCC's Computer III tariffing guidelines, including the new services test.[6]

Both Verizon and NEPCC agree that the Company's payphone rates should be consistent with § 276 and the FCC's Payphone Orders. However, the two differ on the interpretation of the FCC's Payphone Orders with regard to the meaning of the FCC's requirement that rates should be cost-based. NEPCC claims that Verizon's PAL rates are not cost-based because: (1) PAL rates are not based on a PAL-specific cost study, and (2) Verizon made no demonstrations of the reasonableness of the cost-to-rate ratio analysis of its overhead cost.

First, we address the issue of whether PAL rates should be based on a PAL-specific cost study. In previous Department proceedings, payphone service providers have

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5 The Department has already addressed the issue of the Company's consistency with Section 276 in D.P.U. 97-18 and D.P.U. 97-67, in which Verizon removed its intrastate payphone subsidy as required by the Act.

6 Both Verizon and NEPCC agree that the basic requirement under the FCC's new services test is that the rates cover the direct cost of the service and provide a reasonable contribution toward the recovery of joint and common costs, which are referred to as overhead costs (Verizon Brief at 4-5; NEPCC Brief at 4).

recommended that the Department establish a separate class for PAL service. For example, in New England Telephone and Telegraph Company, D.P.U. 92-100, at 272 (1992), the Department rejected the payphone service providers' argument that PAL rates are not cost-based only because we found no evidence that the cost of services provided by the Company to payphone services providers was different from the costs to serve other business customers. The Department's finding, however, in no way implied that the cost of payphone services were the same as the costs to serve other business customers, as alleged by Verizon. To the contrary, even after finding no evidence on which to consider payphone services separately, the Department, recognizing that payphone services providers are competitors of Verizon, encouraged the Company to consider if it is appropriate to establish a separate class for payphone service providers in the future. Id. at 272-273.

Despite the Company's lack of interest in establishing this separate class of service, FCC regulations now require that payphone rates be cost-based, consistent with § 276 and the FCC's Computer III tariffing guidelines, including the new services test. We agree with NEPCC that the current basic payphone access line rate is not payphone-specific, and is, therefore, not in compliance with the FCC's requirement that payphone rates be cost-based. In Local Competition, D.P.U. 94-185, at 15 (1996), the Department found, inter alia, that total service long-run incremental cost ("TSLRIC") is the appropriate standard for determining the prices of Verizon monopoly/essential services. Accordingly, the Department directs Verizon to file a comprehensive TSLRIC study, complete with supporting documentation, for basic payphone access lines and a cost-to-rate ratio analysis of its overhead costs, within 60 days of the date of this Order.

Moreover, we direct the Company to submit the TSLRIC study complete with supporting documentation for payphone features and functions. Verizon provided no demonstration of the reasonableness of the overhead cost for payphone features and functions. Since we have directed the Company to supply the Department with a comprehensive TSLRIC study, it may not justify overhead loading for payphone features and functions by reference to the overhead loading on other tariffed services such as other business services.

Next, we address the issue of whether the FCC payphone standard applies to local usage rates, as NEPCC contends. The FCC, in In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, DA 97-678, released on April 4, 1997, clarified and granted limited waiver of the Commission's tariffing requirements for unbundled features and functions. The FCC stated that "we do not include in this federal tariffing requirement features and functions that are generally available to all local exchange customers and are only incidental to payphone service, such as touchtone services and various custom calling features. In addition, we clarify here that payphone-specific, network-based features and functions must be federally tariffed now only if the LEC provides them separately and on an unbundled basis from the basic payphone line, either to its payphone operations or to others . . . ." Id. at ¶18. While we agree with NEPCC that local usage is not an optional feature or function and that a payphone cannot make use of a payphone line unless it also pays usage, none of the FCC's payphone orders indicate that the FCC intended that usage be included as part of a payphone line or an unbundled payphone feature subject to the FCC's new services test requirement. We disagree with NEPCC's interpretation of FCC's Common Carrier Bureau letter to the Deputy Attorney General of New Jersey that the Commission confirmed that its payphone standards apply to the local usage component of the PAL services. To the contrary, the letter states that "any payphone service rate, flat or usage-based, must be justified by cost support materials as prescribed in 47 C.F.R. § 61.49(g), and must satisfy the price caps new services test" (NEPCC Initial Brief at 25-26; RR-DTE-3, October 7, 1999 Supplement). We believe the letter's use of the term "payphone service rate" is meant to distinguish payphone-specific rates from non-payphone-specific rates. Verizon's local usage rate is not a payphone-specific rate because it applies to all business exchange services. We agree with Verizon that if it had structured its usage rates differently for payphones than for other services, then those rates would be payphone-specific and the FCC's new services test would apply. The fact remains that Verizon has not structured its local usage rate in such a way as to have a separate local usage charge for payphone services. Therefore, we conclude that the FCC payphone standard does not apply to local usage rates.

Finally, we address NEPCC's claim that Verizon's PAL and PASL rates are discriminatory. NEPCC claims that since Verizon's rates are not cost-based, they undermine the non-discriminatory requirement of the FCC's four-part standard. Not withstanding our directive above that Verizon develop payphone-specific rates, since PAL and PASL services are available to all payphone service providers on a tariffed basis, we find no evidence that Verizon's PAL and PASL rates discriminate against NEPCC.

B. Subscriber Line Charges and Primary Interexchange Carrier Charges

The SLC and PICC are federal charges that are designed to recover common line costs.[7] These federal charges are designed to recover the residual portion of the costs that are not recovered by the intrastate loop charge and other federal charges, such as Universal Service Fund costs.

Here again, the FCC has clearly stated that payphone services providers are to be treated as retail customers by LECs and not as telecommunications carriers. Report and Order at ¶ 147. While the PICC charge is a moot issue because of a recent FCC Order, the SLC is a federal charge that applies to all end users, including payphone services providers. Because payphone services providers are treated as end users and because end users in the state currently pay a SLC charge, payphone services providers should be treated similarly. However, in determining whether payphone charges are properly set to recover the TSLRIC of payphone service, the Department will include revenues that Verizon receives from the SLC.

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[7] On May 31, 2000, the FCC issued an order eliminating the residential and single line business PICC charge. The change became effective July 1, 2000. Sixth Report and Order in CC Docket 96-262 and 94-1; Report and Order in CC Docket No. 99-249; Eleventh Report and Order in CC Docket No. 96-45; Released May 31, 2000.

V. ORDER

After due notice, hearing and consideration, it is

ORDERED: That Verizon-Massachusetts conduct a comprehensive TSLRIC study, complete with supporting documentation for basic payphone access lines and a cost-to-rate ratio analysis of its overhead costs; and it is

FURTHER ORDERED: That Verizon-Massachusetts present said cost study to the Department within 60 days of the date of this Order; and it is

FURTHER ORDERED: That Verizon-Massachusetts and the New England Public Communications Council comply with any and all other directives contained in this Order.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN 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

AGREED MOTION FOR CONTINUANCE

The Tennessee Payphone Providers Association ("TPOA") requests that the above-captioned proceeding, now scheduled for hearing in late May, be postponed until after the Tennessee Regulatory Authority has issued final orders in the "permanent pricing" docket (TRA Docket 97-01262) and in the "universal service" proceeding (TRA Docket 97-01262).

The other parties to this proceeding have stated that they have no objection to this request as long as the matter is continued to a date certain. For that purpose, TPOA asks that a pre-hearing conference be convened to re-set the procedural schedule.

Discussion

This case involves the determination, among other things, of the "cost" to BellSouth or providing an access line to a public telephone. The case was originally scheduled to be heard in 1997 but was postponed, by unanimous consent, until May. The purpose of that delay was to allow the TRA to complete the "permanent pricing" and "universal service" proceedings which also involve the determination of the costs of various BellSouth services, including the costs of facilities used to serve public telephones. All the parties agreed that the decisions made in those two other dockets would influence the outcome of the present proceeding.

Furthermore, the parties agreed to the postponement because, in accordance with directions from the FCC, whatever rates are fixed by the TRA in this proceeding will be retroactive to April, 1997. Therefore, no party is prejudiced by delay.

Because of delays in permanent pricing and universal service proceedings, it is now apparent that the TRA will not complete those proceedings until mid to late summer. It makes little sense, therefore, to proceed with the pay telephone docket in May. As the parties remain protected by the FCC's order making the rates retroactive, all agree that a further postponement to a date certain in the future is necessary and appropriate.[1]

Respectfully submitted,

Henry Walker
BOULT, CUMMINGS, CONNERS & BERRY, PLC
414 Union Street, Suite 1600
P.O. Box 198062
Nashville, TN 37219
(615) 252-2363

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded, via U.S. Mails, postage prepaid to all parties of record this 4th day of March, 1998.

Henry Walker

[1]Continuation of this proceeding also involves postponement of BellSouth's tariff filing no. 97-07641 concerning directory assistance charges to pay telephone providers. The agency has suspended the tariff and combined it with the above-captioned proceeding. BellSouth has stated that they do not object to continuing both cases to a date certain in the late summer.

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT NASHVILLE, TENNESSEE

IN 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

INITIAL ORDER FOR EXTENSION OF TIME

This matter came before the Tennessee Regulatory Authority (the "Authority") through the Hearing Officer in this matter, Lynn Greer, for approval of an Agreed Motion[1] for continuance of the proceedings and postponement of the dates for Hearing.

The Report and Recommendation of the Hearing Officer, filed September 24, 1997, set the date for Hearing on this matter as May 21-22, 1998. A copy of this Report and Recommendation is attached as Exhibit A. The Report and Recommendation was approved by the Authority at a regularly scheduled Directors' Conference on October 7, 1997. On March 4, 1998, Tennessee Payphone Providers Association ("TPOA"), filed an *Agreed Motion for Continuance* on behalf of all of the Parties in this proceeding. According to the Motion filed by TPOA, the Parties have agreed to this Motion contingent upon the setting of a new date certain for the Hearings. TPOA, therefore, included in its Motion a request for a Pre-Hearing Conference. A copy of the March 4, 1998, Motion is attached as Exhibit B.

In support of its Agreed Motion, the Parties, through TPOA, stated the reasons for the continuance as:

[1] All Parties to the proceeding independently confirmed their agreement to the continuance.

Ellenberg, Barber, Arlis Spalding

a) This case involves the determination, among other things, of the "cost" to BellSouth of providing an access line to a public telephone. The case was originally scheduled to be heard in 1997 but was postponed, by unanimous consent, until May. The purpose of that delay was to allow the TRA to complete the "permanent pricing" and "universal service" proceedings which also involve the determination of the costs of various BellSouth services, including the costs of facilities used to serve public telephones.

b) The Parties agreed that the decisions in the two other dockets would influence the outcome of the present proceeding.

The Hearing Officer finds that this Motion will not prejudice any Party, but will require the Hearing schedule in this Docket to be revised. Therefore, the Hearing Officer grants the Agreed Motion. Further, the Hearing dates in this matter of May 21-22, 1998, are canceled. The Proposed Hearing Schedule shall be modified at a Status Conference to be held on May 21, 1998, at 9:00 A.M., in the Hearing Room of the Authority.

IT IS THEREFORE ORDERED THAT:

1. The Agreed Motion for Continuance of the Hearing schedule is approved;

2. The Hearing dates of May 21-22, 1998, are canceled;

3. The revisions to the Procedural Schedule from the granting of this Motion shall be the subject of a Status Conference to be held May 21, 1998, at 9:00 A.M.; and

4. Any party aggrieved with the Authority's decision in this matter may file a petition for reconsideration with the Authority within ten (10) days from and after the date of this Order.

Lynn Greer
CHAIRMAN LYNN GREER
AS HEARING OFFICER

ATTEST:

K D Waddell
EXECUTIVE SECRETARY