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REC'D TN
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EXECUTIVE SECRETARY

July 26, 2000

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
360 James Robertson Parkway
Nashville, TN 37201

Re: Tariff Filings by all Telephone Companies Regarding Reclassification of Pay Telephone Service as Required by FCC Order 96-439
Docket No. 97-00409

Dear Mr. Waddell:

The above-referenced matter is on the Authority's conference agenda scheduled for August 1, 2000. Please accept for filing TPOA's appeal of the Hearing Officer's motion denying interim relief to TPOA. Copies have been forwarded to parties of record.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:
Henry Walker

HW/nl
Enclosure

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: **ALL TELEPHONE COMPANIES TARIFF FILINGS REGARDING RECLASSIFICATION OF PAY TELEPHONE SERVICE AS REQUIRED BY FCC DOCKET 96-128**
Docket No. 97-00409

APPEAL OF PRE-HEARING OFFICER'S ORDER DENYING TPOA's MOTION FOR INTERIM RATE RELIEF

The Tennessee Payphone Owners' Association ("TPOA") respectfully files this appeal of the Pre-Hearing Officer's Order of July 21, 2000, in which the Pre-Hearing Officer denied TPOA's motion for interim rate relief pending completion of this docket. TPOA does not object to the other findings in the Order.

SUMMARY

This case has been pending for more than three years. Throughout that time, payphone owners in Tennessee have been paying more than $40 a month to BellSouth for each payphone access line. Based on federal pricing guidelines and developments in the Authority's "UNE" docket, it now should be obvious — even to BellSouth — that the company's $40 price is about double what it ought to be. Therefore, during the four to six additional months it will take to complete this docket, the TPOA asks that an interim, payphone access line rate be set of $18.90 per month. *See* footnote 1, *infra*.

The proposed, interim rate is merely an estimate of the likely outcome of this proceeding. But whatever payphone rate the TRA finally sets will likely be much less than BellSouth's current, $40 rate and will be applied retroactively to April 15, 1997. Therefore, this proposed rate reduction will be more than offset by the refunds BellSouth will owe to payphone owners and will have no impact whatsoever on BellSouth. On the other hand, as demonstrated in the affidavits filed by TPOA members with the Hearing Officer, this interim reduction will allow payphone owners to maintain telephones at marginal locations, such as public buildings and playgrounds, and will help avoid further harm to competition caused by any additional delay in this docket.

BACKGROUND

Three years ago, the Federal Communications Commission directed that all incumbent, local exchange carriers such as BellSouth file payphone tariffs that are "cost-based, nondiscriminatory, and consistent with both Section 276 [of the federal Telecommunications Act] and the [FCC's] Computer III tariffing guidelines [the "new services" test]." *In the Matter of Wisconsin Public Service Commission Order Directing Filings* CCB/CPD No. 00-1, released March 2, 2000, paragraph 2. (A copy of the Order is attached.) The FCC declared that those rates must be effective as of April 15, 1997. In response, the Authority opened this proceeding to determine "appropriate access line rates for payphones" in accordance with the FCC's directions and declared that the payphone rate, once finally determined, would be applied retroactively to April 15, 1997. Hearing Officer's Order, at 1-3.

Today, members of TPOA who operate pay telephones in the BellSouth area are paying, on average, more than $40 per month for each telephone line. *See* Affidavits attached to TPOA's motion. That figure includes both the monthly End User Line Charge ("EULC") and the Presubscribed Interexchange Carrier Charge ("PICC") which TPOA members are required to pay in addition to BellSouth's tariffed rate. As explained below, it is now apparent that the $40 charge is more that twice BellSouth's costs of providing a payphone access line.

In an Order issued March 2, 2000 (cited above), the Common Carrier Bureau of the Federal Communications Commission clarified the manner in which cost-based rates for pay telephone lines should be developed. First, the Bureau said that "absent justification," incumbent LECs may not allocate more overhead costs to payphone services than they "recover in rates for comparable services," and that "UNEs appear to be 'comparable services' to payphone line services." March 2 Order, paragraph 11. Therefore, BellSouth's UNE rates, which already include overhead allocations, provide a useful benchmark for judging the reasonableness of BellSouth's payphone line rates. Second, the March 2 Order specifically explains that, in fixing cost-based payphone rates, the LEC must take into account EUCL and PICC revenues to avoid "double counting." That adjustment alone will reduce BellSouth's current payphone charges by about $12 a month.

If one adjusts BellSouth's current payphone line rate to (1) take into account the EULC and PICC charges (2) set loop, port, switching and billed number screening rates that are consistent with the Authority's UNE docket and (3) compute usage charges based on 600 to 700 calls a month, the end result will be a payphone rate of $18.90 per line, or less.[1]

Based on these calculations, TPOA members expect to receive substantial refunds once the Authority fixes cost-based rates that apply retroactively to April 15, 1997. Those refunds, however, may come too late to keep some members in business or to prevent the

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[1] This estimate is based on the UNE rates in BellSouth's most recent cost study filed June 9, 2000, in docket 97-01262. Even that figure, however, is still higher than the final rate the TRA will likely set in this docket. Based on BellSouth's June 9 filing, the average cost of a loop is $14.92, a "coin port" is $2.16 and usage charges (based on 650 calls per month) would be $1.81. "Billed number screening" adds another penny for a total rate of $18.90. The end result is still higher than a true, cost-based rate because a payphone loop is shorter, on average, than other loops. Based on results in other states, the actual cost of a payphone loop is about 83% of BellSouth's UNE loop rate.

elimination of hundreds of marginal payphone locations. As shown in affidavits filed by the TPOA in support of its motion, payphone owners are suffering severe economic harm as a result of the unforeseen, three-year delay in fixing cost-based rates. Some are going out of business; others are taking out all but the most profitable payphones. The members of TPOA need immediate, interim relief if they are to continue providing service.

The Hearing Officer's Decision

The Hearing Officer denied TPOA's motion for interim relief for the following, two reasons (Hearing Officer's Order, at 8):

> 1. The TPOA's proposed rate is not based on findings gathered during an evidentiary hearing and the issues involved with setting an interim rate are controversial.
> 2. The parties do not agree to the revised interim rate proposed by the TPOA or any other revised interim rate.

There is no other explanation in the Order of the Hearing Officer's decision. As discussed below, both reasons are unsound and inconsistent with the Authority's rulings in other cases.

1. Neither TPOA's proposed, interim rate nor BellSouth's current rate is "based on findings gathered during an evidentiary hearing." BellSouth's $40 rate has ever been examined by anyone to determine whether it complies with the FCC's requirements. It is simply the rate that was in effect on April 15, 1997, when the FCC's requirements become effective.

The Hearing Officer also said that the issues involved in setting an interim rate are "controversial." Perhaps some are, but others are not.

As discussed above, the March 2 Order from the Common Carrier Bureau states that "UNEs appear to be 'comparable services' to payphone line services." March 2 Order, paragraph 11. The March 2 Order also explained that the EUCL and PICC payments must be counted in determining "cost based" payphone rates.[2]

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[2] All of BellSouth's property (all that is used in the provision of regulated telecommunications services) is allocated ("separated") between the interstate jurisdiction, regulated by the FCC, and the intrastate jurisdiction, regulated by state commissions. *See*, *Smith v. Illinois Bell Telephone Co.*, 282 U.S. 133, 148 (1931). Roughly speaking, one-fourth of BellSouth's plant, revenues, and expenses is under the control of the FCC; three-fourths is under control of the states. The FCC fixes rates — such as interstate access charges, the End User Line Charge, and the Presubscribed Interexchange Carrier Charge — to allow BellSouth to recover its "interstate" costs. State commissions fix rates — such as local residential and business line charges, intrastate access charges, and intraLATA toll charges — to allow BellSouth to recover its "intrastate" costs.

Under various sections of the federal Telecom Act, however, state regulators are required to fix cost-based rates without regard to the separations process. For example, in both the UNE pricing docket and the Universal Service docket, the TRA is looking at BellSouth's total, "unseparated" cost of each element or service. When the parties to the UNE docket debate whether a loop cost is $14 or $16, they are referring to the total cost of the loop, not merely the intrastate cost. Similarly, when the TRA determines whether BellSouth's rates for a pay telephone access line is "cost-based," the TRA will be looking at BellSouth's total, unseparated costs of providing a payphone line

Throughout this proceeding (and in similar proceedings in other BellSouth states) BellSouth has insisted that pay telephone owners, such as the members of TPOA, must pay rates to cover BellSouth's total, unseparated cost of providing service <u>in addition to</u> the interstate EUCL and PIC charges. The pay telephone owners have argued that, since the EUCL and PIC charges are intended to reimburse BellSouth for its "interstate" costs, those revenues must be included in fixing cost-based rates. Otherwise, BellSouth would recover it interstate costs twice over.

The March 2 Order of the Common Carrier Bureau resolves this issue. In paragraph 12, the Bureau explained that the "forward-looking cost studies we have required" produce cost estimates on an "unseparated" basis. Therefore, in order to avoid "double recovery" of a carrier's interstate costs, the LEC "must demonstrate that is setting payphone line rates it has taken into account other sources of revenue (*e.g.* SLC/EUCL, PICC, and CCL access charges) that are also used to recover the costs of the facilities involved." Therefore, once the TRA determines BellSouth's total, unseparated cost of providing a pay telephone access line, the agency must deduct the EUCL and PICC charges (about $12) that phone owners are already paying in order to arrive at a rate that is equal to the carrier's total costs.

In response to the Bureau's Order, a coalition of local exchange carriers, including BellSouth (the "LEC Coalition") has strongly objected to that portion of the March 2 Order which implies that payphone line tariffs should be comparable to UNE rates. (A copy of the briefs filed by the LEC Coalition with the FCC is attached to BellSouth's response to TPOA's motion.) The LEC Coalition, however, has not raised any objection to the Bureau's discussion of the EULC and PICC charges. Apparently, no one now disputes the Bureau's explanation that those charges must be considered in arriving at a cost-based rate for a payphone access line.[3]

2. The Hearing Officer's second reason for denying TPOA's motion was that "the parties do not agree" on an interim rate. The TRA, however, can fix interim rates, subject to adjustment, whether or not the parties are in agreement. For example, the TRA has directed BellSouth and various CLECs to pay an interim reciprocal compensation rate for terminating calls

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[3] Although BellSouth did not challenge the Bureau's finding that EUCL and PICC payments have to be taken into account in fixing cost-based rates, BellSouth has come up with a novel argument that defines the issue away. Claiming that any rate is "cost-based" as long as it is priced above cost, BellSouth argues that the EUCL and PICC charges should be treated as just more "overhead loadings." BellSouth's Comments in response to TPOA's Motion for Interim Relief, at 7. Therefore, by BellSouth's logic, all of BellSouth's rates are cost-based," as long as the rates are higher than BellSouth's cost of providing service. If that were true, there is no reason to have delayed these proceedings for three years and no reason to have any further hearings in this docket, since no one disputes that the current rates more than cover BellSouth's costs.

BellSouth also claims no other BellSouth state has adjusted its payphone tariffs to reflect the EUCL and PICC charges. *Id.* Those state decisions, however, were made before the Common Carrier Bureau released the March 2 Order. The South Carolina Commission, for example, recognized that the EUCL and PICC charges allow BellSouth to recover "interstate" costs but believed that, unless the FCC said otherwise, the state could not take those federally mandated charges into account in fixing cost-based rates. A copy of the relevant portions of the South Carolina Order, released April 19, 1999, is attached. *See* pages 22-25. ("The FCC does not state that revenue from [the EUCL] should be used to offset payphone costs.") Now, however, the Common Carrier Bureau has declared that these interstate payments must, in fact, be counted in fixing cost-based payphone rates.

to Internet Service Providers pending a final decision by the FCC on the reciprocal compensation issue. Although the parties vigorously disagree about whether there should be a retroactive "true-up" following the FCC's decision, no one has even suggested that the TRA lacks the power to fix an interim rate absent the agreement of all parties.

Perhaps the Hearing Officer actually meant that the agency must have either the agreement of the parties or an evidentiary hearing to fix an interim rate. But neither BellSouth nor the Hearing Officer has pointed to any Tennessee statute or case law supporting that position. To the contrary, it is well established that the power to fix permanent rates necessarily implies the power to fix interim rates.[4] That is particularly true where the rates are subject to a retroactive true-up so that all parties are reasonably protected from harm. *See* footnote 4, below.

Here, (1) the March 2 Order of the FCC and the preliminary results of the TRA's own investigation of UNE costs demonstrate a substantial likelihood that BellSouth's $40-per-line rate is well in excess of a "cost-based" rate;

(2) affidavits submitted by TPOA members demonstrate that payphone owners will suffer irreparable harm in the absence of interim rate relief;

(3) BellSouth has not argued, and cannot reasonably contend, that it will suffer any harm if TPOA's motion is granted; and

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[4] See *Friends of the Earth v. Wisconsin Public Service Commission*, 254 N.W. 2d 299 (Wisconsin Supreme Court, 1977); *Kansas-Nebraska Natural Gas Company v. State Corporation Commission*, 538 P.2d 702, 710 (Kansas Supreme Court, 1975); *Southern Bell Telephone and Telegraph Co. v. Bevis*, 279 So. 2d 285, 287 (Florida Supreme Court, 1973); *Application of Kauai Electric*, 590 P 2d 524, 535 (Hawaii Supreme Court, 1978); *State v. Department of Transportation of Washington*, 206 P.2d 456, 475 (Washington Supreme Court, 1949); *Chesapeake and Potomac Telephone Co. v. Public Service Commission*, 330 Atl. 2d 236, 240 (D.C. Ct. of Appeals, 1974).

(4) an interim rate reduction will promote the public interest by allowing payphone owners to continue serving marginal locations, especially at public facilities. The Hearing Officer himself acknowledged that "the extended delay in concluding this proceeding was not expected" and that "further delay in setting cost-based pay telephone rates potentially harms competition in the pay telephone market." Order, at 8.

Under these circumstances, the TPOA has both the legal power and the equitable obligation to grant the Motion for Interim Relief and reduce BellSouth's rate on a going forward basis pending the final outcome of this case. That is the only way to protect payphone owners from irreparable harm and to insure that any further delay will not "harm competition in the pay telephone market."

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2000 a copy of the foregoing document was served on the parties of record, via U.S. Mail, addressed as follows:

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
Wisconsin Public Service Commission	)	CCB/CPD No. 00-1
Order Directing Filings	)	

ORDER

Adopted: March 1, 2000 Released: March 2, 2000

By the Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In this Order, we direct the four largest incumbent local exchange carriers (LECs) in Wisconsin[1] to submit to the Federal Communications Commission (Commission) copies of the currently effective tariffs for intrastate payphone service offerings that have not been determined by the Wisconsin Public Service Commission (Wisconsin Commission) to comply with section 276 of the Communications Act of 1934, as amended (Act) and the Commission's rules.

II. BACKGROUND

2. Section 276 of the Act establishes requirements designed to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public.[2] In its Payphone Reclassification Proceeding,[3] the Commission adopted regulatory requirements implementing section 276. The Commission required, *inter alia*, that incumbent LECs file tariffs for basic payphone lines at the state level only, and that unbundled features and functions provided by incumbent LECs to their own payphone operations or to others be tariffed at both the state and federal levels.[4] The Commission required that all incumbent LEC

[1] The four largest incumbent LECs are Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin), GTE North Incorporated (GTE), the subsidiaries of Century Telephone Enterprises, Inc. (Century), and the Telephone Data Systems, Inc. (TDS).

[2] 47 U.S.C. § 276(b)(1).

[3] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecomm. Act of 1996*, CC Docket No. 96-128, *First Report and Order*, 11 FCC Rcd 20541 (1996); *Order on Reconsideration*, 11 FCC Rcd 21233 (1996)(*Payphone Reconsideration Order*), *aff'd in part and remanded in part sub nom. Ill. Public Telecomm. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997); *Second Report and Order*, 13 FCC Rcd 1778 (1997)(*Payphone Clarification Order*), *aff'd in part and remanded in part sub nom. MCI v. FCC*, 143 F.3d 606 (D. C. Cir. 1998); *Third Report and Order and Order on Reconsideration of the Second Report and Order*, 14 FCC Rcd 2545 (1999), *appeal pending sub nom. American Public Communications Council v. FCC*, Case No. 99-1114 (D. C. Cir. filed Mar. 22, 1999).

[4] *Payphone Reconsideration Order*, 11 FCC Rcd at 21307-09.

payphone tariffs filed at the state level be cost-based, nondiscriminatory, and consistent with both section 276 and the Commission's Computer III tariffing guidelines.[5] The Commission determined that the rates assessed by LECs for payphone services tariffed at the state level must satisfy the requirements that the Commission applies to new interstate access service proposed by incumbent LECs subject to price cap regulation (the "new services test").[6] The Commission stated that it would rely initially on state commissions to ensure that the rates, terms, and conditions applicable to the provision of basic payphone lines comply with the requirements of section 276.[7] The Commission also determined that state commissions that are unable to review these tariffs may require incumbent LECs operating in their states to file these tariffs with the Commission. The Common Carrier Bureau (Bureau) has emphasized that the Commission retains jurisdiction under section 276 to ensure that all requirements of section 276 and the Payphone Reclassification Proceeding are met.[8]

3. On November 6, 1997, the Wisconsin Commission issued a letter order in its Docket 05-TI-156. In the letter order, the Wisconsin Commission held that its own jurisdiction to investigate the rates charged by LECs to payphone service providers "is very narrowly circumscribed to enforcing a prohibition on cross subsidy...and discriminatory practices."[9] The Wisconsin Commission also stated that the statutory remedies available under Wisconsin law "only address whether the retail rates charged by telecommunications utilities for competitive telecommunications service recover the underlying cost for that service." Accordingly, the Wisconsin Commission found that it lacks jurisdiction under state law to ensure that the rates, terms, and conditions applicable to providing basic payphone services comply with the requirements of section 276 of the Act and the Commission's implementing rules.[10]

4. On October 28, 1998, the Bureau sent a letter to the Wisconsin Commission stating that, after a review and consideration of the Wisconsin Commission's November 6, 1997 letter order, it was our intention to require the four largest LECs in Wisconsin to file with the "FCC tariffs that set forth the rates, terms, and conditions associated with pay phone services, along with the required

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[5] *Payphone Clarification Order*, 13 FCC Rcd at 1780 ¶ 2, citing *Payphone Reconsideration Order*, 11 FCC Rcd at 21308.

[6] *See Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, CC Docket No. 85-229, *Report and Order*, 104 FCC 2d 958 (1986). The new services test is a cost-based test that establishes the direct cost of providing the new service as a price floor. LECs then add a reasonable amount of overhead to derive the overall price of the new service. *See Amendment of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture*, CC Docket No. 89-79, *Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rulemaking*, 6 FCC Rcd 4524 (1991).

[7] *See Letter to Joseph P. Mettner, Chairman, Public Service Commission of Wisconsin, from Kathryn C. Brown, Chief, Common Carrier Bureau*, 13 FCC Rcd 20865 (Com. Car. Bur. 1998).

[8] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecomm. Act of 1996*, CC Docket No. 96-128, *Order*, 12 FCC Rcd 20997 (Com. Car. Bur. 1997); *see also North Carolina Utilities Commission Order Dismissing and Directing Filings*, 13 FCC Rcd 5313 (Com. Car. Bur. 1998).

[9] Wisconsin Public Service Commission Letter Order, Docket No. 05-TI-156, November 6, 1997 (unpublished).

[10] *Id.*

supporting documentation."[11]

III. DISCUSSION

5. The Wisconsin Commission's stated lack of authority to review these payphone service offerings invokes this Commission's obligations under section 276[12] and the Commission's *Payphone Orders*[13] to promote competition among payphone service providers and ensure the widespread deployment of public payphone service, among other things. We therefore direct the four largest LECs in Wisconsin to submit currently effective intrastate tariffs that set forth the rates, terms, and conditions associated with payphone services to the Commission, along with the supporting documentation in compliance with the requirements of section 276 and the Commission's implementing rules, including the new services test. More specifically, in order to ensure that the tariffs for the four largest LECs in Wisconsin comply with section 276 of the Act, and pursuant to the Commission's Payphone Orders, we direct Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin), GTE North Incorporated, subsidiaries of Century Telephone Enterprises Inc., and the Telephone Data Systems, Inc.to submit tariffs for intrastate payphone service offerings to this Commission, together with the supporting documentation, as detailed below, necessary to demonstrate compliance with the requirements of section 276 and the Commission's implementing rules.

6. The submissions we require these incumbent LECs to make are not official tariff filings subject to or required by section 203 of the Act. Rather, the information submitted is necessary to permit us to review the incumbent LECs' rates, terms and conditions for a local service, payphone line service, that is normally tariffed in the intrastate jurisdiction. We require these submissions under authority of section 276 of the Act, in order to ensure that the incumbent LECs fully comply with our Payphone Orders. If we find an incumbent LEC's payphone line rate is not in compliance with the new services test or other section 276 requirements, we have authority, pursuant to section 205, 47 U.S.C. § 205,[14] and our general authority under section 4(i) of the Act, 47 U.S.C. § 154(i), to make a determination as to the maximum permissible rate and to require the incumbent LEC to

[11] *See Letter to Joseph P. Mettner, Chairman, Public Service Commission of Wisconsin, from Kathryn C. Brown, Chief, Common Carrier Bureau*, 13 FCC Rcd at 20866.

[12] 47 U.S.C. § 276 (b)(1).

[13] *See supra* note 2.

[14] Section 205 provides the Commission with general prescription authority over carrier charges, classifications, regulations, and practices that the Commission determines are "in violation of any of the provisions of this Act." 47 U.S.C. § 205(a). With the enactment of section 276, which expressly addresses intrastate as well as interstate payphone services, the Commission's section 205 authority has been effectively extended to include prescription of a carrier's charges for intrastate payphone line service if existing charges violate section 276 or the Commission's implementing regulations. In somewhat analogous circumstances, the Supreme Court ruled that the Commission's general rulemaking authority under section 201(b) of the Act extends to the adoption of rules regarding intrastate matters that become subject to the Commission's jurisdiction as a result of enactment of the Telecommunications Act of 1996. *AT&T v. Iowa Utilities Board*, 525 U.S. 366, ___, 119 S. Ct. 721, 729-30, 142 L. Ed.2d 834, 848-49 (1999). Thus, we may prescribe a payphone line rate, if necessary, and ensure compliance with such a prescription order, even though the prescribed rate may be filed in a state tariff.

charge no more than that rate, as a measure necessary to the execution of the Commission's section 276 functions. 47 U.S.C. § 205(a); *see also* 47 U.S.C. §§ 154(i) and 276(b), (c).

7. We intend to review these submissions in a procedural manner similar to tariff review proceedings such as those conducted for "open network architecture" (ONA) tariffs under Computer III tariffing guidelines. Except as otherwise directed, the incumbent LECs should file a copy of a tariff and supporting information, in accordance with the ordinarily applicable Commission rules (e.g., usage-sensitive elements whether specified in the payphone line tariff or cross-referenced to another tariff as well as flat rate elements) and should provide cost support for each rate element in accordance with the cost support requirements described below. Rates, terms and conditions for other services commonly used by payphone service providers ("PSPs") (e.g., call screening services) should also be included.[15] For each rate element, the incumbent LEC must submit complete cost studies with full documentation. Summaries of cost study results are not acceptable.[16] The initial submissions will be subject to public comment, and LECs will have the opportunity to respond to the comments that are filed.[17]

8. In order to avoid unnecessary confusion and delay in the implementation of Payphone Order-compliant tariff filings, we set forth briefly below some of the methodological principles applied under Computer III and other relevant FCC proceedings addressing the application of the new services test and cost-based ratemaking principles to services and facilities offered by incumbent LECs to providers of services that compete with incumbent LEC services. While we have allowed some flexibility in the application of these principles in particular contexts, absent a persuasive justification, we expect the incumbent LECs to apply these principles consistently and rigorously to the cost justification of rates for services needed by incumbent LECs' payphone service competitors.

9. 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."[18] Costs must be determined by the use of an appropriate forward-looking, economic cost methodology that is consistent with the principles the Commission set forth in the Local Competition First Report and Order.[19]

10. With respect to the calculation of direct costs, our longstanding new services test policy

[15] Such services should be included in the submissions even if they are also offered to non-payphone subscribers.

[16] See generally Commission Requirements for Cost Support Material To Be Filed with Open Network Architecture Access Tariffs, 6 FCC Rcd 5682 (1991); *Open Network Architecture Tariffs*, 7 FCC Rcd 1512, 1515 ¶¶ 20-22.

[17] Thus, we expect LECs to treat their initial submissions as they would treat a Direct Case filed in a section 204 investigation of a tariff for interstate service.

[18] 47 CFR § 61.49(f)(2).

[19] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499 (1996).

is to require the use of consistent methodologies in computing direct costs for related services.[20] Cost study inputs and assumptions used to justify payphone line rates should, therefore, be consistent with the cost inputs used in computing rates for other services offered to competitors.

11. In determining a just and reasonable portion of overhead costs to be attributed to services offered to competitors, the LECs must justify the methodology used to determine such overhead costs.[21] Absent justification, LECs may not recover a greater share of overheads in rates for the service under review than they recover in rates for comparable services.[22] 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.[23] For purposes of justifying overhead allocations, UNEs appear to be "comparable services" to payphone line services, because both provide critical network functions to an incumbent LEC's competitors and both are subject to a "cost-based" pricing requirement. Thus, we expect incumbent LECs to explain any overhead allocations for their payphone line services that represent a significant departure from overhead allocations approved for UNE services.

12. We also note that the forward-looking cost studies we have required in the contexts described above produce cost estimates on an "unseparated" basis. 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.

13. At this time, this Order only applies to the LECs in Wisconsin specifically identified herein. No other Wisconsin LECs are being required at this time to submit data to the Commission. As stated above, all copies of tariffs, including supporting information, must comply with Part 61 of our Rules, 47 C.F.R. §§ 61.1 *et seq.* We require that these copies of tariffs and supporting documentation be filed by May 12, 2000.

IV. PROCEDURAL MATTERS

14. An original and six copies of all documents must be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. In addition, parties must file two copies of any such documents with the Competitive Pricing Division, Common Carrier Bureau, 445 12th Street, S.W., Room 5-A207, Washington, DC 20554. Parties must also deliver one copy of such documents to ITS, Inc., the Commission's duplicating

[20] *See generally Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture*, 6 FCC Rcd 4524, 4531 ¶ 42; *Expanded Interconnection with Local Telephone Company Facilities*, 9 FCC Rcd 5154, 5187-88 ¶ 122 (1994).

[21] *Amendment of Part 69*, 6 FCC Rcd at 4531 ¶ 44.

[22] *Expanded Interconnection with Local Telephone Company Facilities*, 9 FCC Rcd 5154, 5189 ¶ 128 (1994).

[23] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499 ¶ 713 (1996).

contractor, at its office at 1231 20th Street, N.W., Washington, DC 20036. The documents should reference CCB/CPD No. 00-1.

15. This matter shall be treated as a "permit but disclose" proceeding and subject to the "permit but disclose" requirements under 47 C.F.R. § 1.1206(b), as revised. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in "permit but disclose" proceedings are set forth in Section 1.1206(b) as well.

V. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED that, pursuant to sections 205, 276 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 276, and through authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, Ameritech, GTE, Century and TDS shall file by May 12, 2000, tariffs as described above for intrastate payphone service offerings in Wisconsin with the Commission, together with all supporting documentation described above necessary to demonstrate compliance with the requirements of section 276 and the Commission's implementing rules.

FEDERAL COMMUNICATIONS COMMISSION

Y. R. Varma

Yog R. Varma
Deputy Chief
Common Carrier Bureau

** JOB CONFIRMATION REPORT **　　AS OF　MAR 03 2000 15:12　PAGE.01

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BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 97-124-C - ORDER NO. 1999-285

APRIL 19, 1999

IN RE: Request of BellSouth Telecommunications, Inc. for Approval of Revisions to its General Subscriber Service Tariff and Access Service Tariff to Comply with the FCC's Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996.	))))))))	ORDER SETTING RATES FOR PAYPHONE LINES AND ASSOCIATED FEATURES

I. INTRODUCTION

On March 14, 1997, BellSouth Telecommunications, Inc. ("BellSouth") filed revisions to its General Subscriber Services Tariff ("GSST") and its Access Services Tariff with the Public Service Commission of South Carolina ("Commission"). On March 27, 1997, the Commission assigned Docket No. 97-124-C to BellSouth's tariff filing. On April 4, 1997, the South Carolina Public Communications Association ("SCPCA") filed a petition by which the SCPCA requested (1) that it be allowed to intervene in the proceedings, (2) that the Commission institute an investigation of the tariff filing, and (3) that the Commission stay the effectiveness of BellSouth's tariff filing pending completion of the Commission's investigation. Additionally, the SCPCA alleged by its petition that BellSouth's tariff filing did not meet the requirements of the Payphone that BellSouth should offer Billed Number Screening as an integral part of PTAS service, in the same fashion as Blocking and Screening. Our finding stems from BellSouth's inclusion of Billed Number Screening in its cost study as a component of PTAS service. See, Hearing Exhibit No. 4, Rice Prefiled Exhibit 3. Based on the inclusion of $0.01 for Billed Number Screening in the BellSouth cost study, we adopt this cost proposal of $0.01 for Billed Number Screening and add $0.01 to our approved $22.75 rate, for an inclusive rate of $22.76.

11. The Commission further adopts without adjustment the monthly usage sensitive direct and overhead costs proposed by BellSouth, an amount of $2.73. When this is added to the amount we have approved for non-traffic sensitive costs, we arrive at a total monthly PTAS rate of $25.49. This amount is inclusive of direct, shared and common costs for monthly usage, and allows BellSouth to recover a return on investment that has been previously approved by the Commission.

12. The SCPCA claims that the ultimate rates determined by this Commission for BellSouth's PTAs and SmartLine® Service should include charges SLC and PICC and common carrier line charge ("CCLC"). First, the SCPCA states that BellSouth's rates must include "only the LEC's direct costs plus an appropriate level of overhead costs." (Tr. at 258) Later the SCPCA modifies this position by stating that the rates should be "no higher than the LEC's total – that's direct and overhead – costs for the service, minus the dollar value of each of these revenue elements [SLC, PICC, and CCLC]." (Id.) (emphasis added). The SCPCA then opines that the Commission must "subtract the SLC and the PICC to set a cost based rate for BellSouth or any other LEC," with no mention of the CCLC. (Tr. at 259, 270)

In determining whether BellSouth's rates are cost-based, the Commission finds that it is not appropriate to offset such rates by the SLC and PICC or the CCLC charges. The FCC in its Report and Order released September 20, 1996, concluded that to avoid discrimination among payphone providers, the multi-line business SLC must apply to subscriber lines that terminate at both LEC and competitive payphones. (FCC 96-388 Order at ¶87) The FCC does not state that revenue used from this charge should be used to offset payphone costs. Furthermore, the SLC is a federally mandated charge over which neither this Commission nor BellSouth has control. Therefore, it would be improper for the Commission to require reductions in the payphone access line rates by offsetting them by the SLC charge.

Also, it would be improper for the Commission to require reductions in the payphone access line rates by offsetting them by the PICC, which is a separate charge set forth in FCC Tariff No. 1 and is assessed against all lines. This Commission has no authority to order that a federally-tariffed charge not be placed on certain lines or be used to recover costs for payphone access lines. Additionally, the PICC is levied by LECs on interexchange carriers ("IXCs"), or assessed individually on each end user who does not choose a preferred interexchange carrier. (Tr. at 299) If the SLC and PICC together do not recover the interstate-allocated common line costs, LECs can assess IXCs a per-minute CCLC. (Id.) These CCLC charges are interstate charges assessed against the IXCs, not the PSPs, and should not be used to offset the payphone access line rates.

13. While the Commission has found that the SLC and PICC, as well as the CCLC, should not be used to offset the payphone access line rate, the Commission is also mindful of the purposes of the SLC and PICC. The purpose of the SLC is to recoup part

or all of the local loop costs allocated to the interstate jurisdiction. (Tr. at 298) To the extent that the SLC does not recover all of the interstate loop costs, the remaining costs are recovered by means of the PICC, a flat, per-line charge assessed to each customer's presubscribed interexchange carrier ("PIC"), or assessed individually on each end user (PSP) who does not choose a PIC. (Tr. at 299) Like the SLC, the PICC is a mechanism to recover local loop costs.

The SCPCA asserts that allowing BellSouth full compensation for its interstate costs while at the same time allowing BellSouth to collect additional rate elements such as the SLC and PICC would give BellSouth a double-recovery of its interstate costs associated with payphone lines. To avoid a double-recovery, the SCPCA proposes that the rate approved for payphone access lines should be reduced by the amount of the SLC and PICC.

The Commission cannot endorse reducing the rate for PTAS lines by the SLC and PICC. As stated above, the SLC and PICC are federally mandated charges which are not fixed amounts, but rather are the product of a calculation, which may vary from year to year. See, 47 C.F.R.§§69.104(c) and 69.152(b). Thus, the Commission finds a fixed reduction of the rate for PTAS lines by the SLC or PICC would not be appropriate.

14. The Commission finds that BellSouth's PTAS rates should be set at a flat rate of $36.37 per month. This rate includes the direct and shared and common costs as this Commission found appropriate from the BellSouth cost information [as contained in BellSouth's response to Staff Data Requests and as found in Hearing Exhibit No. 4 (Rice Exhibit 3)] and includes the federally mandated SLC and PICC charges. BellSouth may not charge more that $36.37 for PTAS lines including the SLC and PICC. In other words,

the sum of the SLC, PICC, and BellSouth's payphone rates shall equal $36.37 – no more. This rate of $36.37, which includes the SLC, PICC, and direct, shared and common costs accords with the evidence presented to the Commission in this proceeding. This rate will allow BellSouth to recover its direct costs of providing PTAS, a reasonable return on investment, and an appropriate amount of shared and common costs as well as the federally-mandated SLC and PICC.

15. As to the rates set herein, the Commission also finds that BellSouth is required to make refunds or credits as required by Order No. 97-367, dated May 2, 1997, and Order No. 97-519, dated June 16, 1997. BellSouth is therefore ordered to make refunds or give credits, including appropriate interest at the rate of 8.75% per annum, back to April 15, 1997.

16. As to the rate for SmartLine® Service, the Commission approves the rate as filed by BellSouth. The SCPCA presented no evidence in opposition to the BellSouth proposed rates for SmartLine® Service. Therefore, the Commission finds the rate of $38.00 plus usage per month, or where usage rate service is not available the fixed equivalent rate of $44.00 per month, as filed by BellSouth to be the appropriate rate for SmartLine® Service.

17. The Commission finds that BellSouth's rates for PTAS, as established herein, and for SmartLine® Service, as approved herein, meet the new services test. The FCC's new services test which is applicable to this proceeding provides

> Each tariff filing submitted by a local exchange carrier … that introduces a new service or a restructured unbundled basic service element (BSE) … must be accompanied by cost data sufficient to establish that the new service or