BOULT ▪ CUMMINGS
CONNERS ▪ BERRY PLC

Henry Walker
(615) 252-2363
Fax: (615) 252-6363
Email: hwalker@boultcummings.com

May 11, 2001

David Waddell, Esq.
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: Small Telephone Companies Tariff Filings Regarding Reclassification of Pay Telephone Service as Required by Federal Communications Commission (FCC)
Docket No. 96-128
Docket No. 97-01181

Dear David:

Please find enclosed the original and thirteen copies of reply comments filed on behalf of the Tennessee Payphone Owners Association in the above-captioned proceeding. Copies have been sent to parties.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

Henry Walker

By: Henry Walker

HW/nl
Enclosure

'01 JUN 8 PM 3 20
EXECUTIVE SECRETARY

LAW OFFICES
414 UNION STREET · SUITE 1600 · P.O. BOX 198062 · NASHVILLE · TN · 37219
TELEPHONE 615.244.2582 FACSIMILE 615.252.6380 www.boultcummings.com

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: SMALL TELEPHONE COMPANIES TARIFF FILINGS REGARDING RECLASSIFICATION OF PAY TELEPHONE SERVICE AS REQUIRED BY FEDERAL COMMUNICATIONS COMMISSION (FCC) DOCKET 96-128

DOCKET NO. 97-01181

COMMENTS OF THE TENNESSEE PAYPHONE OWNERS ASSOCIATION

In response to the Comments filed on May 25, 2001 by the Coalition of Tennessee Small Local Exchange Companies ("the Coalition"), the Tennessee Payphone Owners Association ("TPOA") submits the following reply.

1. **How should the Authority set rates for the small incumbent local exchange carriers (ILECs) consistent with Section 276 of the Telecommunications Act of 1996, related FCC orders, and the Authority' decisions in Docket No. 97-00409?**

TPOA believes that this case can be quickly resolved and the payphone rates of most, if not all, of the small carriers in the Coalition readily determined if the Hearing Officer will simply (1) re-affirm the pricing principles previously adopted by the TRA and (2) give each member of the Coalition the option of either (a) filing a payphone specific cost study that is consistent with those principles or (b) concurring in the payphone rates approved by the Authority in the Interim Order, *ie.*, the line and usage rates of BellSouth.

Small local exchange carriers typically concur in BellSouth's tariffs for various kinds of telephone services (such as intraLATA toll calls), and the Coalition itself has suggested that a small carrier should have the option of adopting payphone rates which the TRA has already found to be consistent with the "new services" test and the other pricing principles adopted by the agency. Coalition Comments, 5. At the same time, however, the Coalition inconsistently

argues that a small carrier which does not choose to adopt the TRA-approved rates of another carrier should, in the alternative, be permitted to charge payphone rates which (1) are not consistent with the "new services" test (2) are not supported by any kind of cost study and (3) are equal to whatever the carrier's residually priced, business rates happen to be. Coalition Comments, 2-4. The Coalition, in fact, now argues that the pricing principles mandated by the FCC and adopted in the Interim Order do not even apply to the members of the Coalition.. *Id.*

This is apparently the first time since the case began in 1997 that any party has claimed that the FCC's pricing guidelines, which explicitly and repeatedly direct state commissions to fix payphone rates that are "cost-based" and consistent with the "new services" test, do not apply to a carrier's payphone rates in Tennessee.[1]

This argument is wrong as a matter of law and inappropriate as a matter of procedure.

The FCC's "First Reconsideration Order," released November 8, 1996, (Order 96-439) delegated payphone ratemaking authority to the state commissions and declared, in paragraph 163, that "states must apply the 'Computer III' guidelines [the new services test] for tariffing such intrastate services." Neither that order, nor any of the payphone orders that have followed it, make an exception for small carriers, rate base regulated carriers, or any other type of carrier.

---

[1] It seems likely that TDS, the largest member of the Coalition, decided to raise this argument now to show support for its TDS affiliate in Wisconsin. In defiance of an Order from the Common Carrier Bureau (the *Wisconsin Order,* issued March 2, 2000), directing TDS-Wisconsin to file a forward looking cost study with the federal agency, TDS-Wisconsin refused to file a study of that kind (or any other kind) and argued for the first time that the new Services test should not be applied to rate base regulated carriers, the same argument that the Coalition is raising here.

Since this appears to be a TDS-driven filing, (TDS has 76 payphones belonging to TPOA members. No other coalition member has more than ten.) , TPOA has attached to these Comments excerpts from the response filed by the American Public Communications Council (the national payphone association) with the FCC responding to the arguments of TDS-Wisconsin. APCC's brief includes a thorough discussion of the history and nature of the "Computer III" requirements and the "new services" test, and explains why Congress and the FCC decided to apply those requirements to payphone rates.

Moreover, Section 276 of the federal Telecommunications Act, upon which the FCC's orders are based, explicitly requires, "at a minimum," use of the "Computer III" guidelines. Unlike other sections of the Act, which apply one standard to large carriers and another standard to smaller carriers, Section 276 draws no such distinctions. Neither may the TRA.

Second, the Coalition's argument is four years too late. Acting as Hearing Officer, Chairman Lynn Greer ruled in 1997 that payphone rates of local exchange carriers in Tennessee must be "cost based according to the 'new services test.'" The finding makes no exception for small carriers or rate base regulated carriers. See, "Preliminary Report and Recommendation of the Hearing Officer," issued May 29, 1997, Docket 97-00409. A copy of Chairman Greer's order is attached. [2]

No carrier, including TDS, objected to the Hearing Officer's findings, which were subsequently affirmed by the Authority. Nor did any carrier, including TDS, object when the Hearing Officer stated during the pre-hearing conference on which the order was based that "the law applies to everybody."

The comments were made when the Consumer Advocate's office orally requested that a separate docket (this one) be opened to set payphone rates for smaller carriers. Chairman Greer responded,

> And how would we handle them if we split them out? I mean, can we hold them to a different standard? I mean, I don't know how you can. The law applies to everybody. [Tr. at 30.]

No one indicated any disagreement with the Hearing Officer's remark. Several of the parties also noted that both the agency and the small carriers could save time and money by allowing the

---

[2] At that time, Docket 97-00409 included all of the state's local exchange carriers, including all the Coalition members. An Order establishing a separate docket for the small carriers was not issued until June 6, 1997.

large carriers to litigate issues regarding payphone rates and then applying the agency's decisions to the smaller carriers. *Id.* at 31-34. Although several attorneys, including the Hearing Officer, pointed out that the filing of cost studies could be an expensive burden on small carriers, no one suggested that the FCC's "new services" test did not apply to large and small carriers alike.

The Hearing Officer's conclusions regarding the FCC's payphone guidelines were affirmed again by the Authority in the Initial Order which states, at 16, "The FCC has indicated that states must use the 'new services test' when establishing intrastate payphone rates pursuant to § 276 of the Act." There is no implication of an exception for smaller carriers.

The findings of the Hearing Officer, as affirmed by the Authority, are now "the law of the case." Under that doctrine, "a decision on an issue of law made at one stage of the case becomes a binding precedent to be followed in successive stages of the same litigation." 784 S.W.2d 349, 351 n.1 (Tenn. Ct. App., 1989), quoting *Moore's Federal Practice.* As parties to the proceeding in which Chairman Greer issued his 1997 order, the Coalition members are bound by those rulings and cannot re-litigate them. *Id.*

In sum, the members of the Coalition stand today much in the same position as they did on May 29, 1997. They are bound by the FCC's pricing guidelines and must adopt payphone rates that are "cost based" and consistent with the new services test. To meet that test, they must either file appropriate cost studies or, in the alternative, they may save the time and expense of preparing cost studies by accepting the findings of the agency in the other docket. In other words, they may adopt the payphone rates of BellSouth which were approved in the Interim Order. That, after all, was the main reason for establishing a separate docket in the first place.

2. Should the small ILECs be given an opportunity to adopt wholly or partially the cost models used by the parties in Docket No. 97-00409, as adjusted by the Authority?

If a carrier elects to file a cost study, the parties agree that the carrier may use, in whole or in part, an adjusted cost model used by the TRA to set rates in Docket 97-00409. That study should be BellSouth's TELRIC cost model (for the reasons discussed in question 3 below.) But just as one witness may adopt as his own the testimony of another, the adoption of another carrier's cost model does not relieve the small carrier of the burden of defending, if necessary, the cost model, its inputs, assumptions, and results.

3. Should the small ILECs be given an opportunity to adopt wholly or partially the permanent rates approved by the Authority in Docket No. 97-00409?

See Response to Question 1. TPOA believes that a small carrier should only be allowed to concur in the payphone line and usage rates of BellSouth. If the carrier is unable to measure usage, the carrier may adopt the flat rate approved by the TRA for Citizens Communications of the Volunteer State.

There are two reasons for using BellSouth's rates. First, the Authority has set rates only for BellSouth and Citizens. There may be no final decision regarding permanent rates for Sprint/United for several months. It would be unreasonable to delay a final decision in this proceeding to await the results of the Sprint/United case. Second, and more importantly, neither the Citizens' cost study nor the recently filed Sprint/United cost study has been as extensively scrutinized by the TRA as BellSouth's TELRIC cost study. As the result of the TRA's three-year effort in Docket No. 97-01262 (the "permanent price" docket), the TRA is thoroughly familiar with BellSouth's TELRIC model which was the basis of the company's payphone cost study. The agency has found that BellSouth's TELRIC model, as adjusted by the TRA, produces forward-looking, direct costs which are consistent with the FCC's payphone pricing guidelines. That cannot be said of the cost studies filed by Citizens or Sprint/ United, neither of which has been as closely analyzed by the agency. Therefore, in order for the TRA to be reasonably

satisfied that a small carrier's payphone rates are cost based and consistent with the new services test while, at the same time, allowing that small carrier to save money by adopting the TRA-approved rates of another carrier, the agency should require the small carrier to adopt BellSouth's payphone line and usage rates as set forth in the Interim Order (except in those rare cases where the small carrier does not have measured service capability.)

4. Will the proceedings for the small ILECs require evidentiary hearings? If so, should the hearing be conducted separately or in a consolidated proceeding?

The parties agree that evidentiary hearings may be necessary.

5. What procedural schedule should the Authority adopt for the proceedings?

The parties agree that, to the extent the parties are unable to reach a settlement, the agency should adopt a procedural schedule similar to that used in Docket No. 97-00409.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 

Henry Walker (No. 000272)
414 Union Street, Suite 1600
P.O. Box 198062
Nashville, Tennessee 37219
(615) 252-2363

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2001, a copy of the foregoing document was served on the parties of record, via U.S. Mail, addressed as follows:

Richard Collier, Esq.
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

R. Dale Grimes. Esq.
T.G. Pappas, Esquire
Bass, Berry & Sims
2700 First American Center
Nashville, Tennessee 37219-8888

James Wright, Esquire
United Telephone-Southeast
14111 Capitol Blvd.
Wake Forest, NC 27587

Jon Hastings, Esquire
Boult, Cummings, Conners & Berry
414 Union Street, Suite 1600
Nashville, Tennessee 37219-8062

Guilford F. Thornton, Jr., Esq.
Stokes Bartholomew Evans & Petree
Sun Trust Center
424 Church St., Suite 2800
Nashville, TN37219-2386

Guy M. Hicks, Esquire
BellSouth Telecommunications, Inc.
Suite 2101
333 Commerce Street
Nashville, Tennessee 37201-3300

Tim Phillips, Esq.
Consumer Advocate and Protection Division
of the Attorney General's Office
P.O. Box 20207
Nashville, TN 37202

Henry Walker

ATTACHMENTS

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee
May 29, 1997

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

PRELIMINARY REPORT AND RECOMMENDATION OF THE HEARING OFFICER

A pre-hearing conference was held in the above-captioned matter on Thursday, May 29, 1997, in Nashville, Tennessee before Chairman Lynn Greer acting as Hearing Officer pursuant to the Tennessee Regulatory Authority, hereinafter referred to as "the Authority", Order of May 2, 1997.

HISTORY

The FCC established Docket 96-128, for the Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996. Relative to this proceeding the following FCC orders have been issued: FCC 96-388, FCC 96-439, and FCC DA 97-805. Order 97-388, sets forth the guidelines to be followed by the states and companies in the reclassification of pay telephones and the compensation mechanisms to be implemented for pay telephones. Order 97-439, clarifies Order 96-388 and modifies only two issues of the previous order, (1) the requirements for LEC tariffing of payphone services and unbundled network functionalities; and (2) the requirements for LECs to remove unregulated payphone costs from the carriers' interstate common line charge and to reflect the applications of multiline subscriber line charges to payphone lines. Order DA 97-805 grants a limited waiver, until May 19, 1997, of the FCC's requirement that effective intrastate tariffs for payphone services be in compliance with federal guidelines. Additionally, this order clarifies the federal guidelines which are; that affiliated LEC payphones may not receive compensation from the IXCs unless its intrastate offerings to payphone providers are cost based according to the "new services test" (C.F.R. 61.49 (g)(2)).

TRA Orders 97-00344, 97-00345, 97-00346, dated April 7, 1997, approve BellSouth Telecommunication's (BST) and United Telephone Southeast's (UTSE) tariffs reclassifying pay telephones effective April 1, 1997, pending the outcome of the contested case. These dockets have been combined into the current TRA 97-00409 docket.

TRA Order 97-00409, dated May 2, 1997, appoints Lynn Greer as hearing officer, and approves the tariffs of Citizens Telecommunications of TN, Peoples Telephone, West TN Telephone, Ooltewah-Collegedale, Ardmore Telephone, Citizens Telephone of the Vol State, United Telephone, Crockett Telephone, Claiborne Telephone, Adamsville Telephone, Loretto Telephone, Millington Telephone and Telephone Data System (TDS) Companies (Tennessee Telephone, Humphreys County Telephone, Concord Telephone, and Tellico Telephone) that reclassify pay telephones effective April 15, 1997, pending the outcome of the contested case.

Associated with the reclassification, subsidies to pay telephones were estimated by BST, United Telephone, Citizens Telephone of the Vol State, TDS Companies and UTSE. Tariffs became effective (pending the outcome of this contested case) to eliminate the subsidy on the following dates: BST - 4/1/97, UTSE - 5/19/97, TDS Companies - 5/20/97, United Telephone - 4/15/97 and Citizens of the Vol State - 4/15/97.

Tennessee Payphone Owners Association (TPOA), AT&T, The Consumer Advocate Division and MCI Telecommunications Corporation (MCI) filed petitions and were granted intervention in this matter on April 7th, 24th, May 2nd and 12th, respectively.

On May 19, 1997, BST, UTSE, Citizens of the Vol State and Citizens of Tennessee filed certification that payphone service offerings meet the "new services test" required by the FCC.

The TRA established Docket 97-00409, to address the companies compliance with FCC Order 96-128. Tariffs and estimated subsidy calculations have been accepted by the TRA without audit, pending the outcome of this docket. The FCC clarified the cost basis to be used for payphone services on April 15, 1997. As of this date, no determination has been made by the TRA regarding compliance with this cost basis by any company.

APPEARANCES

The following appearances were entered:

AT&T - **Val Sanford**, Esquire, Gullett, Sanford, Robinson & Martin, 230 Fourth Avenue, N. 3rd Floor, Nashville, Tennessee, 37219-8888.

Tennessee Payphone Owners Association ("TPOA") - **Henry Walker**, Esquire, Boult, Cummings, et al., P.O. Box 198062, Nashville, Tennessee, 37219-8062.

MCI - **Jon Hastings**, Counsel, MCI Telecommunications Corporation, Suite 1600, 414 Union, Nashville, Tennessee 37219.

TDS Telecom ("TDS") and United Telephone South East ("UTSE") - **T. G. Pappas**, Esquire, Bass, Berry & Sims, 2700 First American Center, Nashville, Tennessee, 37219.

BellSouth - **Guy M. Hicks**, Esquire, BellSouth, Suite 2101, 333 Commerce Street, Nashville, Tennessee, 37210-3300.

Citizens Telecom ("Citizens") - **Richard M. Tettelbaum**, Associate General Counsel, Suite 500, 1400 16th Street, N.W., Washington, D.C., 20036, participating by electronic means.

Consumer Advocate Division ("CAD") - **Janet M. Kleinfelter,** Assistant Attorney General, Financial Division, Cordell Hull Building, Second Floor, 425 Fifth Avenue North, Nashville, Tennessee, 37243-0496.

The purpose of the pre-hearing conference was to consider an agreement between the parties, simplification of the issues, a procedural schedule, and any such other matters properly brought before the Hearing Officer in accordance with T.C.A. § 4-5-306.

I. MOTIONS

The first order of business was the address of several outstanding motions:

1.) Both BellSouth and United Telephone South East petitioned for protective orders. The Hearing Officer granted these petitions, with the stipulation that BellSouth work with Authority General Counsel, Dennis McNamee, to finalize the protective order.

2.) The Hearing Officer denied a motion from the Consumer Advocate for an extension of time to file a pre-hearing list of issues.

3.) BellSouth petitioned to request certification "that the rates set forth in sections A7.4.5 and A7.8.2 of its General Subscriber Services Tariff comply with the "new services" test and Authority approval of this filing. The Hearing Officer ruled that a decision on this petition would be rendered during a contested case proceeding.

4.) BellSouth filed a duplicate payphone petition originating Docket 97-01095. BellSouth agreed to withdraw the duplicate petition.

II. ORAL MOTION AT HEARING

The Consumer Advocate made an oral motion for the Authority to bifurcate the docket into two dockets. The current docket would proceed with BellSouth, United Telephone South East and Citizens Communications, Inc. (this would include Citizens Telecommunications Company of Tennessee, L.L.C. and Citizens Telecommunications Company of the Volunteer State, L.L.C.) as parties, and another docket would be opened for the reclassification purposes of the smaller companies. The Hearing Officer ordered the bifurcation, based on the fact that the costs for the studies could be too great for the smaller companies to endure. General Counsel, Dennis McNamee, will write an order based on the oral motion of the Consumer Advocate.

III. ISSUES

The Hearing Officer then produced a consolidated list of issues from the various parties' lists, and asked that these issues be used as a starting point of focus for discovery purposes. The parties thought a final list of the issues would be difficult to define until after discovery had been engaged. Therefore, the parties determined that a final set of issues would be stipulated at the reconvention of the pre-hearing conference on July 8, 1997, at 1:30 pm.

IV. OPTIONS

The Hearing Officer presented the parties with the Authority's options in the continuation of this proceeding. These options are as follows:

1.) The parties can agree to a settlement, precipitating an expedited hearing date and subsequent order.

2.) Assuming no settlement exists, the Authority may remand the proceeding back to the Federal Communications Commission for decision.

3.) Assuming no settlement exists, the Authority may proceed with a contested case proceeding.

The parties conferred among themselves and agreed that no settlement could be reached at this time, and asked that the Authority proceed with the contested case proceeding, and the following schedule.

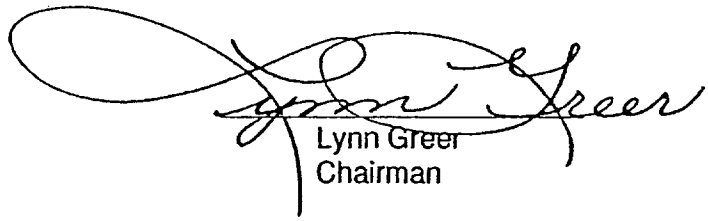
V. SCHEDULE

The parties agreed to the following proposed procedural schedule:

June 6, 1997	Cost studies are due at noon.
June 20, 1997	Discovery requests due at noon.
June 30, 1997	Discovery responses due at noon.
July 8, 1997	Reconvene Pre-Hearing Conference at 1:30 pm.
July 10, 1997	Direct testimony filed by noon.
July 17, 1997	Rebuttal testimony filed by noon.
July 24, 1997	Surrebuttal testimony, if necessary, filed by noon.
August 5, 1997	Hearing.

The parties agreed that service could be accomplished by fax or by hand delivery.

The Authority reserves the right to modify this schedule at any time.



Lynn Greer
Chairman

CORRECTED COPY

NON-PROPRIETARY VERSION

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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

COMMENTS OF APCC ON ILEC SUBMISSIONS

The American Public Communications Council ("APCC") submits the following comments on the submissions of the Wisconsin incumbent local exchange carriers in this proceeding.

STATEMENT OF INTEREST

APCC is a national trade association representing about 1,800 primarily independent (non-local exchange carrier) providers of pay telephone equipment, services, and facilities. APCC seeks to promote competitive markets and high standards of service for pay telephones. To this end, APCC actively participates in FCC proceedings affecting payphones. APCC's foremost concern is to ensure full implementation of the federal Telecommunications Act mandate "to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public." 47 U.S.C. § 276(b).

III. GENERAL PRINCIPLES

Before addressing the individual cost submissions of Ameritech and GTE, we will review the applicable principles established in the FCC's prior orders. APCC has fully presented its position on most of these matters in its Opposition to the LEC Coalitions' Application for Review and Report for Stay of the *March 2 Order* ("APCC Opposition"), filed May 12, 2000. (APCC expressly incorporates by reference its Opposition in these comments). However, because some of the ILECs have reiterated their disagreement with that order, and some have deviated from the requirements of the order in their cost submissions, APCC will restate the applicable law as established in FCC decisions.

A. The Telecommunications Act and the FCC Require That Payphone Line Rates be "Cost Based" and Satisfy the New Services Test

Some of the ILECs have chosen to include in their transmittal letters additional arguments challenging the Commission's authority to address rates that are filed in state tariffs – even though the state commission has unequivocally disclaimed any authority to review the rates itself. As stated in the APCC Opposition, Section 276 required the Commission to adopt regulations to promote competition and "widespread deployment of payphone services". 47 U.S.C. § 276(b). In particular, the Commission was required to adopt safeguards that would prevent ILECs from subsidizing and discriminating in favor of their own payphone services. *Id.*, § 276(a), (b)(1)(C). The statute requires that these safeguards, "at a minimum," include nonstructural safeguards equal to the Commission's *Computer III* safeguards. *Id.*

One of the *Computer III* safeguards that Congress required, "at a minimum," to be applied is the requirement that rates for ILEC services needed by an ILEC's competitors must meet the "new services test." While in *Computer III* this safeguard applied only to

interstate ONA services, in the *Payphone Order* the Commission expressly stated that *interstate and intrastate* rates for LEC services to PSPs must meet be cost-based and priced in accordance with *Computer III* guidelines. *First Reconsideration Order*, ¶ 163.

The FCC had clear authority under Section 276 to adopt and enforce this requirement with respect to intrastate payphone line service rates. While the original *Computer III* safeguards were limited in their application to intrastate services, due to the restriction of Section 2(b) of the Act, Section 276 specifically directs the Commission to apply its regulations to both interstate and intrastate services (47 U.S.C. § 276(a), (b)), and preempts any state regulations that are inconsistent with the Commission's regulations (*id.*, § 276(c)). The U.S. Court of Appeals has held that, by expressly providing the Commission with authority over intrastate services, Congress made clear that Section 2(b) did not limit the Commission's jurisdiction under Section 276. *Ill. Public Telecom. Ass'n. v. FCC*, 117 F.3d 555, 562 (D.C. Cir. 1997).

Therefore, the Commission has clear jurisdiction to require – as it did in the *Payphone Order* – that in order to be eligible to receive per-call compensation for interstate and intrastate payphone calls, ILECs must revise their interstate and intrastate payphone line service rates in accordance with the federal "new services test" standard. Because the Commission has clear authority to require ILECs to conform intrastate payphone line service rates to the "new services test," it also has clear authority to step into the shoes of a state commission that is unable to conduct a review, and to review for itself the ILEC's intrastate payphone line service rates for compliance with the federal test. Finally, to the extent that the ILEC has not complied, the FCC has clear authority to order an appropriate remedy – *i.e.*, to prescribe the rates that the ILEC must charge in order to be in compliance with the *Payphone Order*.

In order to prevent ILECs from "charg[ing] their competitors unreasonably high prices for these services" (*First Report and Order*, ¶ 146), the Commission adopted a series of requirements governing LEC pricing of payphone line services. (*First Reconsideration Order*, ¶ 163). The Commission required ILEC payphone line services to 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) nondiscriminatory. States must apply these requirements and the Computer III guidelines for tariffing such intrastate services.

Id. (footnote omitted). The *Computer III* guidelines alluded to are the guidelines developed by the Commission for purposes of federal tariffing of open network architecture ("ONA") services. These guidelines include the "new services test." *Id.*, n.492.

Each of these requirements has significance. "Cost-based" pricing means, among other things, that rates must be justified on a cost basis (not a residual or "contribution" basis). The FCC has specifically held, for example, that rates priced to provide a universal service subsidy are not "cost-based." *Local Competition Order*, ¶ 713.

The "Computer III guidelines" incorporating the "new services test" require ILECs to price services at a level that "*will not recover more than* a just and reasonable portion of the carrier's overhead costs." 47 CFR § 61.49(f)(2) (emphasis added). Prior FCC decisions applying the new services test in the *Computer III* context, as well as other contexts involving services provided by ILECs to their competitors, have required ILECs to determine direct costs using uniform, forward-looking methodologies. *Open Network Architecture Tariffs of Bell Operating Companies, Order*, 9 FCC Rcd 440, 455 (1993) (*"ONA Tariffs"*). *Computer III* guidelines also require the ILEC to propose *and justify* an overhead allocation. The ILEC must make an affirmative showing of its forward-looking overhead costs, and may not simply propose unsupported "loadings." Prior FCC decisions

have required ILECs' overhead allocations to be consistent (or deviations explained) for "comparable" services. *See, e.g. Expanded Interconnection with Local Telephone Company Facilities*, 9 FCC Rcd 5154, 5189 (1994). In applying *Computer III* guidelines, the FCC has unequivocally rejected overhead allocations that exceed the estimated average percentage overhead allocations for the ILEC's services as a whole. *See, e.g.*, *ONA Tariffs*, 9 FCC Rcd at 458.

B. Direct Costs of Payphone Lines Must be Calculated Using Forward-Looking Economic Cost Methodology

The new services test is a forward-looking economic cost methodology. The Commission explained in the *Local Competition Order* that, "expanded interconnection services are subject to the new services test, which . . . uses a forward-looking methodology." ¶ 826. The forward-looking nature of the new services test was also confirmed in the Commission's *Computer III* tariff decisions which specifically mandate a forward-looking cost methodology. In *Open Network Architecture Tariffs of Bell Operating Companies, Order*, 9 FCC Rcd 440, 455 (1993), the Commission stated:

> We conclude that, for purposes of this proceeding, prospective costs are the economically relevant costs to use to support BSE rates, because they represent the costs a profit maximizing firm would consider in making a business decision to provide a new service. Historical costs associated with plant already in place are essentially irrelevant to the decision to enter a market since these costs are "sunk" and unavoidable and are unaffected by a new product decision. We also believe that use of prospective costs for new BSEs is in the public interest, because the resulting generally lower BSE prices will encourage innovative services.

Furthermore, *Computer III* guidelines require that ILECs "must use the same methodology [to implement new services test] for all related services." *Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Report and Order & Order on Further Reconsideration*, 6 FCC

Rcd 4524, 4531, ¶ 42 (1991). UNEs are clearly "related" in that both UNEs and payphone line service offerings are essential services provided to the ILECs' competitors, both are provided to serve a market for which Congress has specifically mandated the Commission to promote competition, and both are specifically required to be offered at "cost-based" rates. Therefore, the Bureau appropriately directed ILECs to use a forward-looking cost methodology that is consistent with the principles of the *Local Competition Order* in cost-justifying rates for payphone line services.

Although the RBOCs have contested the forward-looking economic cost methodology requirement stated in the *March 2 Order*, both SBC/Ameritech and Verizon/GTE have submitted in this proceeding studies that they characterize as forward-looking economic cost studies, belying any claim that producing such studies would be burdensome or difficult. In fact, there is no burden because forward-looking cost studies are readily available for use in setting payphone line rates. In addition to the TELRIC studies, the Bell companies and other ILECs frequently prepare Total Service Long Run Incremental Cost ("TSLRIC") studies for submission to state commissions in cost-justifying exchange service rates at the state level.

In this case, SBC/Ameritech and Verizon/GTE have submitted studies that deviate in significant ways from the direct cost methodologies that they have been required to follow in state UNE proceedings. Accordingly, the Commission should correct those methodologies in the ways detailed in the company-specific sections below and in the attached declaration of APCC's economic consultant, Don Wood.

One of the most egregious errors in the companies' direct cost showings, however, is Ameritech's failure to provide a payphone specific estimate of average local call duration – a critical ingredient in its direct cost showing since Ameritech's basic local usage costs are

developed on a per-minute and per-setup basis while its local usage rate is developed on a per-call basis. The predictable result of applying an inflated estimate of payphone call duration, which is at least double the average local payphone call in any other available credible estimate (including GTE/Verizon's), is to inflate the direct cost of usage by a factor of roughly two.

C. Overhead Allocations Must Be Affirmatively Justified and Cost Based

As the *March 2 Order* correctly states, the burden is on the ILEC to *justify* an overhead allocation. *March 2 Order*, ¶¶ 8, 11. In state after state, in payphone line service rate proceedings, ILECs have failed to provide *any* legitimate justification for the overhead allocations they propose. Rather, the ILECs propose to set the overhead allocation for payphone line service at whatever allocation is necessary to maintain payphone line service rates at the same level as business service rates. Because business line services have been priced on a "residual" or "contributory" basis, to make up whatever common overhead costs are not recovered in the rates for other ILEC services, the "overhead loading on business service" provides no meaningful assurance of a cost-based price for payphone line service.

The most fundamental defect in the ILECs' cost showings in this proceeding, as in virtually every payphone line service rate proceeding, is that the ILECs made no meaningful attempt to justify their overhead allocations.

The *March 2 Order* also states that "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." *March 2 Order*, ¶ 11. This reflects the clear Commission ruling that payphone line service rates must be "cost-based." *First Reconsideration Order*, ¶ 163. By definition, service pricing that is designed to provide a subsidy for other services cannot be "cost-

based." *Local Competition Order*, ¶ 713. The "cost-based" requirement thus automatically invalidates Ameritech's position that overhead allocations are reasonable if they are equivalent to the allocations for business services. Business services overhead allocations are not subject to any cost-based overhead allocation test or any other test. The overhead allocation for a business service is rarely even examined. Rather, they are typically priced in order to provide "contribution" to other local exchange services, *e.g.*, residential service. Therefore, business service rates cannot be "cost-based," and cannot provide an appropriate model for a cost-based overhead allocation. This is not surprising: business rates are not designed to be fair to an ILEC's telecommunications competitors; they are not designed for competitors at all.

D. UNE Overhead Allocations Are an Appropriate Benchmark for Reviewing the Reasonableness of ILECs Payphone Line Rate Overhead Allocations.

Cost-based-pricing precedents require that overhead allocations be consistent (or deviations justified) for comparable services. See *Expanded Interconnection with Local Telephone Company Facilities*, 9 FCC Rcd 5154, 5189 (1994), *cited in March 2 Order*, ¶ 11, n. 22 *and in* Coalition App. at 8, n.8. "Comparable" in this context means an ILEC service offering critical network functions to competitors, not a service provided to business subscribers that is priced to provide "contribution." The Bureau correctly found that UNEs offered to CLECs "appear to be" such a "comparable" service to payphone line service, "because both provide critical network functions to an incumbent LEC's competitors and both are subject to a 'cost-based' pricing requirement." *March 2 Order*, ¶ 11. The Bureau's position is also consistent with the findings of a number of state commissions that have reviewed payphone line rates. Pennsylvania Public Utility Commission, *Central Atlantic Payphone Association v. Bell Atlantic-Pennsylvania, Inc.*,