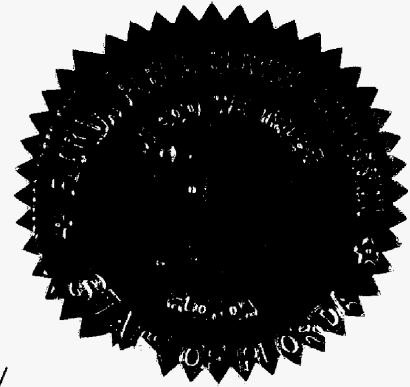


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030300-TP

In the Matter of

PETITION FOR EXPEDITED REVIEW OF
BELLSOUTH TELECOMMUNICATIONS, INC.'S
INTRASTATE TARIFFS FOR PAY TELEPHONE
ACCESS SERVICES (PTAS) RATE WITH
RESPECT TO RATES FOR PAYPHONE LINE
ACCESS, USAGE, AND FEATURES, BY
FLORIDA PUBLIC TELECOMMUNICATIONS
ASSOCIATION.



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Volume 1

Pages 1 through 181

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER J. TERRY DEASON
COMMISSIONER RUDOLPH "RUDY" BRADLEY
COMMISSIONER CHARLES M. DAVIDSON

DATE: Wednesday, May 12, 2004

TIME: Commenced at 9:35 a.m.
Concluded at 1:05 p.m.

PLACE: Betty Easley Conference Center
Hearing Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR
Official FPSC Reporter
(850) 413-6734

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12 LEE FORDHAM, ESQUIRE, and ADAM TEITZMAN, ESQUIRE,
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15 Commission Staff.

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COMMISSIONER DEASON: Call the hearing to order.
Could I have the notice read, please.

MR. FORDHAM: Pursuant to notice given April 14th,
2004, this time and place has been set for a hearing in Docket
Number 030300-TP for the purposes set forth in the notice.

COMMISSIONER DEASON: Thank you. Take appearances.

MS. WHITE: Nancy White and Meredith Mays for
BellSouth Telecommunications.

MR. TOBIN: David Tobin for the Public
Telecommunications Association.

MR. FORDHAM: Lee Fordham and Adam Teitzman for --
representing the Commission.

COMMISSIONER DEASON: Okay. Mr. Fordham, do we have
any preliminary matters?

MR. FORDHAM: Commissioner, there is one matter.
Subsequent to the prehearing, BellSouth has requested official
recognition of actually two decisions. And what we did -- what
Commissioner Davidson did at the prehearing, we would suggest,
might be appropriate, and that is to simply list those
decisions under the Section XIV of the prehearing order,
decisions which may impact the Commission's resolution of the
issues. And I'll let BellSouth address that further.

COMMISSIONER DEASON: Ms. White.

MS. MAYS: Actually, Commissioner Deason, may it

1 please the Commission.

2 COMMISSIONER DEASON: Sure.

3 MS. MAYS: We just have two additional decisions we'd
4 like the Commission to take notice of. We would be happy to
5 have those decisions just included in the prehearing order, as
6 Mr. Fordham has suggested.

7 COMMISSIONER DEASON: Okay. Mr. Tobin, do you have
8 any objection?

9 MR. TOBIN: No objection, Commissioner.

10 COMMISSIONER DEASON: Very well. Mr. Fordham,
11 just -- will you just add it?

12 MR. FORDHAM: Thank you, Commissioner. And that's
13 all the preliminary matters that staff had.

14 COMMISSIONER DEASON: Okay. Does BellSouth have any
15 preliminary matters?

16 MS. MAYS: No, sir.

17 COMMISSIONER DEASON: Mr. Tobin, any preliminary
18 matters?

19 MR. TOBIN: No, sir.

20 COMMISSIONER DEASON: Very well. Staff, do we -- I
21 noticed that there are some exhibits up here. Do we need to
22 address them at this time?

23 MR. FORDHAM: At the pleasure of the Commission, we
24 can introduce those at this time or later in the proceeding.
25 We have three stipulated exhibits, Commissioner. If you wish

1 to actually admit those or introduce them at this time, we can,
2 or if you prefer, we can wait until later in the proceeding.

3 COMMISSIONER DEASON: Let's go ahead and do it now
4 and that will be fine.

5 MR. FORDHAM: Okay. Very good. Stip-1, Exhibit
6 Number 1 would be Stip-1 or BST Stip-1, and that's a composite
7 exhibit which includes BellSouth's responses to staff's first
8 set of interrogatories and first request for production of
9 documents, BellSouth's responses to the Florida Public
10 Telecommunications Association's first set of interrogatories
11 and first request for production of documents, BellSouth's
12 responses to staff's second request for production of
13 documents, and BellSouth's response to staff's second set of
14 interrogatories. All that would be BST Stip-1.

15 COMMISSIONER DEASON: Okay. That would be identified
16 as Exhibit Number 1.

17 (Exhibit 1 marked for identification.)

18 MR. FORDHAM: Next, Commissioner, we have
19 BST-Conference (sic.) Stip -- Confidential Stip, and that is a
20 single item. That's BellSouth's response to the Florida Public
21 Telecommunications Association's first set of interrogatories
22 and first request for production of documents.

23 COMMISSIONER DEASON: That would be identified as
24 Exhibit 2.

25 (Exhibit 2 marked for identification.)

1 MR. FORDHAM: And, thirdly, FPTA Stip-1, and that is
2 a composite exhibit which contains Florida Public
3 Telecommunications Association responses to staff's first set
4 of interrogatories and first request for production of
5 documents, FPTA's supplemental responses to staff's first set
6 of interrogatories and first request for production of
7 documents, FPTA's responses to BellSouth Telecommunications'
8 first set of interrogatories and first request for production
9 of documents, FPTA's responses to BellSouth's second set of
10 interrogatories and second request for production of documents,
11 and, finally, FPTA's responses to staff's second set of
12 interrogatories and second request for production of documents.

13 COMMISSIONER DEASON: That will be identified as
14 Exhibit 3.

15 (Exhibit 3 marked for identification.)

16 MR. FORDHAM: And those are all of the stipulated
17 exhibits, Commissioner.

18 COMMISSIONER DEASON: And these exhibits are
19 stipulated. I assume there's no objection to entering them
20 into the record. Very well. Show then that Exhibits 1, 2 and
21 3 are admitted into the record.

22 (Exhibits 1, 2 and 3 admitted into the record.)

23 COMMISSIONER DEASON: I noticed that in the
24 prehearing order under Section VIII that there's a -- it
25 addresses opening statements, if any. Are there to be any

1 opening statements?

2 MS. WHITE: Yes. Yes, sir. Instead of giving
3 witness summaries, the lawyers are going to give opening
4 statements and there will be no witness summaries. So then
5 after the opening statements, the witnesses will be put on the
6 stand, the testimony entered into the record and then
7 cross-examination.

8 COMMISSIONER DEASON: And we're going to do direct
9 and rebuttal simultaneously?

10 MS. WHITE: That's my understanding.

11 COMMISSIONER DEASON: Very well.

12 MR. TOBIN: Commissioner?

13 COMMISSIONER DEASON: Yes, Mr. Tobin.

14 MR. TOBIN: We will, we will also proffer an opening
15 statement, but we will also ask our witnesses to present
16 summaries of their testimonies.

17 COMMISSIONER DEASON: Okay. Was this discussed at
18 the prehearing? Was there going to be one in lieu of the other
19 or --

20 MR. TOBIN: No.

21 MR. FORDHAM: Commissioner, it was staff's
22 understanding that the expanded time frame for opening
23 statements would be in lieu of witness summaries. The
24 Commission had expressed a preference not to have the summaries
25 of the testimony, but rather to allow the extra time for the

1 pening statements.

2 COMMISSIONER DEASON: Very well. Mr. Tobin, I'll
3 give you a choice. You can do the opening statement in lieu of
4 summaries by your witnesses, or if you prefer for the witnesses
5 to give summaries, then you'll have to waive your opening
6 statement. So do you have a preference?

7 MR. TOBIN: I'll go ahead and give an opening
8 statement.

9 COMMISSIONER DEASON: Very well. Well, then we'll
10 just direct your witnesses then to, to not give summaries, and
11 we'll go directly into cross-examination when we reach that
12 point.

13 This is a petition that was filed by the Pay
14 Telephone Association, so perhaps it would be best, Mr. Tobin,
15 if you go first with your opening statement. And the
16 prehearing order says not to exceed 20 minutes. Do you
17 anticipate it will take that long?

18 MR. TOBIN: No, sir.

19 COMMISSIONER DEASON: Very well. If there's nothing
20 else at this point, Mr. Fordham.

21 MR. FORDHAM: Nothing else by staff, Commissioner.

22 COMMISSIONER DEASON: Okay. We can then proceed to
23 opening statements.

24 MR. TOBIN: Thank you, Commissioner. Good morning.
25 We're here today under what we consider to be very

1 unique circumstances. Accordingly, we thought it would be
2 beneficial to take a moment and review the history of the
3 proceedings that have brought us here before you today.

4 On February 2nd, 1996, the Telecommunications Act of
5 1996 became law. The Telecom Act of '96 was an unusually
6 important legislative enactment that changed the landscape of
7 telecommunications regulation. Through this comprehensive
8 amendment to the Communications Act of 1934 Congress sought to
9 establish a procompetitive national policy. One of the stated
10 goals of Section 276 of the Act was the promotion of widespread
11 deployment of payphone services for the benefit of the general
12 public.

13 Shortly after the adoption of the '96 Act, the FCC
14 passed a series of payphone orders that provided specific
15 standards for the implementation of Section 276 of the Act.
16 Many of those standards are not new, but have been in place for
17 many years, including the Computer III guidelines.

18 Two of the requirements set forth in the payphone
19 orders were that, one, all LECs were required to have certified
20 that their intrastate payphone rates were cost-based on or
21 before April 15th, 1997. And, two, if and only if the LEC had
22 certified that its intrastate rates were cost -- intrastate
23 PTAS rates were cost-based, the LEC would be entitled to
24 collect per call dial-around compensation for all completed
25 dial-around calls originating from its pay telephones.

1 Through two letters from Michael Kellogg as counsel
2 to the RBOC Coalition, of which BellSouth was and remains a
3 member, BellSouth acknowledged the FCC's requirement that it
4 certify that its PTAS rates be cost-based, but requested a
5 waiver indicating that it needed more time to comply with that
6 requirement. The FCC granted BellSouth and the other RBOCs
7 their waiver, which was necessary to ensure that BellSouth was
8 allowed to collect tens of millions of dollars in dial-around
9 compensation. However, that waiver was contingent on the
10 requirement that BellSouth certify that its intrastate PTAS
11 rates were cost-based in compliance with the '96 Act.

12 Notwithstanding a commitment by BellSouth, BellSouth
13 made no changes to its intrastate payphone rates in Florida.
14 Subsequently, BellSouth and the other BOCs utilized their
15 significant resources in their efforts to water down and delay
16 the implementation of intrastate cost-based PTAS rates at every
17 opportunity. As a result, the many national and state payphone
18 associations worked in concert to seek out the FCC's assistance
19 to clarify the LEC requirements. The results of those efforts
20 was the issuance of two orders by the FCC. As early as March
21 of 2000 the FCC's Common Carrier Bureau issued the first
22 Wisconsin order, and then in January of 2002 the FCC issued the
23 second Wisconsin order. In both cases, the RBOC Coalition
24 appealed those decisions. In July of 2003 the United States
25 District Court of Appeals for the District of Columbia

1 confirmed the FCC's second Wisconsin order.

2 The original payphone orders and the results of those
3 decisions are the basis of these proceedings and provide this
4 Commission with the principles that must be applied to ensure
5 that BellSouth's intrastate PTAS rates are cost-based and in
6 compliance with the 1996 Act.

7 Based upon those decisions, it's clear that the FCC's
8 original '96 payphone orders have survived BellSouth's and the
9 other RBOCs' efforts to thwart Congress's goal to promote
10 competition among payphone service providers and promote the
11 widespread deployment of payphones for the benefit of the
12 general public.

13 It is also clear that when this Commission first
14 considered intrastate PTAS rates, BellSouth failed to provide
15 the information necessary for this Commission to determine
16 whether BellSouth's PTAS rates were, in fact, cost-based.
17 Specifically, BellSouth failed to demonstrate the
18 reasonableness of the overhead allocation included in its PTAS
19 rate.

20 Today this Commission is being asked to implement the
21 national policy mandates as set forth in Section 276 of the
22 Telecommunications Act and to implement the standards
23 established by the FCC in its original payphone orders and the
24 Wisconsin orders.

25 The FPTA is asking this Commission to establish a

1 prospective intrastate PTAS rate of \$18.04. That rate includes
2 the federal EUCL charge and a reasonable allocation for
3 overhead. We're also asking that this Commission require
4 BellSouth to refund to PSPs the amount of the EUCL collected
5 since April 15th, 1997. We are also asking this Commission to
6 require BellSouth to refund to PSPs the difference between what
7 BellSouth should have charged PSPs as a proper cost-based
8 intrastate PTAS rate and what BellSouth actually charged and
9 collected from those PSPs since this Commission's prior order.
10 This Commission has a unique opportunity to further the
11 national public policy and further the public interest of the
12 state of Florida.

13 In the Wisconsin order, the FCC specifically provided
14 and found that payphones are an important part of the nation's
15 telecommunications system. They are critical not only for
16 emergency communications, but also for those Americans who
17 cannot afford their own payphone service, their own, excuse me,
18 their own home telephone service. Payphone service is
19 on-demand dial tone, per use, wireline, high quality service
20 available 24 hours a day, seven days per week, 365 days per
21 year. Users are not required to make an initial investment in
22 equipment, await activation of the service or pay recurring
23 monthly charges. Any member of the public can make calls with
24 coins or by use of calling cards, prepaid cards or other, or
25 other methods of dialing around.

1 Emergency 911 calls are free, free of charge across
2 Florida's payphone base. Again, that's available 24 hours a
3 day, seven days a week. Payphones provide vital access for
4 Florida's poor citizens and tourists to this nation's
5 telecommunications infrastructure, two very important groups of
6 citizens who deserve this Commission's protection.

7 This Commission must pay particular attention to
8 these issues, particularly in light of BellSouth's recent exit
9 from the payphone business.

10 Many of the issues before you today will hinge upon
11 legal issues and the interpretation of the FCC's various
12 orders. We do not intend to utilize this Commission's valuable
13 time to argue those issues today; rather, we'll include those
14 in our briefs that will be filed with this Commission after the
15 hearing. Thank you.

16 COMMISSIONER DEASON: Thank you.

17 Ms. Mays.

18 MS. MAYS: Commissioner Deason, if I could just have
19 a moment. We've prepared some material that we'd like to pass
20 out.

21 COMMISSIONER DEASON: Very well.

22 Ms. Mays, are you going to cover this in 20 minutes
23 or less?

24 MS. MAYS: Yes, I will do my best.

25 COMMISSIONER DEASON: Very well.

1 MS. MAYS: I may be a little bit more lengthy than
2 Mr. Tobin, but I'll try to move right along.

3 MR. TOBIN: Excuse me. Just for the record, this --
4 we have not seen this before, so I just want to get that on the
5 record.

6 MS. MAYS: Yes. We'll be happy to identify what
7 we've passed out. It consists of a series of orders which are
8 a matter of public record, and it has pieces of the discovery,
9 not all the discovery, as well as a snapshot of testimony.
10 We'll be happy to identify it as the next Exhibit Number 4 and
11 submit it as a formal exhibit or simply use it as a
12 demonstrative exhibit, whichever the Commission prefers.

13 COMMISSIONER DEASON: We will identify it as
14 composite hearing Exhibit 4, and we'll entitle it, Opening
15 Presentation by BellSouth.

16 MS. MAYS: Thank you, Commissioner.

17 (Exhibit 4 marked for identification.)

18 MS. MAYS: Good morning. We've distributed these
19 notebooks, Commissioners, and we'll go through them a little
20 bit, and I will try to keep these remarks concise and to the
21 point.

22 As we talk with you this morning, there are four
23 areas that we do want to go over with you. We will also go
24 over some of the background. In Mr. Tobin's opening
25 presentations there were some background areas that we think

1 you need to hear about in more detail. We'll go over those.
2 We'll also go over really the two, two issues that are before
3 you, and then we'll discuss BellSouth's evidence, and we'll
4 close with a discussion of some of the FPTA's arguments.

5 Turning to the background, Mr. Tobin mentioned the
6 Telecom Act. But before the Telecom Act was passed in 1996,
7 this Commission acted and held a series of hearings to open the
8 Florida payphone market to competition. And then after the
9 Telecommunications Act was passed and the payphone orders were
10 first issued, this Commission took the charge that the FCC gave
11 it, which was to implement cost-based rates in Florida, to
12 implement the new services test, and you did that. You opened
13 a docket, and that was a docket that the FPTA participated in.
14 We provided cost studies back in that docket, and those cost
15 studies were provided to the FPTA. A hearing was scheduled,
16 but it never took place, it was canceled, and there was a
17 workshop and you allowed BellSouth and the FPTA to talk to see
18 if something could be resolved.

19 At Tab 1 at the end of those discussions you will see
20 the letter that was sent from counsel to the FPTA to the
21 Commission. And in that letter the counsel asked for
22 Commission action, and you acted. You went ahead and you
23 entered an order; you entered an order in 1998, and that order
24 is at Tab 2. And in your order you found that BellSouth's PTAS
25 or pay telephone access service rates met the new services

1 test. You did what you were charged to do by the FCC; you
2 looked at the cost studies and you entered an order. After you
3 entered that order, there was a protest filed by the FPTA. And
4 before there was a hearing held to discuss that protest, the
5 FPTA withdrew it. And your decision became final, and that
6 decision is at Tab 3.

7 After you entered that decision, there was not an
8 appeal, there was not a motion for reconsideration, there was
9 not even a letter sent by the FPTA saying, you know, we're not
10 going to pursue this anymore, but we may come back to you at a
11 later date and tell you that this order is incorrect and we're
12 going to want a refund. They didn't do anything at all.

13 And so your order became final. We charged the
14 payphone service providers in Florida the tariffed rates that
15 were in our tariff, and we also charged the payphone providers
16 the federal EUCL or end-user common line charge that is in our
17 FCC tariffs.

18 With respect to the EUCL, there was a change in 1997
19 by which the access charges that are addressed at the federal
20 level, we were required or there was an access charge change
21 that allows us to do the end-user common line charge on every
22 single payphone. And so the end-user common line charges are
23 tariffed at the FCC level. We charged those. Our state
24 tariffs were -- are tariffed here and we charged those. That's
25 what we did. No one contested the tariffs, no one said the

1 tariffs were invalid. The FPTA didn't do any protest of those
2 tariffs.

3 So how do we get there? How do we get here today?
4 Well, Mr. Tobin already mentioned that there were later orders
5 by the FCC. There were two. There were some states unlike
6 Florida where the state commissions didn't set out to implement
7 the new services test, and Wisconsin was one of those states.
8 They did not act. And because Wisconsin did not act, the
9 Common Carrier Bureau did, and in Wisconsin they issued an
10 order in 2000 that applied to the Wisconsin ILECs. That order
11 is at Tab 4. And at Paragraph 14 of that order you see the
12 language that says, "This order applies to the carriers in
13 Wisconsin."

14 That order was appealed; it was appealed to the full
15 FCC. And that brings us to the January 2002 Wisconsin order
16 that was issued that really forms the true basis of the case
17 and why we are here today. And in the 2002 order the FCC
18 detailed what it thought the new services test would be, and
19 there were two aspects of this order that were not in the
20 previous payphone orders in the detail that they were in the
21 Wisconsin order.

22 First, the FCC detailed how you go about implementing
23 the new services test and included some specific guidelines on
24 overhead. They changed some of the aspects of the 2000 order.
25 And, second, the FCC said, when you set your state rates, you

1 need to take into account those federal EUCL charges or FCC
2 tariff charges. They didn't say you couldn't charge them.
3 They said you had to account for them. And those were not
4 detailed in the other orders.

5 Now the other thing that the FCC did in the Wisconsin
6 order, in the January 2002 order you will find at Tab 5, is
7 they, they acknowledged that state commissions such as yourself
8 had acted. They commended state commissions for acting, but
9 they also said there were different applications, and they said
10 this order will assist the states. They didn't say you go back
11 and order refunds, they didn't say you change your earlier
12 orders. They said, here's this order. And you can certainly
13 look at it in more detail, should, should you choose to.

14 Now that order was January 2002. The FPTA filed this
15 petition that brings us here March 2003, which brings us to
16 what are the issues? And there are two issues: First, what
17 should the PTAS rates be going forward; and, second, should
18 there be a refund?

19 In terms of the going-forward rates, we have provided
20 you with cost information, we have used the guidance in the
21 Wisconsin order and we have a proposal for you that changes the
22 current 12-rate group structure to one statewide structure. We
23 ask with respect to the refund that you deny that entirely. We
24 do not believe there is any basis for you to order that. Those
25 are the issues.

1 Let me talk a little bit about the evidence. We have
2 two witnesses, Ms. Kathy Blake and Mr. Bernard Shell.

3 Ms. Blake touches on the issues and specifically on the policy
4 issues, and Mr. Shell sponsors the cost study that we filed.

5 We believe this case is really very straightforward.
6 You set our rates in final orders that were not appealed. We
7 charged those rates, and you can now look at our rates and
8 decide if you want to change them. You could have done that
9 without the Wisconsin order, but you have it and it provides
10 you some guidance. And we've looked at that guidance and we've
11 proposed a rate structure for you. If you adopt that proposal,
12 you would go to one statewide rate, and we ask you to set that
13 rate at \$17.23. That takes into account that we will continue
14 to charge the EUCL in our FCC tariff of \$7.13 so that we
15 recover our total costs, which are \$24.36. You get there by
16 adding the two charges, and we would not recover more than the
17 total cost. That's what we're asking you to do if you wish to
18 change the rates.

19 Now before we end, I'd like to just discuss some of
20 the FPTA's arguments and talk to you a little bit about how
21 they try to make this more complicated.

22 First, the refund claim. The FPTA's position is
23 essentially that your order, your orders, your earlier orders
24 were wrong because you didn't have later orders that weren't
25 even issued then, and we don't think that makes any sense. The

1 Wisconsin order itself was appealed, and that was not decided
2 until July of 2003. And even then there was some subsequent
3 action in terms of rehearings and petitions for cert filed.
4 The petitions for cert weren't denied until last month, April
5 of 2004.

6 Now if you look at Tab 7, we just have one of the
7 discovery responses that was filed in this docket. And in this
8 response the FPTA says, we haven't come to you for seven years,
9 and they have some reasons about why they haven't done that.
10 But the bottom line is they say they haven't come to you, but
11 now they're coming to you, they want you to change your earlier
12 orders and they want to totally ignore some of the legal
13 doctrines that we can talk about in briefs. But the bottom
14 line is they want you to fix something they say you erred when
15 you didn't have orders, and they didn't come to you for seven
16 years, and we don't think that justifies a refund claim.

17 They also talked to you a little bit about
18 competition and this notion of promoting competition. Well,
19 it's difficult to imagine how a market where in Florida we have
20 464 certified pay telephone companies, how that becomes more
21 competitive, but I'm not really sure how a refund makes it more
22 competitive. There's more payphone providers certified in
23 Florida than there are CLECs.

24 With respect to payphone deployment, if you flip over
25 to Tab 10, those are just two pages out of the testimony of

1 BellSouth's witness Kathy Blake. And actually the second page
2 shows the Florida payphone line trend, which has been
3 decreasing. The first page shows line trend information from
4 some of the other states, and these are -- two of those states
5 were addressed in the FPTA's witness's testimony as states that
6 apparently got it right the first time, and in all the states
7 the line trends are going downward. Again, we don't think
8 there's any evidence that shows a refund will have any impact
9 on the number of payphones.

10 Now the last argument that Mr. Tobin didn't really
11 raise in his opening but they've raised in some of their
12 discovery is this notion that we -- they shouldn't have had to
13 come to you at all because no one should have to look out and
14 watch BellSouth's rates. And if this is such a matter of
15 crucial importance, it's difficult to imagine why they
16 shouldn't have to come to you at all for seven years. But
17 putting that aside, if the FPTA was so convinced our costs went
18 down, it seems to me that they could have come forward. The
19 bottom line is that in Florida there's no requirement that we
20 do periodic cost studies. We did a cost study when you looked
21 at this, we did a cost study coming here, we've put a proposal
22 in front of you, but there's no requirement that says you need
23 to look at your costs all the time and constantly change them.
24 And, quite frankly, the reality of this world is that if there
25 is a rate decrease, everyone welcomes it. But if our costs go

1 up and we ask to change them, that gets fought all the time.
2 So in today's world this notion that there would be constant
3 changes, I think, is a little naive.

4 In closing, we are going to ask at the end of this
5 case that you set the going-forward rate in the amount
6 of \$17.23 in Florida, one rate, a statewide rate, and we are
7 going to ask that you deny the refund claim.

8 Thank you for your attention.

9 COMMISSIONER DEASON: Thank you.

10 Mr. Fordham, are we ready to swear in witnesses?

11 MR. FORDHAM: That's correct, Commissioner.

12 COMMISSIONER DEASON: Okay. All the witnesses who
13 will be testifying today, please stand and raise your right
14 hand.

15 (Witnesses collectively sworn.)

16 COMMISSIONER DEASON: Mr. Fordham, what page is the
17 witness list, Page 5?

18 MR. FORDHAM: Oh, in the prehearing order?

19 COMMISSIONER DEASON: Yes.

20 MR. FORDHAM: Yes.

21 COMMISSIONER DEASON: And this is -- we're going to
22 abide by this.

23 MR. FORDHAM: In the order.

24 COMMISSIONER DEASON: Very well. Okay. Mr. Tobin,
25 you may call Mr. Renard.

1 MR. TOBIN: Thank you. FPTA calls Mr. Renard.

2 COMMISSIONER DEASON: Welcome back, Mr. Renard.

3 THE WITNESS: Thank you, Mr. Chairman. It's a
4 pleasure to be here with you.

5 BRUCE W. RENARD

6 was called as a witness on behalf of Florida Public
7 Telecommunications Association, Inc., and, having been duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. TOBIN:

11 Q Would you please state your name for the record.

12 A Bruce Wayne Renard.

13 Q And by whom are you employed and what is your
14 position?

15 A I'm the Executive Director for the Florida Public
16 Telecommunications Association. And I'm assuming you'd like
17 our address, and that is 9432 Bay Meadows Road, Suite 140,
18 Jacksonville, Florida 32256.

19 Q Thank you. Mr. Renard, have you caused direct
20 testimony and rebuttal testimony to be filed in this docket?

21 A Yes, I have.

22 Q Mr. Renard, do you have any changes to that
23 testimony?

24 A I have two, two or three minor typographical
25 corrections on my direct testimony. Page 3, the word "serv"

1 ould be "serve." And the -- at the time the testimony was
2 iled, I was -- it was 2003, and so on that same page my
3 eference to "2003" needs to be changed to read this year, now
4 2004."

5 The only other changes in my rebuttal testimony, on
6 page 13 the rate we're requesting, as mentioned in Mr. Tobin's
7 opening statement, is \$18.04 as opposed to the \$17.65 that was
8 in there earlier. That was just a correction based on
9 information we got as we went through the hearing. And with
10 those changes, otherwise, I would proffer my testimony.

11 Q Okay. Mr. Renard, if I were to ask you the questions
12 contained in your direct and rebuttal testimony at this time,
13 would your answers be the same, subject to the changes you just
14 provided here today?

15 A Yes, they would.

16 Q Do you have any exhibits to your direct or rebuttal
17 testimony?

18 A Yes.

19 Q Do you have any changes to those exhibits?

20 A No, I do not.

21 MR. TOBIN: I'd ask that the testimony with all the
22 exhibits be moved into the record as if read from the stand.

23 COMMISSIONER DEASON: Okay. We will insert the
24 prefiled testimony into the record. And we will at this point
25 identify the exhibits, and then we will allow you the

1 opportunity to move them into the record at the conclusion of
2 cross-examination.

3 There are -- does Mr. -- Mr. Renard has exhibits
4 attached to both the direct and the rebuttal; is that correct?

5 MR. TOBIN: Yes, Commissioner. It's listed in the
6 prehearing order.

7 COMMISSIONER DEASON: Okay. Let's -- we'll identify
8 the exhibits attached to the direct testimony as composite
9 Exhibit 5 and the exhibits attached to the rebuttal testimony
10 as composite Exhibit 6.

11 MR. TOBIN: Thank you.

12 (Exhibits 5 and 6 marked for identification.)

13 (REPORTER'S NOTE: Exhibit 5 is not in existence.

14 See transcript at Page 75 for further explanation.)
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25

1 **Q. Please tell the Commission your name, business address and current**
2 **employment.**

3 A. **My name** is Bruce Renard. I am the Executive Director of the Florida Public
4 Telecommunications Association, Inc. ("FPTA"). My business address is 9432
5 Baymeadows Road, Suite 140, Jacksonville, Florida 32256.

6
7
8 **Q. What is your education and employment background?**

9 A. I attended Boston University and the State University of New York, at New Paltz,
10 earning a B.A., *magna cum laude*, and earned a Juris Doctor degree from the
11 University of Florida, with specializations in telecommunications and
12 international trade law (1978 Cambridge/Warsaw program). After graduating
13 from the University of Florida College of Law, I served as staff counsel and
14 associate general counsel for the Florida Public Service Commission, with
15 responsibilities in all areas of utility regulation and a specialty representing
16 Florida's interests at the national level on key telecom issues. After leaving the
17 Florida Public Service Commission, I engaged in the private practice of law with
18 a specialization in telecommunications and utility law - representing a variety of
19 national and regional telecom concerns before a wide range of state and federal
20 forums. I then joined Peoples Telephone Company, Inc., the then largest non-
21 local exchange company provider of pay telephone services in the United States,

1 as its General Counsel and Vice President of Regulatory Affairs. At the end of
 2 1998, Peoples Telephone Company merged with another publicly traded pay
 3 telephone service provider, Davel Communications, Inc. ("Davel"), where I
 4 served in a number of senior management roles, ultimately serving as President
 5 until the merger of Davel with PhoneTel Technologies, Inc. in mid-2002. In
 6 September of 2002, I accepted an appointment to ~~serve~~^{serve} as the Interim President of
 7 the American Public Communications Council ("APCC"), the national trade
 8 organization representing the independent payphone industry throughout the
 9 United States. I concluded that tenure in June of this year an assumed my current
 10 role as Executive Director for the FPTA and President of FPTA Technologies
 11 subsidiary in July. I also presently serve as President of Renard Consulting, Inc.,
 12 providing regulatory and public affairs consulting services to telecom concerns
 13 nationwide.

14
 15 **Q. Were you involved in the FCC's adoption of the *Payphone Orders*¹?**

16 A. I have served as a member of the Board of Directors of the APCC and a member
 17 of the APCC Legal Committee since its inception. In that capacity, I have been
 18 intimately involved as an industry representative working with the FCC in the

¹ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 20,541 (1996) ("*Report and Order*"); Order on Reconsideration, 11 FCC Rcd 21,233 (1996) ("*Order on Reconsideration*"); Order, 12 FCC Rcd 20,997 (Comm. Car. Bur. 1997) ("*Bureau Waiver Order*"); Order, 12 FCC Rcd 21,370 (Comm. Car. Bur. 1997) ("*Second Bureau Waiver Order*"), (Collectively, the "*Payphone Orders*"). Subsequently, In the Matter of Wisconsin Public Service Commission: Order Directing Filings, 15 FCC Rcd 9978 (Comm. Car. Bur. 2000) ("*First Wisconsin Order*"), and Memorandum Opinion and Order, 17 FCC 2051 (2002) ("*Second Wisconsin Order*"), (Collectively, the "*Wisconsin Orders*").

1 promulgation of its *Payphone Orders* through which it implemented the payphone
2 provisions of the Telecommunications Act of 1996 (the “Telecom Act”).
3

4 **Q. What is the purpose of your testimony in this proceeding?**

5 A. The purpose of my testimony is to discuss the crucial importance of the payphone
6 access line rate reductions mandated by the Telecom Act and the FCC’s *Payphone*
7 *Orders* and the subject of this docket. I will explain why the excessive rates
8 charged today by BellSouth have greatly reduced the availability of payphone
9 service in general—and why the requested relief will meaningfully promote the
10 continued widespread availability of payphone service in Florida. Finally, I will
11 briefly explain why the record in this proceeding requires a substantial decrease in
12 existing line rates in order for those rates to be “cost-based”.
13

14 **Q. Do current federal requirements envision state regulators implementing the**
15 **FCC’s mandate to reduce rates for payphone access lines?**

16 A. Yes. The FCC has specifically relied on state regulators to implement the new
17 services test requirements consistent with Section 276 of the Telecom Act and
18 addressed in the *Second Wisconsin Order* for the stated purpose of assisting state
19 regulatory bodies in applying the new services test to intrastate payphone line
20 rates. Moreover, §276(c) of the Telecom Act states that the FCC’s regulations
21 requiring cost-based rates legally preempt all inconsistent state ratemaking
22 criteria. In fact, the RBOC Coalition, which includes BellSouth, specifically

1 challenged the FCC's authority to regulate intrastate payphone access rates. In the
 2 *Second Wisconsin Order*, the FCC found that it has jurisdiction over the intrastate
 3 payphone line rates charged by Regional Bell Operating Companies. *Second*
 4 *Wisconsin Order* (at ¶2). The United States District Court of Appeals for the
 5 District of Columbia finally confirmed the FCC's *Second Wisconsin Order* on
 6 July 11, 2003 and no further appeal was taken to the United States Supreme
 7 Court.

8
 9 **Q. How did the Federal Telecom Act cause the present proceeding here in**
 10 **Florida?**

11 A. Section 276 of the Telecom Act required the FCC to pass regulations to advance
 12 the twin goals of "promot[ing] competition among payphone service providers
 13 and promot[ing] the widespread deployment of payphone services to the benefit of
 14 the general public . . ." In paragraph 163 of the *Order on Reconsideration*, the
 15 FCC enunciated one of the major requirements towards meeting these goals. In
 16 that Order, the FCC stated:

17 We require LECs to file tariffs for the basic payphone
 18 services and unbundled functionalities in the intrastate and
 19 interstate jurisdictions as discussed below. LECs must file
 20 intrastate tariffs for these payphone services and any
 21 unbundled features they provide to their own payphone
 22 services. The tariff for these LEC-payphone services must
 23 be: (1) cost based; (2) consistent with the requirements of
 24 Section 276 with regard, for example, to the removal of
 25 subsidies from exchange and exchange access services and;
 26 (3) non-discriminatory. States must apply these
 27 requirements and the Computer III guidelines for tariffing
 28 such intrastate services.

1
2 After the FCC's *Order on Reconsideration*, there was disparate application of the
3 new services test in various state proceedings. Accordingly, on January 31, 2002,
4 the FCC issued the *Second Wisconsin Order* to "...assist states in applying the
5 new services test to BOCs' intrastate payphone line rates in order to ensure
6 compliance with the *Payphone Orders* and Congress' directives in section 276."
7 *Second Wisconsin Order* (at ¶2). In its *Second Wisconsin Order*, the FCC
8 clarified and further interpreted the requirements of Section 276 of the Act and the
9 application of the new services test specifically to pay telephone access rates.

10
11 In the *Second Wisconsin Order* the FCC found that: (i) Section 276 requires
12 Regional Bell Operating Companies ("BOCs") to set their intrastate payphone line
13 rates, including usage rates, in compliance with the new services test; (ii)
14 Intrastate payphone service rates must be calculated using a forward-looking,
15 direct cost methodology such as TELRIC or TSLRIC; (iii) Overhead loading rates
16 for payphone lines must be cost-based, may be calculated using unbundled
17 network element ("UNE") overhead loading factors, and may not be set artificially
18 high in order to subsidize or contribute to other local exchange services.
19 Additionally, any overhead allocations for payphone services that represent a
20 significant departure from overhead allocations for UNE services must be justified
21 by the local exchange company; and (iv) In establishing its cost-based, state-
22 tariffed rates, a BOC must reduce the monthly per line rate determined under the

1 new services test by the amount of the federally tariffed subscriber line charge or
2 end user common line charge commonly known as "EUCL" to prevent double
3 recovery of costs.

4
5 **Q. Has BellSouth complied with the cost based rate requirement requested in**
6 **this docket with regard to payphone access lines?**

7 A. No. On August 11, 1998 in Docket No. 970281-TL, the Florida Public Service
8 Commission issued a Notice of Proposed Agency Action Order Approving
9 Federally Mandated Intrastate Tariffs For Basic Payphone Service, Order No.
10 PSC-98-1088-FOF-TL, in which it found that that existing incumbent local
11 exchange company tariffs for smart and dumb line payphone services were cost-
12 based, consistent with Section 276 of the Telecommunications Act of 1996, and
13 non-discriminatory. That Order was finally approved and made effective as of
14 January 19, 1999. At that time, this Commission did not have the benefit of the
15 *Wisconsin Orders* in this evolving area of federal telecommunications law.
16 When the FCC issued its *Second Wisconsin Order* to ensure a consistent
17 application of the new services test specifically to pay telephone access rates, it
18 intended to provide all state commissions, including this Commission, with the
19 assistance and guidance necessary to ensure the proper and consistent application
20 of the new services test to pay telephone access rates. BellSouth is a member of
21 the RBOC Coalition that was a party to the *First Wisconsin Order*, the *Second*
22 *Wisconsin Order* and the appeal of the *Second Wisconsin Order* to the District

1 Court of Appeals for the District of Columbia and, as such, has been intimately
2 involved in this evolving area of federal law. Despite the ongoing clarifications of
3 the new services test requirements set forth by the FCC, BellSouth has not
4 reduced its payphone access rates in Florida to comply with those requirements.
5 In fact, if the FPTA had not filed this proceeding and forced BellSouth to comply
6 with the new services test, BellSouth would continue to charge payphone
7 providers in the State of Florida unlawful rates.

8
9 **Q. Are BellSouth's current Florida payphone line rates valid?**

10 A. No. BellSouth continues to charge EUCL on top of its local line rates, in clear
11 violation of the *Wisconsin Orders*. The continued EUCL charge flies in the face
12 of the *Second Wisconsin Order*, which was decided by the FCC on January 31,
13 2002 and affirmed by the DC Circuit Court of Appeals For the District of
14 Columbia on July 11, 2003. Moreover, the rates charged by BellSouth for pay
15 telephone access services are not cost-based in compliance with the new services
16 test. Precise cost based rates cannot be calculated at this time because no current
17 cost information is publicly available. Based on the most recent publicly available
18 cost information for UNEs in Florida, however, BellSouth's rates exceed a cost-
19 based level by a significant margin.

20
21 **Q. With all of the benefits promised by the Telecom Act of 1996 has the**
22 **independent payphone industry experienced financial prosperity?**

1 A. No. The payphone industry as a whole has experienced a consistent decline over
2 the past several years. Payphone providers as a whole have all experienced
3 consistent erosion in every traditional revenue source because of increases in so-
4 called “dial around traffic,” and the displacement of payphone calling by wireless
5 service. Congress and the FCC have recognized that this economic decline in the
6 industry has significantly intensified the need for sharp reductions in costs
7 payphone service providers pay for access service. This is especially true because
8 payphone access costs have become the single largest economic hurdle in placing
9 and maintaining a payphone for public use.

10

11 **Q. What is the primary cost for a payphone provider to provide a payphone to a**
12 **particular location?**

13 A. The largest single cost to provide payphone service is typically the monthly bill
14 paid to the local exchange company for a telephone line.

15

16 **Q. Please explain how lower line costs will result in larger payphone availability**
17 **to Florida’s citizens.**

18 A. Every time a PSP determines whether it will begin or continue to serve a
19 particular payphone location, it must do a cost analysis. Sometimes this cost
20 analysis is very formal and rigorous and sometimes it is “seat of the pants.” In the
21 end, however, no payphone service provider, LEC or otherwise, can serve a
22 location if its costs for providing service at that location exceed its revenues. IN

1 most circumstances, the PSP's single largest cost to provide service to any
2 particular location is the cost of local access.

3 The FCC fully understood this economic effect of the free market when it required
4 and then reaffirmed that all payphone access line rates to be reduced and to be
5 cost based. Naturally, the amount of revenue available from a location is largely
6 the result of the number of consumers who will be using the payphone there.

7 However, as the cost of serving a location decreases, more potential and current
8 locations become economically viable. This naturally results in the deployment of
9 more payphones, particularly in rural and low-income areas where phones may
10 have previously been unprofitable.

11
12 **Q. Based upon your experience do excessive payphone access line rates decrease**
13 **the deployment of payphones?**

14 A. Yes. The viability of any particular payphone location is driven by its
15 profitability, which is heavily impacted by the cost of local access, the largest cost
16 for any particular payphone location. PSPs are, for the most part, small business
17 people who cannot afford to operate unprofitable phones.

18
19 **Q. Will the relief requested by the FPTA in this docket promote the widespread**
20 **deployment of payphones as required under the Telecom Act of 1996?**

21 A. Yes. There is no doubt that a significant rate reduction and a refund of past
22 overcharges will have a direct effect on the number of installed payphones in

1 Florida. Establishing a true cost-based payphone line rate in compliance with the
2 new services test will lower the revenue requirement for establishing a new
3 payphone location, which will, in turn, enable more payphones to be deployed.
4 Additionally, requiring BellSouth to refund the excessive profits it has collected
5 from PSPs since 1997 will provide the payphone industry with a much needed
6 economic stimulus that will help to offset years of overcharges and return
7 payments that should not have been made in the first instance. Once BellSouth
8 finally exits the payphone business as previously announced, only independent
9 payphone providers such as the FPTA's members, will provide public payphone
10 service to Florida's citizens and tourists in the those regions formerly served by
11 BellSouth.

12 This Commission should be very wary of BellSouth's resistance to full and proper
13 implementation of the new services test requirements, especially in view of
14 BellSouth's decision to terminate 100 years of participation in the payphone
15 business while devoting substantial resources to its "unregulated" wireless
16 business. That dynamic creates the obvious incentive for BellSouth to seek denial
17 of the well justified financial relief intended by Congress and the FCC under the
18 new services test. The Commission should instead be guided by the public
19 interest, which supports swift and sure refunds and rate reductions for Florida's
20 remaining pay telephone providers.

21
22 **Q. How would the decreased deployment of payphones you just described affect**

1 **economically disadvantaged users of telecommunications service?**

2 A. The economically disadvantaged would be harmed most. With no relief from the
3 presently excessive BellSouth payphone access line costs, PSPs will be forced to
4 remove a large number of payphones in rural, high cost and less populated areas,
5 and increase rates for local coin calls at the phones in those areas, where phones
6 are not removed. Any rate increase will in turn drive more consumers away from
7 payphones and toward either not making calls or using wireless alternatives. As a
8 result, more and more payphones will be removed from service and members of
9 the public who rely on payphones as a “home phone” substitute, require a
10 payphone for emergency calling and/or cannot financially afford a cell phone, will
11 be left with no access to badly needed services. This Commission can have a real
12 impact on preventing this scenario and promoting the continued widespread
13 deployment of payphones in Florida—by affording the refund and rate reduction
14 relief requested in this docket.

15

16 **Q: Does this conclude your testimony?**

17 A: Yes it does.

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition of Florida Public)
Telecommunications Association)
for Expedited Review of BellSouth)
Telecommunications, Inc.'s Tariffs)
with respect Rates for Payphone)
Line Access, Usage, and Features.)

Docket No.: DN 030300-TD

**REBUTTAL TESTIMONY OF
BRUCE W. RENARD**

1 **Q. Please tell the Commission your name, business address and current**
2 **employment.**

3 A. My name is Bruce W. Renard. I am the Executive Director of the Florida Public
4 Telecommunications Association, Inc. ("FPTA"). My business address is 9432
5 Baymeadows Road, Suite 140, Jacksonville, Florida 32256.

6

7 **Q. Have you previously filed testimony in this docket?**

8 A. Yes.

9

10 **Q. What is the purpose of your testimony in this proceeding?**

11 A. The purpose of my testimony is to respond to issues raised by the testimony filed
12 by other parties in this docket. I respond specifically to the testimony of Kathy
13 Blake of BellSouth, Inc. ("BellSouth")

14

1 **Q. Ms. Blake alleges that the Commission's PAA Order No. PSC-98-1088-FOF-**
2 **TL in Docket No. 97-281-TL, issued on August 11, 1998 (the "PAA Order")**
3 **conclusively establishes that no credit or refund was or is due to the FPTA**
4 **membership. Is she Correct?**

5 A. No. implementation and application of "new services test" cost based rates to pay
6 telephone access lines have been an ongoing and evolving process. The FCC's
7 Payphone Orders are intended to provide this Commission with guidance as to the
8 FCC's intended application of the relevant payphone provisions of the Telecom Act
9 giving rise to the "new services test" requirements for payphone access line
10 pricing. The Payphone Orders also provide significant guidance regarding the
11 timeframe in which "new services test" pricing requirements would be applicable
12 under the Act, namely that all PTAS rates be cost based on and after April 15,
13 1997. When this Commission adopted the *PAA Order*, it did not have the benefit
14 of the FCC's detailed explanation and clarification as later supplied in the *Second*
15 *Wisconsin Order*. To the extent that the *PAA Order* is shown to be in conflict with
16 the clarification provided in *Second Wisconsin Order*, this Commission is simply
17 fulfilling its administrative and equitable obligations to correct that conflict.
18 Moreover, BellSouth has been a party to each of the FCC proceedings, and any
19 subsequent appeals, that form the FCC's *Payphone Orders* and the basis for
20 FPTA's petition in this docket. Notwithstanding its intimate knowledge of the
21 requirements included in the *Payphone Orders*, BellSouth has failed to voluntarily
22 comply with the requirements of those Payphone Orders until the FPTA filed its
23 petition in this docket. BellSouth should not be permitted to "utilize" the

Commission's 1998 PAA Order as a means to avoid a refund of overages generated by PTAS rates which it knew were out of compliance with federally mandated "new services test" requirements for years - and which were being fought by the RBOC Coalition in court throughout that time period.

Q. When should BellSouth have been aware that its PTAS rates were not in compliance with the FCC's Payphone Orders?

A. BellSouth knew or should have known since the initial application of the "new services test" on April 15, 1997 that there were open questions under active review both at the federal administrative level and before the federal courts concerning implementation of this set of payphone access line requirements. This evolving application was to be expected in a complex "inter-jurisdictional" circumstance such as this. Following the FCC's adoption of the "new services test" there were numerous state proceedings underway across the country that generated a variety of questions and issues that wound up making their way back to the FCC for clarification and explanation as to the mechanics and nuances of implementing the "new services test." In fact, BellSouth has been fully aware of these disputes and issues even prior to April 15, 1997. The RBOC Coalition (of which BellSouth is a member) advocated vigorously against application of the "new services test" requirements before the FCC and its staff in 1996 and 1997 during the initial implementation of the Act, again when the FCC's Common Carrier Bureau considered and adopted the *First Wisconsin Order* in 2000, subsequently during the full FCC's consideration and ultimate adoption of the *Second Wisconsin Order*

1 released March 2, 2000, and finally on appeal to the D.C. Circuit Court of Appeals
2 through July 11, 2003. Certainly, BellSouth and its counsel had intimate
3 knowledge of the potential that its position regarding application of “the new
4 services test” would be rejected and that its PTAS rates in Florida would thus be
5 rendered noncompliant - from the very beginning. Moreover, the FCC’s *Second*
6 *Wisconsin Order* was specifically intended to provide the states with clear guidance
7 on the implementation of Section 276 of the Telecom Act in this area; it did not
8 create “new law.” Accordingly, the new services test requirements are effective as
9 of April 15, 1997. BellSouth cannot now claim that it “relied” on this
10 Commission’s PAA Order implementing federal law when, prior to, simultaneous
11 with and subsequent to the PAA Order’s adoption BellSouth was itself challenging
12 the application of the “new services test” before the federal regulators and courts -
13 and significant clarifications were ultimately provided that plainly render the earlier
14 tariff rate void from the outset.

15
16 **Q. Ms. Blake takes the position that the FPTA never sought regulatory review or**
17 **judicial review of BellSouth’s PTAS rates after the Commission’s PAA Order.**
18 **Is that true?**

19 **A.** I do not believe that to be entirely correct. The FPTA participated in the
20 proceedings that are the basis of this Commission’s *PAA Order*. Rather than
21 pursue a long and costly adversarial rate proceeding before this Commission, the
22 FPTA felt it more prudent and a better use of limited resources to await FCC
23 clarification of the key guidelines for application of the “new services test” in all

1 state proceedings, including Florida. Ultimately, the FPTA filed its petition for
2 relief before this Commission once the FCC had issued its *Second Wisconsin*
3 *Order*, but prior to the final decision of the D.C. Circuit Court of Appeals
4 affirming that decision on appeal. The FPTA simply could not wait for the D.C.
5 Circuit Court's final opinion given the significant decline experienced by the pay
6 telephone industry generally and in the State of Florida specifically. We could no
7 longer wait for BellSouth to "voluntarily" implement cost based rates. And, over
8 time, it became increasingly evident that BellSouth would not comply with federal
9 law unless and until required to do so. Ms. Blake would like this Commission to
10 deny FPTA the "refund aspect" of the relief requested because FPTA did not
11 police BellSouth's PTAS rates sooner. As discussed in more detail later in my
12 testimony, I believe that position to be completely at odds with Congress' intent in
13 adopting Section 276 of the Telecom Act and this Commission's obligation to
14 timely implement that intent.

15
16 **Q. Ms. Blake takes the position that this Commission has no legal authority to**
17 **order a refund in this present case. Do you agree?**

18 A. No. Ms. Blake refers the Commission to BellSouth's Motion to Dismiss filed in
19 this docket, as support for her position. This reliance is misplaced for a number of
20 reasons which are described in the FPTA's Response in Opposition to BellSouth's
21 Motion to Dismiss, as previously filed in this docket and now attached to this
22 testimony as **Exhibit 1**. When viewed in the cold light of day, BellSouth's
23 arguments as set forth in its Motion to Dismiss are all based upon principles of

1 “equity” and not “law.” BellSouth cannot be permitted to claim reliance on this
2 Commission’s PAA Order as an “equitable” basis of protection from refunding of
3 clear overcharges, especially when it knew that the PAA Order was based upon
4 key issues still under review at the federal level and those issues were ultimately
5 clarified in a manner apposite to the positions strongly advocated by BellSouth.
6 Allowing BellSouth to retain millions of dollars unlawfully charged to PSPs since
7 1997 cannot be said to be doing “equity. This is especially so when the
8 fundamental application of the “new services test” to the RBOCs has been clarified
9 by the FCC twice and remained under judicial review until just recently.
10 Curiously, BellSouth has only now “voluntarily” reduced its Florida tariffed rates
11 by the EUCL charge of \$7.13 per month. Notwithstanding, BellSouth’s rates as
12 approved in the *PAA Order* did not “factor out” the EUCL and BellSouth
13 continued to charge the EUCL until October 27, 2003 - more than three and one-
14 half years after the FCC Common Carrier Bureau’s clarification that BellSouth
15 cannot include EUCL costs in deriving PTAS line rates. **Equitable principles**
16 should require at a minimum that all those EUCL amounts unlawfully collected by
17 BellSouth from PSPs be refunded with interest. Otherwise, BellSouth will be
18 unjustly enriched at the expense of the much smaller competitive pay telephone
19 companies throughout the State of Florida. Clearly, this is not the result Congress
20 intended when it adopted Section 276 of the Telecom Act, nor that intended by the
21 FCC in implementing that Section.

22
23 **Q. In her testimony, Ms. Blake takes the position that BellSouth was not required**

1 **to reduce its intrastate payphone line rates by the amount of the EUCL on a**
2 **specified date. Is she correct?**

3 A. No. The FCC's *Second Wisconsin Order* clearly requires that, in order to avoid a
4 double recovery of costs, the RBOC must demonstrate that in setting its payphone
5 rates it has taken into account other sources of revenue (i.e., the EUCL) that are
6 used to recover the costs of the facilities involved. That decision had the stated
7 purpose of "assisting states in applying the new services test to the BOC's
8 intrastate payphone line rates in order to ensure compliance with the Payphone
9 Orders and Congress' directives in Section 276." Further, the *Second Wisconsin*
10 *Order* was not intended to implement a new requirement prospectively. The FCC
11 made it very clear that the *Second Wisconsin Order*, which essentially affirmed all
12 aspects of the *First Wisconsin Order*, only clarified existing law and the
13 requirements of Section 276 of the Telecom Act as originally intended for
14 application by Congress and the FCC. Accordingly, charging and collecting the
15 EUCL, on top of an intrastate payphone line charge that had not "backed out" the
16 EUCL costs, anytime after April 15, 1997 is a per se violation of applicable federal
17 law. This double charging and the associated unjust enrichment of BellSouth, is
18 properly remedied through a refund to the customers, plain and simple.

19
20 **Q. In her testimony, Ms. Blake takes the position that BellSouth has no**
21 **responsibility to voluntarily reduce its PTAS rate pursuant to the Second**
22 **Wisconsin Order. Is she correct?**

23 A. No. Ms. Blake's position would stand Section 276's twin stated goals - the

1 widespread deployment of payphones and promotion of competition in payphone
2 services - completely on their heads. To take Ms. Blake's position to its logical
3 extreme, BellSouth would never be required to comply with Section 276's "new
4 services test" requirements, as clarified by the FCC and upheld by the federal
5 courts, unless and until challenged by a third party - and then compliance would
6 only have to be prospective. Obviously, even BellSouth does not believe its tariffs
7 in place prior to October 26, 2003 were compliant with "new services test"
8 requirements since BellSouth has now "voluntarily" reduced its PTAS rates by the
9 amount of the EUCL. The double charging of the EUCL has been occurring since
10 April 15, 1997. Fixing this problem prospectively should not relieve BellSouth of
11 the obligation to refund the earlier overcharges with interest for the full period of
12 applicability. This is especially true in light of BellSouth's commitment to deliver
13 refunds as contained in the letter from Michael K. Kellogg to Mary Beth Richards
14 dated April 10, 1997, previously filed with the Commission in this docket.

1 **Q. If this Commission were to adopt Ms. Blake's position with respect to**
2 **BellSouth's denial of a refund and accept its recently filed new PTAS rate,**
3 **would this have any effect on the widespread deployment of payphones and/or**
4 **competition in the State of Florida?**

5 **A. Yes. I believe it will have a severe negative impact on the widespread**
6 **deployment of payphones and payphone competition in the State of Florida. As**
7 **set forth in my previous testimony in this docket, the largest single monthly**
8 **"fixed" cost typically incurred to provide payphone service is the monthly bill that**
9 **a PSP must pay to the local exchange company for local access. There is no doubt**
10 **that a significant rate reduction will have a direct effect on the number of installed**
11 **payphones in Florida. Simply put, establishing a true cost-based payphone line**
12 **rate in compliance with the new services test, as set forth in Mr. Wood's**
13 **testimony, will lower the revenue threshold for establishing a new payphone**
14 **location, which will, in turn, enable more payphones to be deployed. Additionally,**
15 **requiring BellSouth to refund the excessive profits it has collected from PSPs since**
16 **1997 will provide the payphone industry with a much-needed economic stimulus**
17 **that will help ensure some reasonable semblance of prospective widespread**
18 **deployment of pay telephones for the benefit of the general public in Florida. In**
19 **this regard, it must be noted that, as BellSouth exits the payphone business per its**
20 **previous announcements independent payphone providers such as the FPTA's**
21 **members will be left to provide public payphone service to Florida's citizens and**
22 **tourists throughout the BellSouth territory. FPTA views this as a significant**
23 **ongoing service need with serious public interest implication. Payphones play a**

1 vital role in our nation's communications infrastructure, particularly for many
2 poor, rural and minority citizens. There remain significant segments of the
3 population that do not have easy access to basic telephone service. Those Florida
4 citizens and visitors rely on payphones as their primary access to our nation's
5 communications networks. BellSouth's exit from the payphone business will only
6 speed the loss of payphone availability to the general public in Florida. Based
7 upon a report filed with this Commission in connection with BellSouth's exit from
8 the payphone business, BellSouth had approximately 35,000 payphones installed in
9 the State of Florida as of March 2001 and 13,000 payphones installed as of
10 September 2003. BellSouth has begun its mass removal of all payphones located in
11 the State of Florida, which mass removal should be completed sometime during the
12 first or second quarter of the coming year. This particular juncture is, thus, an
13 extraordinarily important time for the Commission to consider this issue and act in
14 support of maintaining widespread public payphone availability in Florida.
15 Adoption of Ms. Blake's position would also be fundamentally adverse to
16 competition. Establishing a true cost-based payphone line rate in compliance with
17 the new services test will create an environment where payphone services can be
18 provided to consumers at lower cost. A lower rate for calls from payphones will in
19 turn make payphone calling more competitive with its current real-world
20 competitor - wireless calling. While BellSouth will no longer be providing
21 payphone services to consumers, it will remain a significant player in the cellular
22 world through its large interest in Cingular Wireless. Fewer payphones available
23 to the general public, is a good thing from a wireless viewpoint. It is, however,

1 clearly not a good thing from a public interest standpoint, especially in view of the
2 unique and compelling circumstances presented here and now.

3
4 **Q. In her testimony, Ms. Blake indicates that BellSouth should not have reduced**
5 **its rates to comply with the new services test because PTAS rates in Florida are**
6 **directly tied to basic business rates (1FB), which have increased over time. Is**
7 **her testimony correct?**

8 A. Ms. Blake is correct that Section 364.3375(2)(e) provides each pay telephone
9 station shall be “eligible to subscribe to flat-rate, single line business local
10 exchange services.” To the extent, however, 1FB basic business line rates are not
11 cost-based and, therefore, not compliant with Section 276 of the Telecom Act,
12 Section 364.3375(2) (e) must be viewed as “preempted” or read to be “non-
13 exclusive” and therefore permissive of BellSouth’s filing a lawful and compliant
14 payphone line rate in lieu of the 1FB business line rate for payphone lines. It
15 must be remembered, as well, that this section of Florida law was adopted at a time
16 when BellSouth had been imposing mandatory measured service on all lines
17 provided to its payphone competitors. The referenced section of Florida law was
18 passed to remove this restriction and provide a lower line charge. The cited
19 Florida law, although adopted well before the “new services test,” thus shares a
20 dual common intent with the later federal requirement - that of lowering a key
21 economic hurdle to payphone deployment and improved payphone competition.
22 Applying this common intent here results in a consistent outcome – not a conflict as
23 BellSouth would have this Commission believe.

1
2 **Q. In her testimony, Ms. Blake states that BellSouth's rates "have been, and are**
3 **currently in compliance with the FCC's new services test" but further indicates**
4 **that BellSouth has "taken certain steps in light of the additional guidance by**
5 **the FCC in the [Second] Wisconsin Order and the fact that the parties were**
6 **unable to reach a mutually acceptable resolution of this matter." Can you**
7 **describe the "steps" taken by BellSouth and provide us with some insight as to**
8 **why you believe BellSouth took those steps?**

9 **A. BellSouth revised its PTAS tariff to reduce its rates by the amount of the EUCL**
10 **Charge, effective October 27, 2003, only after the FPTA filed its petition in this**
11 **docket and the filing of testimony became imminent. Notwithstanding BellSouth's**
12 **continuing claim that it had no obligation to do so, I believe that BellSouth did**
13 **have an affirmative obligation to take at least this step from the "get go" - April**
14 **15, 1997 - or to now make refunds that will implement this same result. Once the**
15 **later FCC clarifications were handed down and affirmed by the federal appellate**
16 **courts, their obligation became absolute. A tariff filing to remove EUCL now**
17 **does not somehow "cleanse" the past double charging of EUCL prohibited by the**
18 **"new services test" throughout. Only a full refund, with interest, will accomplish**
19 **that result and provide an outcome that will serve both the both the public interest**
20 **and the equities of this case.**

21
22 **Q. Having reviewed all the testimony filed in this case, what is your bottom-line**
23 **recommendation to this Commission?**

1 A. I recommend that this Commission, consistent with applicable federal law and in
2 furtherance of the public interest, (i) adopt a prospective PTAS rate of ~~\$17.65~~ ^{~~\$18.04~~} in
3 accordance with the testimony of Don J. Wood in this docket, (ii) direct BellSouth to
4 refund all amounts paid for EUCL/SLC since April 15, 1997 and (iii) direct
5 BellSouth to refund to PSPs the difference between (a) the PTAS rates, including
6 rates for access lines, features, and usage paid by PSPs to BellSouth since January
7 20, 1999, and ~~\$17.65~~ ^{~~\$18.04~~}.

8 **Q. Does this conclude your testimony?**

9 A. Yes it does.

1 COMMISSIONER DEASON: Okay. And the witness is
2 tendered for cross?

3 MR. TOBIN: Yes, sir.

4 COMMISSIONER DEASON: Very well. Ms. Mays.

5 MS. MAYS: Yes. Thank you, Commissioner.

6 CROSS EXAMINATION

7 BY MS. MAYS:

8 Q Mr. Renard, I'd like to go over with you, first of
9 all, just the change you made so I can understand what the
10 FPTA's recommendation is.

11 Can you tell me again, what is the rate you are
12 recommending this Commission adopt?

13 A It's \$18.04.

14 Q \$18 and how many cents?

15 A Four.

16 Q Four, 18.04. Okay. Can you tell me, Mr. Renard,
17 what the basis of the change from the 17.65 to the 18.04 is?

18 A The rate was developed by our cost expert, Mr. Wood,
19 who can testify to that. He's responsible and engaged in that
20 change. I'm just reflecting it in my testimony to conform to
21 his.

22 Q So you do not know -- I apologize.

23 A I believe it was just a computational error or
24 typographical error of that nature, administerial in nature
25 only.

1 Q And just so we're clear, Mr. Renard, when you say
2 that the rate you are suggesting is 18.04, that is a rate that
3 is inclusive of the FCC's -- the EUCL charge we have tariffed
4 at the FCC level; is that correct?

5 A Yes. That rate includes -- it represents the full
6 amount of the monthly payment that will be made by a payphone
7 service provider to obtain local phone service from BellSouth.

8 Q And you understand, Mr. Renard, that the manner in
9 which BellSouth's tariffs operate is that we would have a state
10 tariff with a rate and we also have our FCC tariff; isn't that
11 right?

12 A I'm aware that you do have different state and
13 federal tariffs, Ms. Mays. I'm not certain as to whether the
14 EUCL or SLC charge appears as well in the intrastate tariff. I
15 do know that it comes on one bill to the end user.

16 Q Right. So the end-user would get a telephone bill.
17 And if we were to look at the rate you've adopted, we would
18 have a state tariff rate in the neighborhood of 11 -- whatever
19 18.04 minus 7.13 is -- and then there would be an FCC tariff of
20 the 7.13; is that right?

21 A Yes, that is. I believe in our testimony we noted it
22 was, I believe, a 10.91 rate or -- as you said, whatever the
23 difference between the total rate and the EUCL would be would
24 be the designated intrastate portion.

25 Q And just so I'm clear, you're not suggesting that

1 this Commission would modify or do anything to our FCC tariff,
2 are you?

3 A No. I'm simply suggesting the Commission understand
4 that we're talking about one unified line here, one piece of
5 access, if you will, used for both inter and intrastate and one
6 total bill for that service that includes, as you note, an
7 inter and an intrastate piece.

8 Q And just one last clarification on this because I
9 just want to make sure we're clear, is on -- if you have the
10 prehearing order -- do you have that, Mr. Renard?

11 A Yes, I do.

12 Q Okay. If you could go over to Page Number 8 of that
13 under Issue 1A, and I'm looking at the FPTA's position.

14 A Yes.

15 Q At the end of the position there's a sentence about
16 BellSouth continuing to include EUCL on its invoices. And just
17 so we're clear, you're not contesting that after this
18 Commission acts, that we can't invoice an item in our FCC
19 tariff, are you?

20 A Not at all. In fact, sending one bill obviously
21 makes more sense in terms of efficiency and cost-effectiveness
22 for the company.

23 Q Okay. I'd like to talk to you a little bit about the
24 Wisconsin order, Mr. Renard.

25 Mr. Tobin in his opening talked about the payphone

1 orders in the '96 Act forming the basis of -- basis for your
2 case. Isn't it fair that the Wisconsin order, and I'm
3 referring to the 2002 order, is really at the heart of your
4 case?

5 A I believe it is one of the pieces that's at the heart
6 of the case. I don't believe though it's the, it's the
7 wellspring, if you will, for the case. The wellspring is
8 Section 276 of the '96 Act in my opinion, and all of the orders
9 that came after -- out of the FCC were simply intended to
10 implement this provision. So to me that's, that's kind of the
11 start of it all. It is unfortunate that it took many years to
12 get the clarifications necessary to understand what the
13 original intent and purpose in our opinion was to, to that
14 provision, but certainly the 2002 order provided clarification
15 as to what had gone before.

16 Q Do you expect that the FPTA would have been here
17 today had the 2002 order not been issued?

18 A No, I don't think we would. And let me just say in
19 that regard that the Florida association and the entire
20 payphone industry, all the state associations looked at that
21 Wisconsin proceeding as a way to get much needed clarification
22 for states all over the country. There were proceedings going
23 on here and in many other states, there were many contested
24 issues, and the industry was simply not able to, you know, fund
25 those fights effectively all over the country, nor did we think

1 it was the most intelligent way to get the issues resolved.
2 Because this was federal law with delegated authority to this
3 Commission, rather than expend Commission resources here and in
4 other states, the FPTA as a state partner of the APCC, the
5 American Public Communications Council, which is our national
6 trade association, felt it imperative to get clarification at
7 the federal level that would then be applicable throughout the
8 country.

9 Wisconsin presented a unique circumstance because
10 Wisconsin said it did not have the jurisdiction and, therefore,
11 the FCC would have to implement, if you will, the cost-based
12 rate provisions at issue here. And we view that proceeding as
13 a forum to, to have clarification as to the proper
14 implementation of the test that would then be usable all over
15 the country. And, in fact, that's how it turned out.

16 It is unfortunate that it took the time it took to
17 get there, but we did ultimately get there, as you mentioned
18 earlier in your statement, with the final U.S. Supreme Court
19 denial of certiorari on this matter.

20 Q And in looking at that history, Mr. Renard, the
21 reason we got to the 2002 decision was due to the inaction of a
22 state commission; isn't that right?

23 A It wasn't inaction. They actually wrote -- no,
24 excuse me, I don't believe so. I don't believe it was inaction
25 because the Wisconsin commission actually communicated with the

1 FCC to tell them that they didn't have the jurisdiction to do
2 what the FCC wanted them to originally.

3 Q I'm sorry. Were you finished, Mr. Renard?

4 A The Wisconsin commission didn't have the jurisdiction
5 to do what, what needed to be done to implement the new
6 services test and, therefore, it would be incumbent on the FCC
7 to do so.

8 Q But I guess the point I'm trying to get across, or
9 maybe I'm not being clear about it, is that the Wisconsin
10 decision and the Wisconsin order, it wasn't a notice of
11 proposed rulemaking or a generic proceeding. It was ultimately
12 an appeal of a bureau order that resulted because a state
13 commission did not implement the new services test in that
14 state; isn't that right?

15 A I really am not comfortable with that
16 characterization, Ms. Mays. Instead, I would, I would try to
17 put it this way to the Commission.

18 First of all, the fact that you mentioned it's a
19 bureau order, it was an FCC order. And, in fact, when you read
20 the order, it says by the FCC. The FCC can act through its
21 bureau or as the full commission. And the first time it acted,
22 it did it through the bureau, through the then Common Carrier,
23 now Wireline Bureau. But the order is an FCC order.

24 The RBOCs appealed that order, they didn't like the
25 result and appealed it to the full commission. The FCC upheld

1 the Common Carrier Bureau order, and the RBOCs then appealed
2 that to the DC Circuit Court of Appeals. And I believe if you
3 look in the DC Circuit opinion which came out in '03, there's
4 language in there that is very clear. And I don't want to take
5 the time of the Commission, but we can certainly point it out,
6 that says to me very clearly that the rules established in the
7 Wisconsin proceedings in both of those orders were going to
8 apply to payphone lines all over the country. And that's
9 almost a verbatim quote.

10 So I think everyone involved with that proceeding,
11 and I was involved in that, you know, I was employed at the
12 time by the largest independent payphone provider in the
13 country, so we were very, very interested in the proceeding
14 obviously. And everyone felt that that was the proceeding that
15 was going to provide the necessary clarification to properly
16 implement the new services test and the cost-based rate
17 requirements. And we viewed it in the nature of a declaratory
18 ruling, and I think the DC Circuit's opinion confirms that that
19 was the proper way to view it.

20 Q My question, Mr. Renard, was whether the Wisconsin
21 order resulted from a notice of proposed rulemaking? Was the
22 Wisconsin order in 2002 a result of a notice of proposed
23 rulemaking? If you could answer yes or no and then explain.

24 A I'm not certain. I don't believe there was a notice
25 of proposed rulemaking, but I'm just not certain of that.

1 Q You said you were involved in those proceedings,
2 Mr. Renard?

3 A I was, as I said, I was the, I was the senior
4 executive with the largest independent provider in the country
5 for most of that time.

6 Q Are you aware, Mr. Renard, that in its appellate
7 papers the FCC said to the DC Circuit that the 2002 order
8 applied to Wisconsin? Were you aware of that?

9 A If you can point me to some language, I'd be happy to
10 look at it. Again, there may have been -- and clearly what was
11 being dealt with was the handling and implementation of the
12 cost-based rate requirements in Wisconsin. However, the
13 generic nature of those and the fact that all the parties and
14 the FCC knew that these issues were in play and needed
15 clarification around the country certainly gave that proceeding
16 and the result of it a, a much larger flavor and application
17 than just Wisconsin.

18 Q Can you point me to any language in the Wisconsin
19 order, Mr. Renard, that requires this Commission to order a
20 refund?

21 A Not without researching it or studying it. I'd like
22 the opportunity to look at the, at the opinion again to see if
23 there is language like that. I just -- it would take a fair
24 amount of time right now, which I would rather avoid, if we
25 can, with --

1 Q Well, if you're not aware of it sitting there, I
2 don't think we need to take the Commission's time. They can
3 certainly read it themselves.

4 You talked a little bit -- I guess all of the rate
5 questions we should direct to Mr. Wood; is that right?

6 A That's certainly your prerogative. I wouldn't tell
7 you how to present your case. But certainly on any detailed
8 cost information, Mr. Wood is the expert in that area.

9 Q Well, let me make sure I understand.

10 Do you -- other than Mr. Wood's testimony about what
11 the rate should be, do you have any personal knowledge about
12 the rate recommendation you have put forth to this Commission?

13 A I have personal knowledge that it is the rate that
14 I'm sitting here recommending to the Commission based on my
15 expert's opinion, who's, you know, been involved in a dozen or
16 more of these proceedings around the country.

17 Q Do you happen to know, Mr. Renard, the difference
18 between the direct cost and the overhead percentage in the rate
19 you are recommending? Do you have any knowledge about that?

20 A When you say direct cost, can you be more specific?
21 What direct costs are you speaking of?

22 Q What I'm talking, what I'm talking about is that --
23 do you understand, Mr. Renard, in developing the rate under the
24 new services test that you look at direct cost to provide a
25 service plus overhead? Do you understand that?

1 A I understand the basic application of the new
2 services test, but in any detail I would defer those questions
3 to Mr. Wood.

4 Q Now your organization, the FPTA, it is a certified
5 CLEC here in Florida, is it not?

6 A I believe it is.

7 Q And it's been --

8 A Although we've never provided service or activated
9 it.

10 Q You've been a CLEC since 1996, haven't you?

11 A I believe the certificate has been around for a long
12 time. I've only been in this position recently, so I can't
13 give you an exact timeframe. But as I said, it's never been
14 activated, and I'm not really certain that the association is
15 the holder of the certificate. I would suspect, and I haven't
16 looked back at this, but I would suspect that it is. It may be
17 an affiliate of the association. I'm just not certain.

18 MS. MAYS: May I approach, Commissioner?

19 COMMISSIONER DEASON: Yes.

20 MS. MAYS: If we could just have identified with the
21 next number the handout I've passed out. It's a printout from
22 this Commission's Web site.

23 COMMISSIONER DEASON: Exhibit 7.

24 (Exhibit 7 marked for identification.)

25 BY MS. MAYS:

1 Q Mr. Renard, in looking at what has been identified as
2 Exhibit 7, this is a, this is a printout from this Commission's
3 Web site, and it shows Florida Public Telecommunications
4 Association, Inc., as a CLEC certified in Florida. Do you see
5 that?

6 A I see your reference to that, yes.

7 Q So does that help you in terms of the last question I
8 asked you about whether the association is a CLEC in Florida?

9 A Assuming arguendo this is accurate, then that would
10 answer the question and indicate that, that the association is
11 the holder of a certificate.

12 Q Thank you. Now if the association chose to be an
13 active CLEC, it could obtain services, unbundled elements,
14 could it not?

15 A There are many steps involved in, in obtaining that,
16 I believe. But assuming all the steps and conditions were
17 achieved to get to that point, yes, I would imagine so.

18 Q And if the association chose to be an active CLEC,
19 could it not act and provide service to its members using the
20 unbundled network elements?

21 A That's conceivable. Obviously it's not something
22 that's ever made sense or we would have activated this
23 authority long ago, and it's never been activated.

24 Q And isn't it also true, Mr. Renard, that a payphone
25 service provider, one of your members, could also become a

1 CLEC?

2 A As far as I know, anyone who meets the requirements
3 established by the Commission to be a CLEC in Florida can
4 certainly become a CLEC.

5 Q Are you aware, Mr. Renard, if whether a FPTA member
6 payphone provider who gets services, PTAS services from a CLEC,
7 whether they are charged the EUCL charge by the CLEC?

8 A My experience is in some cases they are and in some
9 they're not.

10 Q Okay. I want to go through a hypothetical, if I
11 could, with you, Mr. Renard. And I want to take the \$18,
12 18.04 rate that you have put forth in your testimony.

13 If you, if you back out the EUCL from that rate, let
14 me make sure my, my math is right here, we get to
15 a \$10.91 tariffed rate. Does that sound right to you?

16 A Yes, it does.

17 Q And are you familiar with Ms. Blake's testimony,
18 Mr. Renard?

19 A I've read it, yes.

20 Q Okay. In Ms. Blake's testimony she has a rate for
21 the UNE-P, the loop, the port, and if you use the usage as
22 Mr. Wood calculated it in the UNE Zone 1 of 12.87. Does that
23 sound like what you read?

24 A I seem to remember more of a \$15.35 number, but maybe
25 I'm thinking of a different part of her testimony.

1 Q Okay. Well, will you accept, subject to check, that
2 if we're looking just in rate group one, that the rate there
3 for the loop, the port and Mr. Wood's usage will be 12.87; can
4 you accept that for me, subject to check?

5 A Subject to check, I will be happy to accept that.

6 Q Okay. And in terms of -- let's assume for the sake
7 of argument that the Commission adopted your rate. What you
8 would be presented with is a \$10.91 state tariffed rate and
9 a \$12.97 UNE-P rate; is that correct?

10 A I think that's -- I don't believe that's correct, and
11 I think it's really kind of confusing and misleading to the
12 Commission to put it that way because the apples to apples
13 comparison here is what the total payment is. And as I
14 understand it, a CLEC does not have to pay a EUCL. And the
15 CLEC's rate that you've put forth is the total that they're
16 going to pay to BellSouth; whereas, the payphone provider has
17 to pay the intrastate and the EUCL, and you have to look at the
18 total payment for the total cost of the line to compare apples
19 to apples in my opinion.

20 Q Well, let me just ask you as a businessman,
21 Mr. Renard, if you were competing with BellSouth for customers,
22 do you think you would be more or less likely as a
23 businessperson to compete for payphone service providers if the
24 tariffed rate was lower than the UNE-P rate?

25 A I believe there is still going to be an opportunity

1 for competition to compete for payphone service lines at the
2 rate that we're proposing in this case. Not -- there's still a
3 differential, enough of a differential, I believe, between the
4 UNE-P rate and the retail rate we're allowing you to charge us
5 if the Commission adopts the recommendation to still provide
6 for a competitive response in there.

7 It may or may not be a UNE-P methodology they use.
8 They may go to straight resale or other -- or their own
9 facilities in that case to compete. So, yeah, I think lowering
10 the rate, you know, that we've suggested here still provides
11 for competition.

12 Q Your membership, your PSAPs, or PSPs, excuse me, they
13 receive monthly bills from BellSouth. We've talked about that
14 earlier. So they have known, have they not, that they're
15 getting the state tariffed rate and the FCC charges? They get
16 those bills every month; is that right?

17 A For those that have stayed on BellSouth's service,
18 that would be correct.

19 Q And for those that have stayed on BellSouth's service
20 since 1997, they've been getting monthly bills since that time
21 that contain those rates; is that correct?

22 A That is correct. But I have to tell you I don't
23 think many of them have stayed on BellSouth based on the level
24 of the rate over this period of time. And there has been a lot
25 of migration to CLECs for these services because the rate has

1 been inflated.

2 Q And, Mr. Renard, in polling your membership or in
3 talking to them, you're not aware, are you, of any of your
4 members presenting any sort of written claim or objection to
5 BellSouth or to this Commission about those tariffed rates, are
6 you?

7 A I believe all of our members have been relying on the
8 association as a partner of the APCC to prosecute the
9 clarification of these issues as has been done over this
10 extended period of time. And they have looked to us to get
11 that clarification, even though it's taken a tremendous amount
12 of effort and time through the FCC and the bureau and the
13 courts and this Commission and all the other places we've been
14 to try to get the clarification to where that's -- that's where
15 they thought their protest was taking place in that context.

16 Q So is your answer, no, you're not aware of a written
17 protest by the members to BellSouth?

18 A I have no awareness whether they did or did not
19 provide you any written notice.

20 Q In getting prepared for this case, did you ask any of
21 them?

22 A No. I was preparing in many other respects for this
23 case without -- no one suggested to me that I should ask them.
24 I believe in some of our responses we did offer to poll the
25 members for certain things, and BellSouth had never, to my

1 knowledge, followed up and asked us to do that.

2 Q So other than your written discovery answer that is
3 in the materials we handed out where you -- the association
4 hasn't come forward for seven years, you don't have any other
5 knowledge about protests or claims or any of that sort of
6 thing?

7 A Well, first -- no, I don't agree with that. First of
8 all, I think the seven years is misleading. I'm not sure where
9 you're getting that from because this Commission's final order,
10 as I understand it, was in 1999. Well, it's only 2004 now.
11 That's only five years. So --

12 Q Well, I'm getting it from what's at Tab 7, and it's
13 your discovery response. So if you have the notebook or your
14 counsel can give it to you, that's where, that's where the
15 information is.

16 A What is the discovery response?

17 Q It's under Tab 7.

18 And just so we're clear, Mr. Renard, the question was
19 simply, other than -- I'm sorry. Let me rephrase.

20 The question was whether you are aware of any of your
21 members presenting any sort of claim or objection to BellSouth?

22 A Well, BellSouth has been a party -- first, if I can
23 respond to the first question first and --

24 Q If you could answer the question yes or no and then
25 explain, I would appreciate it.

1 A I'd be happy to. Can you state the question one more
2 time for me?

3 Q The question is are you aware of any of your members
4 presenting any sort of written claim or objection to BellSouth?

5 A As I -- I believe I've answered that question
6 already, and the written objections have been made in the form
7 of all the challenges that have taken place to the basic
8 implementations of the new service test orders, both here in
9 Florida and nationwide.

10 Q And what are the -- I'm sorry, Mr. Renard. Were you
11 finished?

12 A And, and BellSouth has at all times been a party to
13 the RBOC Coalition who's been on the other side of all those
14 matters. So to suggest that these issues have not been fought
15 over the last, over this period of time, I believe, is
16 misleading.

17 I also believe it's misleading to suggest that we're
18 coming back after seven years. This seven years is in response
19 to a question involving the implementation of the 1996 Act.
20 And as I said earlier, that is the starting point here is the
21 '96 Act. And that does bring you to seven years when this was
22 done in '03.

23 So while there's been seven years or now eight years
24 really since the passage of the Act, this Commission didn't
25 issue its order that you're seeking to rely on until 1999.

1 And, frankly, in my opinion the passage of time here doesn't
2 alter the basic fact as to whether the order was lawful and
3 valid when it was issued or not.

4 And if the Commission finds out later that it was
5 unlawful, it's obligated to go back, in our opinion, and
6 correct it. And to correct the order in this case would give
7 it its effect back to April 15th of 1997.

8 Q And when you say challenges in Florida and elsewhere,
9 the only challenge in Florida was a protest that was withdrawn;
10 is that right?

11 A Again, I don't believe that's, that's an accurate
12 portrayal because Florida, as I mentioned several times
13 already, has been a participant at the national level in
14 getting these issues clarified. There are numerous filings
15 made to do that. That's where this has been hashed out.

16 Q Are you saying that this Florida Commission or the
17 Florida Commission staff has filed something at the FCC asking
18 for clarification?

19 A No. I'm saying the Florida Public Telecommunications
20 Association as a state partner of the APCC has been pursuing
21 those proceedings and been the party in those proceedings and
22 involved with them during this entire period.

23 Q So you're really talking about what the APCC has
24 filed; correct?

25 A I'm really talking about what the payphone industry

has had to do to get this clarified.

2 Q In terms of the parties to this case, which are the
3 FPTA and BellSouth, and, of course, we're in front of the
4 Commission, has the FPTA filed any challenge other than the
5 protest it withdrew to the rates here in Florida?

6 A Again, for the -- I believe I've asked and answered
7 that several times, and the answer is through our participation
8 in the national association we have.

9 And not to belabor the issue, this is federal law
10 being delegated to this Commission to implement. We didn't
11 think it made sense to take this Commission's time and
12 resources up with those issues until the clarification was
13 fairly certain. And unfortunately it's been an uphill fight to
14 get that clarification and it's taken time. It's not our
15 fault. We would have loved for this to have been implemented
16 properly initially.

17 And let me add that we don't think the Commission
18 made, you know, made a mistake that was of its own doing. We
19 think the Commission did the best it could at the time, but
20 that the clarification that's been produced subsequent to that
21 time shows that there was an inadvertent but significant and
22 material error in the original order.

23 We've been paying as a practical matter closer to \$36
24 per phone per month under the BellSouth tariffs that have been
25 in effect for most of this time. That's twice what the rate

1 should be in our opinion. And that's material and that's an
2 error that should be corrected whenever the error is found.

3 Q Mr. Renard, in your testimony one of the reasons that
4 you are asking for the relief you're seeking here today is
5 because you believe that the rates we've charged have reduced
6 the availability of payphone service; is that right?

7 A I believe they've been a factor, certainly, in
8 reducing -- yes, I believe they've been a factor in reducing
9 the payphone availability. Certainly not the only factor.
10 Wireless communications has been a tremendous factor pressing
11 the payphone industry.

12 The difficulty I have is I believe there's been a
13 regulatory skewing that is involved in that. And I believe if
14 the rates were right, the reduction of phones would not be as
15 much. And I believe if the rates were comparable for cellular
16 in a connection to what the payphone providers have been
17 required to pay, there could at least be enough of a level
18 playing field there for the two to compete fairly without a
19 regulatory skewing that has taken place.

20 Q And you also believe that if the Commission grants
21 you the relief you've asked for, that there will be more
22 widespread availability of payphone service; is that right?

23 A I believe the relief requested here will promote the
24 widespread availability of payphones in Florida. We're not
25 suggesting that the relief is going to cause payphone numbers

1 to grow, but we are suggesting that they can dramatically
2 impact the numbers that they drop. And with BellSouth pulling
3 their phones out, the numerous providers that have gone out of
4 business -- you know, you cited 400 payphone certificates.
5 There were over 1,000 not long ago. And many of those 400 are
6 gas stations with one phone; they're not payphone companies.
7 We have, you know, 60 members or something, and that's -- and
8 not all of those are payphone companies. There are not that
9 many payphone companies left and --

10 Q So --

11 A If I can just finish. The relief here, we believe,
12 will enable payphones to remain available to the public, more
13 so than at the rates that BellSouth is suggesting. We believe
14 the refund here will help restore some economic viability to
15 the companies that have been so pressed given the, the
16 operating environment. And we believe the, the, the relief is
17 ripe because BellSouth promised, in our opinion, to have
18 correct rates in place on April 15th of '97, and that promise
19 enabled BellSouth to collect a lot of money in dial-around
20 compensation. BellSouth has gotten that money, keeps that
21 money. We're not asking you to disgorge that money.

22 MS. MAYS: With respect, Commissioner, I believe the
23 witness is going farther than answering or explaining the
24 question I originally asked him, so I would object and ask that
25 he complete the answer.

1 THE WITNESS: I'll just conclude there.

2 MS. MAYS: Thank you.

3 THE WITNESS: Sorry. I didn't mean to go on.

4 BY MS. MAYS:

5 Q So when you said widespread availability of
6 payphones, just so I am clear, what you are talking about is
7 payphones remaining in service; you're not talking about more
8 payphones going into service.

9 A No. The pay -- Florida has constant new
10 construction. When they build a new mall, there's a decision,
11 are we going to put payphones there or not? And the cost that,
12 that the payphone provider has to pay for a line is its largest
13 operating cost to put that phone there or not. And we think
14 with a proper line rate there will be more phones. Some will
15 be new, some will still come out; there's a constant, you know,
16 flux. But when all is said and done, if the rate is set right
17 here, and by right we mean as low as reasonably possible with
18 some reasonable overhead, we believe that will create an
19 environment to enable payphones to remain out there, more of
20 them for more people for a longer period of time. We really do
21 believe that.

22 Q If I could get you to look at your rebuttal
23 testimony, Mr. Renard, at Page 10 at Line 16, please.

24 A Sure. I'm sorry. What page?

25 Q Page 10 of your rebuttal at Line 16.

1 A Line 16. Yes. I'm there.

2 Q Okay. The sentence I'm looking at says as follows:

3 "Establishing a true cost-based payphone line rate in
4 compliance with the new services test will create an
5 environment where payphone services can be provided to
6 consumers at lower cost." Do you see that?

7 A Yes, I do.

8 Q Now this Commission has no authority over the coin
9 rate or the rate the payphone service providers provide their
10 service to the public, does it?

11 A No, that's only partially correct. The local coin
12 rate was deregulated by the U.S. Supreme Court upholding an
13 FCC, part of the FCC's implementation of the payphone orders.
14 But this Commission still regulates the operator service rates
15 we charge, and there may be other rates I'm not thinking about.
16 So we're still partially rate regulated.

17 Q Well, this Commission has no authority if there's a
18 rate reduction to make Joe Blow Payphone charge 25 cents to
19 make a call versus \$1 to make a call, does it?

20 A I would not presume to tell the Commission what
21 authority it might have in that circumstance. What I would say
22 is that by reducing this key operating cost for the payphone
23 provider, the Commission will help to ensure that the rates
24 remain as low as reasonably possible. So they're now at 50
25 cents on average for a local call. This will help them from

1 having to go to 75 or \$1.

2 MS. MAYS: Thank you, Mr. Renard. I don't have any
3 other questions.

4 COMMISSIONER DEASON: Staff?

5 MR. FORDHAM: Staff has no questions, Commissioner.

6 COMMISSIONER DEASON: Commissioners? Redirect.

7 MR. TOBIN: No, Commissioner.

8 COMMISSIONER DEASON: Very well. Exhibits -- I have
9 a question. I identified Exhibit 4 as -- I'm sorry, Exhibit
10 5 as the exhibits accompanying the prefiled direct. I'm not
11 sure there were any exhibits accompanying the prefiled direct.
12 Do you know if that is the case or not?

13 Staff, were there any exhibits attached to the
14 prefiled direct?

15 MR. FORDHAM: Commissioner, I don't think there were.

16 COMMISSIONER DEASON: I'm not showing any.

17 MR. TOBIN: I don't think so either, Commissioner.

18 COMMISSIONER DEASON: Okay. So that is identified as
19 Exhibit 5. We won't try to take that exhibit number away. We
20 just won't enter Exhibit 5 into the record because apparently
21 it's nonexistent anyway.

22 So that leaves us with Exhibit 6, which is the
23 prefiled exhibits accompanying the rebuttal testimony.

24 Mr. Tobin, you had requested that exhibit be
25 admitted?

1 MR. TOBIN: Yeah. I don't think that's necessary at
2 this time.

3 COMMISSIONER DEASON: Okay. You're not going to
4 admit Exhibit 6 -- this is the exhibit accompanying the
5 rebuttal testimony.

6 MR. TOBIN: I'm sorry. Yes. Please admit those.

7 COMMISSIONER DEASON: Any objection?

8 MS. WHITE: No objection.

9 COMMISSIONER DEASON: Hearing no objection, show then
10 that Exhibit 6 is admitted.

11 (Exhibit 6 admitted into the record.)

12 MS. MAYS: Commissioner Deason, if we could please,
13 we would like to have our opening presentation admitted, which
14 is Exhibit 4. We would also like Exhibit 7 to be admitted,
15 which is the printout from the Commission's Web site.

16 COMMISSIONER DEASON: Okay. We'll address Exhibit
17 7 at this point. This is the printout from the PSC Web site.
18 Mr. Tobin, do you have any objection to Exhibit 7?

19 MR. TOBIN: No objection.

20 COMMISSIONER DEASON: Okay. Show then that Exhibit
21 7 is admitted.

22 (Exhibit 7 admitted into the record.)

23 COMMISSIONER DEASON: Exhibit 4 is the opening
24 presentation. Is there any objection to the admitting -- to
25 the admittance of Exhibit 4?

1 MR. TOBIN: No objection.

2 COMMISSIONER DEASON: Staff, any objection to Exhibit
3 4? Mr. Fordham?

4 MR. FORDHAM: No, Commissioner.

5 COMMISSIONER DEASON: Okay. Show then that Exhibit
6 4 is admitted.

(Exhibit 4 admitted into the record.)

8 Okay. Thank you, Mr. Renard. You may be excused.

9 THE WITNESS: Thank you, Mr. Chairman, Commissioners.
10 Appreciate the opportunity to be here.

11 COMMISSIONER DEASON: Mr. Tobin, you may call your
12 next witness.

13 MR. TOBIN: The FPTA calls Don Wood.

14 DON J. WOOD

15 was called as a witness on behalf of Florida Public
16 Telecommunications Association, Inc., and, having been duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. TOBIN:

20 Q Mr. Wood, would you please state your name and
21 address for the record.

22 A Yes. My name is Don J. Wood. My business address is
23 30000, that's 30000 Mill Creek Avenue, Suite 395, Alpharetta,
24 A-L-P-H-A-R-E-T-T-A, Georgia.

25 Q By whom are you employed and what is your position?

1 A I'm a principle in the firm of Wood & Wood. We are a
2 financial and economic consulting firm specializing in
3 telecommunications.

4 Q Have you caused direct testimony and rebuttal
5 testimony to be filed in this docket?

6 A Yes, sir, I have.

7 Q Do you have any changes or corrections to that
8 testimony?

9 A I have one correction to the rebuttal testimony, and
10 it appears at Page 27. And I guess I should explain.
11 Here's -- the problem that we have on the rate proposal
12 numbers, BellSouth had originally provided a PTAS cost study to
13 us prior to the proceeding. Then attached to Ms. Caldwell's
14 testimony they also presented the PTAS cost study. They are
15 almost, but not quite, identical. And we have been operating
16 with two versions of the BellSouth cost study internally
17 unknowingly. One version has a slightly higher cost, and it is
18 the one, the earlier version that yields the 18.04. The later
19 version actually yields the slightly lower cost.

20 To make my testimony consistent with the proposal and
21 the prehearing order, we would need to make the following
22 changes. Page 27, Line 9, the value of 16.05 should
23 be \$16.40, 16.40. On Line 11, 17.65 would be 18.04. On Line
24 14 it's the same correction, 17.65 would be 18.04. And then on
25 Line 15, \$10.52, 10.52 would be 10.91. And that would make

1 these numbers consistent with the proposal in the prehearing
2 order and consistent with BellSouth's original cost study.

3 Q If I were to ask you the questions contained in your
4 direct and rebuttal testimony at this time, would your answers
5 be the same, subject to the changes you just provided?

6 A Yes, sir, they would.

7 Q Do you have any exhibits to your direct or rebuttal
8 testimony?

9 A There are two exhibits to my direct testimony, and I
10 do not believe there are any exhibits to my rebuttal.

11 Q Do you have any changes to those exhibits?

12 A No, sir, I do not.

13 MR. TOBIN: I'd ask that the testimony with all
14 exhibits be moved into the record as if read from the stand.

15 COMMISSIONER DEASON: We will insert the prefiled
16 direct and rebuttal testimony with the corrections made into
17 the record without objection. And we will identify the
18 exhibits accompanying the prefiled direct testimony as
19 composite Exhibit 8, and we will wait until the conclusion of
20 cross-examination to move that exhibit.

21 (Exhibit 8 marked for identification.)
22
23
24
25

1 **Qualification and Introduction**
2

3 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

4 A. My name is Don J. Wood. I am a principal in the firm of Wood & Wood, an
5 economic and financial consulting firm. My business address is 4625 Alexander Drive,
6 Suite 125, Alpharetta, Georgia 30022. I provide economic and regulatory analysis of the
7 telecommunications, cable, and related convergence industries, with an emphasis on
8 economic policy, development of competitive markets, and cost-of-service issues.

9

10 Q. PLEASE DESCRIBE YOUR BACKGROUND AND EXPERIENCE.

11 A. I received a BBA in Finance with distinction from Emory University and an MBA
12 with concentrations in Finance and Microeconomics from the College of William
13 and Mary. My telecommunications experience includes employment at both a
14 Regional Bell Operating Company ("RBOC") and an Interexchange Carrier
15 ("IXC").

16 Specifically, I was employed in the local exchange industry by
17 BellSouth Services, Inc. in its Pricing and Economics, Service Cost
18 Division. My responsibilities included performing cost analyses of new
19 and existing services, preparing documentation for filings with state
20 regulatory commissions and the Federal Communications Commission

1 ("FCC"), developing methodology and computer models for use by other
2 analysts, and performing special assembly cost studies.

3 I was employed in the interexchange industry by MCI
4 Telecommunications Corporation, as Manager of Regulatory Analysis for
5 the Southern Division. In this capacity I was responsible for the
6 development and implementation of regulatory policy for operations in the
7 southern U. S. I then served as a Manager in MCI's Economic Analysis
8 and Regulatory Affairs Organization, where I participated in the
9 development of regulatory policy for national issues.

10 •

11 Q. HAVE YOU PREVIOUSLY PRESENTED TESTIMONY BEFORE
12 STATE REGULATORS?

13 A. Yes. I have testified on telecommunications issues before the regulatory commissions
14 of thirty-five states, Puerto Rico, and the District of Columbia. I have also presented
15 testimony regarding telecommunications issues in state, federal, and overseas courts,
16 before alternative dispute resolution tribunals, and at the FCC. A listing of my
17 previous testimony is attached as Exhibit DJW-1.

18

19 Q. PLEASE DESCRIBE YOUR EXPERIENCE REVIEWING COST
20 STUDIES, MODELS, AND METHODOLOGIES.

1 A. While employed in the BellSouth Service Cost Division, I had the
2 opportunity to work with a number of cost models, and to analyze and
3 review the manner in which these models were used in the cost
4 development process. Since that time, I have reviewed cost studies
5 performed by each of the seven (now four) RBOCs, and a number of other
6 incumbent local exchange carriers (“ILECs”), including both Tier 1
7 companies and smaller carriers. In each case, my review of these cost
8 studies has included an extensive evaluation of the methodologies,
9 computer models and spreadsheets, and inputs/assumptions employed by
10 the particular ILEC.

11 I have also been asked by regulators to develop detailed rules for
12 ILECs’ performance of cost studies. My proposed costing rules have been
13 adopted and implemented in both Delaware and Wyoming.

14

15 Q. PLEASE DESCRIBE YOUR EXPERIENCE WITH THE EVALUATION
16 OF PROPOSED RATES FOR PAYPHONE ACCESS LINE SERVICES.

17 A. I have been asked to evaluate the appropriateness of payphone access line
18 (“PAL”) services rates, in light of the FCC rules implementing Section 276
19 of the Telecommunications Act of 1996 (“Act”), in Alabama, Colorado,
20 Connecticut, Indiana, Louisiana, Oregon, Massachusetts, Mississippi,

1 North Carolina, Ohio, Puerto Rico, South Carolina, Tennessee, Vermont
 2 and here in Florida.

3

4 Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

5 A. I have been asked by the Florida Public Telecommunications Association
 6 ("FPTA") to review and evaluate the intrastate rates for the various
 7 payphone access services offered by BellSouth. In doing so, I have
 8 attempted to determine if these rates conform to the requirements of
 9 Section 276 of the Act and the subsequent FCC Orders implementing that
 10 section of the Act.²

² Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 20,541 (1996) ("*Report and Order*"); Order on Reconsideration, 11 FCC Rcd 21,233 (1996) ("*Order on Reconsideration*"); Order, 12 FCC Rcd 20,997 (Comm. Car. Bur. 1997) ("*Bureau Waiver Order*"); Order, 12 FCC Rcd 21,370 (Comm. Car. Bur. 1997) ("*Second Bureau Waiver Order*"), (Collectively, the "*Payphone Orders*"). Subsequently, In the Matter of Wisconsin Public Service Commission: Order Directing Filings, 15 FCC Rcd 9978 (Comm. Car. Bur. 2000) ("*First Wisconsin Order*"), and Memorandum Opinion and Order, 17 FCC 2051 (2002) ("*Second Wisconsin Order*"), (Collectively, the "*Wisconsin Orders*").

1 My testimony is divided into three sections. Section 1 responds, to
2 the extent possible given currently-available information, to the issues set
3 forth in Appendix A to the September 24, 2003 Scheduling Order. Section
4 2 describes the standard to be applied by this Commission when evaluating
5 the appropriateness of BellSouth's existing rates for payphone access
6 services, including the FCC's four part test.³ I also discuss the FCC's
7 clarification of this standard and the manner in which it should be applied.
8 Section 3 describes my analysis of existing rates and the best available cost
9 information. This analysis shows that BellSouth's current rates are well in
10 excess of cost and well in excess of a level that would be compliant with
11 the FCC's requirements.

12

³ In the *Second Wisconsin Order*, the FCC concluded that as a matter of law, its jurisdiction to mandate a specific pricing methodology in this context is limited to BOCs, and does not extend to other ILECs. This ruling was affirmed on appeal and is now final. In this proceeding, the Commission can and should apply the FCC standards to both Verizon and Sprint in for at least two reasons: (1) the FCC's pricing requirements are consistent with (and essential to) the objective of the Act to ensure the widespread deployment of payphones, an objective that is clearly consistent with the public interest, and (2) the FCC encourages the application of its requirements in order to help ensure a consistent national policy: "We...encourage states to apply the new services test to all LECs, thereby extending the pro-competitive regime intended by Congress" (§ 42). Because of the importance of this public interest component, I refer to the FCC rules as a standard that must be applied to all ILECs, either as a matter of law or as a matter of sound public policy.

1 **Section 1: Response to identified issues.**

2
3
4 Q. PLEASE PROVIDE A RESPONSE TO THE LIST OF TENTATIVE ISSUES AS
5 SET FORTH IN THE SEPTEMBER 24, 2003 SCHEDULING ORDER.

6 A. The issues, along with a statement of position, are as follows. For some issues,
7 FPTA does not have a fully developed position at this time because it has not had
8 access to the necessary information. For example, in order to respond to issues 2
9 (b) (regarding compliant rates) and 2 (d) (regarding appropriate level of refunds)
10 FPTA needs access to BellSouth cost information that has not yet been made
11 available in this proceeding. Once this information is available, I will supplement
12 my response.

13 **1. (a) Has BellSouth reduced its intrastate payphone line rates by the**
14 **amount of the interstate EUCL? If not, has BellSouth ceased charging the**
15 **EUCL on payphone lines?** No. BellSouth invoices reveal that BellSouth
16 continues to assess its tariffed rate for the multi-line business End User Common
17 Line charge, or EUCL.

18 **1. (b) As of what date was BellSouth required to reduce its intrastate**
19 **payphone line rates by the amount of the interstate EUCL?** In order to make
20 BellSouth's rates compliant with the applicable FCC Orders (these orders are
21 described in detail in Section 2 of my testimony), BellSouth should have reduced

1 its intrastate payphone line rates – at a minimum – by the amount of the EUCL on
2 April 15, 1997.

3 **1. (c) Can the FPSC order refunds to FPTA’s members for the time**
4 **period bracketed between (a) and (b)? If so, what is the amount of any**
5 **required refunds and how should any refunds be effected?** Yes, the
6 Commission can and should order refunds. The amount of the refund should be
7 the amount paid to BellSouth for EUCL since April 15, 1997. Further, BellSouth
8 promised in a letter dated April 10, 1997 from the RBOC Payphone Coalition
9 counsel, Michael Kellogg, to issue a refund back to April 15, 1997 in the event its
10 PTAS rates did not conform to the new services test.

11
12 **2. In Docket No. 970281-TL, PAA Order No. PSC-98-1088-FOF-TL,**
13 **issued on August 11, 1998, this Commission determined BellSouth’s**
14 **intrastate payphone rates to be in compliance with the FCC’s “new services”**
15 **test. (a) Are BellSouth’s intrastate payphone rates no longer compliant with**
16 **the new services test? If so, when did they become noncompliant?**

17 BellSouth’s rates are not currently in compliance and probably were not in
18 compliance as of August 11, 1998. If the FCC had issued its clarifying orders
19 (these orders are described in detail in Section 2 of my testimony) prior to that
20 time, it is highly unlikely that the Commission would have concluded that

1 BellSouth's rates were in compliance. Because all available evidence suggests
2 that BellSouth's costs have trended downward over time (this Commission's
3 orders regarding UNE rates are consistent with such an observation), at a
4 minimum BellSouth's rates became out of compliance immediately after the
5 August 11, 1998 order was issued. As the FCC has made clear, the application of
6 the New Services Test is a dynamic and ongoing process that recognizes changes
7 in cost levels over time.

8
9 **2. (b) If BellSouth's intrastate payphone rates are not compliant with**
10 **the new services test, at what rate levels will BellSouth's intrastate payphone**
11 **rates comply with the new services test?** A compliant rate level cannot be
12 calculated with certainty without cost information from BellSouth that is specific
13 to the task at hand (namely, the development of cost-based rates for payphone
14 access lines). In Section 3 of my testimony, I show that, based on the most recent
15 publicly available information, BellSouth's rates exceed a cost-based level by a
16 significant margin.

17
18 **2. (c) Can this Commission order BellSouth to revise its intrastate**
19 **payphone rates? If so, as of what date should any such rate changes be**
20 **effective?** Yes, this Commission has the authority to require BellSouth to reduce

its intrastate rates for payphone access services. Compliant rates should be required to be in place as soon as reasonably practicable after the Commission's decision in this proceeding, but no later than fifteen days.

2. (d) If BellSouth's payphone rates became noncompliant with the new services test, can the FPSC order refunds to FPTA's members for the time period from when they became noncompliant to the date identified in Issue 2(c)? If so, what is the amount of any required refunds, and how should any refunds be effected? Yes. The Commission must require BellSouth to refund the difference between compliant rates and the rates actually charged to FPTA members. A calculation of the refund due for each time period can be calculated once the relevant cost information is produced by BellSouth.

Section 2: The standard to be applied by the Commission when evaluating the ILECs' rates for payphone access line services.

The FCC's Payphone Orders

Q. PLEASE DESCRIBE HOW YOU HAVE APPROACHED YOUR ANALYSIS OF BELLSOUTH'S EXISTING RATES.

A. My analysis of the rates and related cost information seeks to answer four questions:

(1) Are BellSouth's rates *cost based*?

1
2 (2) Are BellSouth's rates *consistent with the requirements of section 276*
3 *of the Act*?

4
5 (3) Are BellSouth's rates *nondiscriminatory*?

6
7 (4) Are BellSouth's rates *consistent with the FCC's Computer III tariffing*
8 *guidelines (i.e., in compliance with the so-called "new services test"?)*
9

10 I want to be clear that these are four distinct and independent areas
11 of inquiry. While the first question is perhaps the most critical (rates that
12 are properly cost based are likely to be consistent with the Act, be
13 nondiscriminatory, and meet the FCC's Computer III guidelines), these are
14 four distinct criteria that BellSouth's payphone access services rates must
15 meet. The FCC's "new services test" is one, but only one, of these four
16 independent criteria.
17

18 Q. WHY HAVE YOU FOCUSED YOUR ANALYSIS ON THESE FOUR
19 SPECIFIC QUESTIONS?

20 A. I have focused my analysis in this manner because these are the four criteria
21 expressly adopted by the FCC in its *Payphone Orders* that were issued pursuant to
22 its responsibilities as defined in Section 276 of the Act. This is the standard that
23 state regulators are to apply when determining if existing or proposed intrastate
24 rates for the elements of payphone access services (access lines, usage, and

1 features) are in compliance with the FCC requirements. It is the standard that has
2 been applied by other state regulators.

3

4 Q. WHY HAS THE FCC ESTABLISHED A SET OF STANDARDS TO BE
5 APPLIED BY STATE REGULATORS WHEN DETERMINING INTRASTATE
6 RATES FOR PAYPHONE ACCESS SERVICES?

7 A. The Act mandates that the FCC take this role. Specifically, section 276(b)(1)(C)
8 requires that the FCC establish a set of nonstructural safeguards to implement the
9 provisions of the Act. The Act states that these safeguards are to include - at a
10 minimum - the "new services test", established previously by the FCC in the
11 *Computer III* inquiry. As I will explain in more detail below, the FCC, in
12 response to this legislative mandate, established the four-part test to be applied to
13 interstate payphone access services (features) and intrastate payphone access
14 services (access lines, usage, and features).

15

16 Q. HOW DID THE FCC RESPOND TO THIS LEGISLATIVE MANDATE?

17 A. The FCC has issued the series of *Payphone Orders* that set forth the requirements
18 for rates for payphone access services in CC Docket 96-128 and related dockets.
19 The basic requirements are set forth in the *Bureau Waiver Order* (at ¶35): "LECs
20 must have effective state tariffs that comply with the requirements" set forth for

1 these rates and "these requirements are: that payphone services state tariffs must
2 be cost based, consistent with section 276, nondiscriminatory, and consistent with
3 Computer III tariffing guidelines."

4 The *Second Bureau Waiver Order* reiterated the mandate that payphone
5 access services tariffed at the state level must comply with these requirements. In
6 that order the FCC's Common Carrier Bureau ("CCB") granted a limited
7 extension of time for LECs to file tariffs that contained rates in compliance with
8 the four-part test described above. The CCB noted (§ 18) that in requesting this
9 limited waiver, the "RBOC coalition concedes that the Commission's payphone
10 orders, as clarified by the *Bureau Waiver Order*" will determine the basis for how
11 new and existing payphone access service rates will be evaluated by state
12 regulators.

13 To summarize, the FCC has required the ILECs to have on file intrastate
14 tariffs that include rates for payphone access services in full compliance with the
15 four part test. In addition, the ILECs must provide the cost data necessary for the
16 state regulator to determine whether the existing or proposed rates comply with
17 the FCC standard.

18
19 **The FCC's Wisconsin Orders**

20 Q. WERE THE INTRASTATE FILINGS MADE IN ACCORDANCE WITH THE

1 AGREED-UPON – AND ORDERED – TIMEFRAME?

2 A. In almost all instances, no. Since 1997, some state regulators have reviewed, and
 3 often changed, PAL rates in response to a complaint by payphone service
 4 providers (“PSPs”), a voluntary filing by an ILEC, or a decision by the regulator
 5 to update the rates based on new cost information. Over this extended period of
 6 time, ILECs and state regulators have applied various interpretations of the FCC
 7 pricing standards. In order to address questions that had been put forth by various
 8 interested parties, to increase the consistency of rates from state to state, and to
 9 generally make the examination of PAL rates at the state level more efficient, the
 10 FCC has issued two subsequent orders.

11 To be clear, these orders have two stated purposes: (1) to set out specific
 12 requirements for a filing to be made by two ILECs operating in Wisconsin, and
 13 (2) to provide guidance to PSPs, ILECs, and state regulators regarding the proper
 14 interpretation of the FCC requirements. In the *Second Wisconsin Order*, the FCC
 15 states up front that

16 In compliance with this statutory mandate, we affirm the
 17 Bureau’s conclusion that section 276 requires BOCs to set
 18 their intrastate payphone line rates in compliance with the
 19 Commission’s cost-based, forward-looking “new services
 20 test.” *Although the administrative record for this matter*
 21 *shows disparate applications of the new services test in*
 22 *various state proceedings, we believe that this Order will*
 23 *assist states in applying the new services test to BOC’s*
 24 *intrastate payphone line rates in order to ensure*
 25 *compliance with the Payphone orders and Congress’*

1 *directives in section 276* (emphasis added, ¶ 2).⁴
 2

3 Q. EXPLAIN WHY THE *WISCONSIN ORDERS* ARE IMPORTANT AND
 4 USEFUL IN THE PRESENT CONTEXT.

5 A. On March 2, 2000, the Competitive Pricing Division of the FCC's Common
 6 Carrier Bureau ("CCB") issued the *First Wisconsin Order*. This order was almost
 7 immediately subjected to an application for review by the full commission. On
 8 January 31, 2002, the FCC issued the *Second Wisconsin Order* clarifying and, and
 9 in almost all instances, reaffirming CCB's position. These orders serve to provide
 10 clarification in this case and similar state proceedings by answering the following
 11 question: What would the FCC require the ILECs to demonstrate (and what
 12 information would be specifically required to be provided) if the FCC were to
 13 apply its own standards to the rates for payphone access service?

14 In other words, the *Wisconsin Orders* provide the Commission with an
 15 opportunity to resolve a difference of opinion that has arisen in similar
 16 proceedings in other states. I have argued in my testimony that the FCC has
 17 intended to require a four part test, and that application of the FCC's standard
 18 requires the LECs to make an affirmative demonstration of both the direct and a
 19 reasonable level of overhead costs associated with providing payphone access

⁴ Unless otherwise noted, I have omitted all footnotes from the citations to FCC orders in

1 services. Such an affirmative demonstration must be supported by a cost study of
2 each of the categories of cost to be included in the rate. In contrast, BellSouth has
3 consistently taken the position that it can fully comply with the FCC's
4 requirements by merely calculating a price/cost ratio for PAL and comparing that
5 ratio to (1) a price/cost ratio of 4.8x, adopted in a specific and limited context in a
6 previous FCC order, or (2) the price/cost ratio of "any plausible benchmark,"
7 including other services such as a local business line. If nothing else, the
8 *Wisconsin Orders* should serve to put these issues to rest once and for all.

9
10 Q. IS IT YOUR TESTIMONY THAT THE *WISCONSIN ORDERS* SHOULD
11 FORM THE PRIMARY BASIS FOR THIS COMMISSION'S APPLICATION
12 OF THE FCC'S STANDARDS IN THE MANNER SET FORTH IN YOUR
13 TESTIMONY?

14 A. Not necessarily, but these orders do provide useful guidance (the FCC states that
15 providing guidance and helping to ensure consistent application of the standards is
16 the intent of these orders). I urge the Commission to require BellSouth to fully
17 justify its rates for payphone access services in the manner that I have described
18 because doing so will permit the objectives of the Act – increased competition for
19 payphones and the widespread deployment of payphones – to be met in Florida,

order to improve readability.

1 while the existing BellSouth rates do not and will not do so. Payphones are an
2 important means of communication for a large number of people, and the public
3 interest will be served by ensuring that those phones continue to be available. The
4 *Wisconsin Orders* have provided this Commission with invaluable clarification as
5 to how the FCC would apply its standard in this docket.

6
7 Q. PLEASE DESCRIBE THE REQUIREMENTS SET FORTH IN THE
8 *WISCONSIN ORDERS*.

9 A. The *Wisconsin Orders* make a number of statements that clarify the FCC's intent.

10 The *First Wisconsin Order*, issued by the Common Carrier Bureau, begins
11 by reiterating the FCC's four-part test as set forth in the *Payphone Orders*: "The
12 Commission required that all incumbent LEC payphone tariffs filed at the state
13 level be cost-based, nondiscriminatory, and consistent with both section 276 and
14 the Commission's Computer III tariffing guidelines" (§ 2) and makes it clear that
15 the ILECs must "provide cost support for each rate element in accordance with the
16 cost support requirements described below...For each rate element, the incumbent
17 LEC must submit complete cost studies with full documentation" (§ 7).

18 The order then goes on to describe in detail how compliance with the FCC
19 standards can be achieved: "In order to avoid unnecessary confusion and delay in
20 the implementation of *Payphone Order*-compliant tariff filings, we set forth

1 briefly below some of the methodological principles applied under Computer III
 2 and other relevant FCC proceedings addressing the application of the new services
 3 test and cost-based ratemaking principles to services and facilities offered by
 4 incumbent LECs to providers of services that compete with incumbent LEC
 5 services” (§ 8).

6 The methodological principles set forth in the *First Wisconsin Order* are
 7 as follows:

- 8 1. “Costs must be determined by the use of an appropriate forward-looking,
 9 economic cost methodology that is consistent with the principles the
 10 Commission set forth in the Local Competition First report and Order” (§ 9).
 11
- 12 2. “With respect to the calculation of direct costs, our longstanding new services
 13 test policy is to require the use of consistent methodologies in computing
 14 direct costs for related services. Cost study inputs and assumptions used to
 15 justify payphone line rates should, therefore, be consistent with the cost inputs
 16 used in computing rates for other services offered to competitors” (§ 10).
 17
- 18 3. “In determining a just and reasonable portion of overhead costs to be
 19 attributed to services offered to competitors, the LECs must justify the
 20 methodology used to determine such overhead costs” (§ 11).
 21
- 22 4. Absent justification, LECs may not recover a greater share of overheads in
 23 rates for the service under review than they recover from comparable
 24 services...For the purpose of justifying overhead allocations, UNEs appear to
 25 be ‘comparable services’ to payphone line services, because both provide
 26 critical network functions to an incumbent LEC’s competitors and both are
 27 subject to a ‘cost based’ pricing requirement. Thus, we expect incumbent
 28 LECs to explain any overhead allocations for their payphone line services that
 29 represent a significant departure from overhead allocations approved for UNE
 30 services” (§ 11).
 31
- 32 5. “Given that the new services test is a cost-based test, overhead allocations
 33 must be based on cost, and therefore may not be set artificially high in order to

subsidize or contribute to other LEC services” (§ 11). To satisfy these requirements, an incumbent LEC must demonstrate that the proposed payphone line rates do not recover more than the direct costs of the service, plus “a just and reasonable portion of the carrier’s overhead costs.”

6. In order to avoid double recovery of costs, therefore, the LEC must demonstrate that in setting its payphone rates it has taken into account other sources of revenue (e.g., SLC/EUCL) that are used to recover the costs of the facilities involved” (§ 12).

After the *First Wisconsin Order* was issued by the CCB, the LEC Coalition filed an application for review. The FCC granted that application, but denied the LEC Coalition’s request to withdraw or stay the effectiveness of the *First Wisconsin Order*. On January 31, 2002, the FCC released the *Second Wisconsin Order*. In the order, the FCC reaffirmed almost all of the CCB’s conclusions, and provided the following important and useful clarifications:

1. “[In the *Reconsideration Order*], we confirmed that, even if LEC payphone tariffs were filed at the state level, they should nevertheless comply with section 276 as implemented by the Commission and, as such, should be cost-based, nondiscriminatory, and consistent with both section 276 and our own Computer III tariffing guidelines” (emphasis added, § 14).
2. “The *Bureau Order* confirmed our longstanding policy that the new services test requires the use of consistent methodologies in computing the direct costs for related services. As a result, the *Bureau Order* stated, *cost study inputs and assumptions used to justify payphone line rates should be consistent with the cost inputs used in computing rates for comparable services offered to competitors*” (emphasis added, § 24).

3. “The Commission’s longstanding precedent shows that we have used forward-looking cost methodologies where we have applied the new services test” (§ 43).

4. “[T]he *Bureau Order* states that LECs should use a forward-looking methodology that is ‘consistent’ with the *Local Competition Order*. TELRIC is the specific forward-looking methodology..required by our rules for use by states in determining UNE prices. States often use “total service long run incremental cost (TSLRIC) methodology in setting rates for intrastate services. It is consistent with the *Local Competition Order* for a state to use its accustomed TSLRIC methodology (or another forward-looking methodology) to develop the direct costs of payphone line service costs.”

5. The FCC provided a specific example (and notably, only one example) of the difference between the pricing requirements for UNEs as set forth in the *Local Competition Order* and payphone services as set forth in the *Payphone Orders*: “while we have prohibited LECs from including certain ‘retail’ costs in their prices for UNEs, no such prohibition applies to payphone lines services.” The LECs can include such “retail “ costs if they can demonstrate that these costs “are attributable to payphone line services” (§ 50).

6. With regard to the calculation of acceptable overhead loadings, the FCC confirmed that PAL rates developed using UNE overhead loadings “are in full compliance” with both the Act and *Payphone Orders*. The FCC explicitly added two additional methods for calculating acceptable overhead loadings: the method described in the *Physical Collocation Tariff Order* and the method described in the *ONA Tariff Order*. A state regulator may use any or all of these three methods in order to calculate an “upper limit on overhead loadings” for payphone services (§§ 53-54).

7. The FCC specifically and directly rejected the Coalition’s “any plausible benchmark” argument: “in our decisions applying the new services test to services offered to competitors, we have allowed BOCs some flexibility in calculating overhead allocations, but we have carefully reviewed the reasonableness of the BOC’s overhead allocations. We have *not* simply accepted any ‘plausible benchmark’ proffered by a BOC” (emphasis in original, § 56).

8. The FCC specifically and directly rejected the Coalition’s argument that ILEC’s are “free to apply to payphone service rates whatever markup over direct cost is incorporated in their business line rates” (§ 55).

1 9. The FCC specifically and directly rejected the Coalition’s argument that “the
 2 *Payphone Features Order* supports the proposition that any overhead allocation
 3 within a wide range is ‘reasonable’ for purposes of the new services test” (§ 57).
 4 *The FCC rejected the argument that the rate to cost ratio of 4.8x adopted in that*
 5 *order was applicable in the context of setting rates for any other payphone*
 6 *services*, instead describing the allowance of such an overhead loading as “very
 7 fact specific”, based on “adequate justification” provided in that investigation, and
 8 applicable only to “payphone features whose monthly costs did not exceed a few
 9 cents per line.”
 10

11 Q. BRIEFLY SUMMARIZE YOUR UNDERSTANDING OF THE FCC
 12 STANDARD SET FORTH IN THE *PAYPHONE ORDERS*, AS CLARIFIED BY
 13 THE *WISCONSIN ORDERS*.

14 A. Based on the FCC’s most recent efforts to provide guidance to someone who is
 15 “applying the new services test in order to ensure compliance with the Payphone
 16 orders and Congress’ directives in section 276,” the requirements for cost-based
 17 rates and compliance with the new services test have been clarified in the
 18 following way:

- 19 1. The ILEC must demonstrate that rates for PAL services, including the access
 20 line, usage, and features are cost-based in a two-step process. Direct costs must
 21 be calculated based on a forward-looking economic cost methodology, such as
 22 TSLRIC or TELRIC. Any overhead loading added to that direct cost must be
 23 demonstrated to be reasonable.
 24
- 25 2. Cost study inputs and assumptions used to calculate direct costs must be
 26 consistent with the inputs and assumptions used to calculate costs and rates for
 27 services provided to other competitors.
 28
- 29 3. Direct costs must be adjusted to account for the application of federal charges,
 30 such as the SLC, in order to avoid a double-recovery of costs.
 31

1 4. Overhead loadings must be demonstrated to be reasonable in the context of the
 2 rate element being proposed. A price to cost ratio adopted in another context,
 3 *specifically including but not limited to the 4.8x direct cost permitted for certain*
 4 *low-priced features in the Payphone Features Order*, is not a substitute for a
 5 demonstration by the ILEC that the proposed overhead loading is reasonable with
 6 regard to the rate element being examined.
 7

8 Q. HAVE OTHER STATE REGULATORS APPLIED THE FCC'S FOUR PART
 9 TEST TO DETERMINE WHETHER INTRASTATE PAYPHONE ACCESS
 10 SERVICES RATES ARE APPROPRIATE AND LAWFUL?

11 A. Yes. The Delaware Public Service Commission, in Docket No. 97-031T
 12 Consolidated, applied the FCC's four part test in order to determine
 13 whether the intrastate rates for Bell Atlantic payphone access lines were
 14 appropriate, and concluded that the rates as proposed did not meet these
 15 requirements.⁶ Similarly, the West Virginia Public Service Commission
 16 applied the FCC requirements in its Order in Case No. 97-0643-T-T and
 17 likewise concluded that existing intrastate rates for Bell Atlantic payphone
 18 access lines did not comply with the FCC's four part test.⁷ The South
 19 Carolina Public Service Commission concluded in Docket No. 97-124-C

⁶ In the Matter of the Tariff Filing by Bell Atlantic-Delaware, Inc. To Make Revisions to P.S.C.-DEL.-No. 1, PSC Docket No. 97-013T Consolidated, Order No. 4637, November 4, 1997 (¶¶ 3, 18) ("*Delaware Order*")

⁷ Bell Atlantic-West Virginia, Inc., Case No. 97-0643-T-T, Commission Order, May 22, 1997 (pages 4-5, 8, 13-15) ("*West Virginia Order*").

1 that the requirements of the FCC's four part test should be applied in order
2 to determine appropriate levels for intrastate payphone access services
3 rates.⁸ The Public Service Commission of Maryland used the FCC
4 requirements as the basis of its analysis,⁹ and the Tennessee Regulatory
5 Authority rejected an argument by BellSouth that only the New Services
6 Test be applied, and instead stated that "the Directors voted unanimously to
7 set rates that are: 1) compliant with the new services test; 2) consistent with
8 section 276 of the Act; 3) nondiscriminatory; and 4) cost-based."¹⁰

9
10 Q. DOES THE COMMISSION FACE THE SAME TASK IN THIS
11 PROCEEDING THAT OTHER STATE REGULATORS FACED IN THE
12 PROCEEDINGS THAT YOU CITED?

13 A. Yes. In each case, the state regulator sought to determine whether a

⁸ Request of BellSouth Telecommunications, Inc. for Approval of Revisions to its General Subscriber Service Tariff and Access Service Tariff, Docket No. 97-124-C, Order No. 1999-285, April 19, 1999 (¶ 4) ("*South Carolina Order*").

⁹ In the Matter of the Inquiry into the Payphone Tariffs of Bell Atlantic – Maryland, Inc., Public Service Commission of Maryland, Case No. 8763, February 27, 2001 (page 2) ("*Maryland Order*").

¹⁰ In Re: All Telephone Companies Tariff Filings Regarding Reclassification of Pay Telephone Service as Required by Federal Communications Commission Docket 96-128, Tennessee Regulatory Authority, Docket No. 97-00409, February 1, 2001 (page 17) ("*Tennessee Order*").

1 LEC's existing or proposed rates for payphone access line services
2 complied with the requirements of both Section 276 of the Act and the
3 subsequent FCC *Payphone Orders* implementing Section 276.
4

5 **Public Interest Considerations**

6 Q. WHY IS IT IMPORTANT THAT THE COMMISSION ACT NOW TO
7 ENSURE THAT THE OBJECTIVES OF SECTION 276 OF THE ACT
8 ARE MET?

9 A. The explicit objectives of section 276 (1) to increase competition for
10 payphone services and (2) to ensure the widespread deployment of
11 payphones require this action. The ability of competing payphone
12 providers to continue to operate and compete in the marketplace depends
13 on the ability of these providers to obtain PAL service at the appropriate
14 cost-based rates. Equally importantly, the widespread deployment of
15 payphones in Florida depends on the implementation of such rates. In
16 those geographic areas of the state where cellular coverage may be
17 unavailable, and for certain groups of customers in all areas of the state,
18 payphones represent an important (and often vital) "last resort" means of
19 communication.

1

2 Q. ISN'T THE DIMINISHING BASE OF PAYPHONES, AND THE
3 CURRENT STRUGGLE OF PAYPHONE PROVIDERS, SIMPLY AN
4 INEVITABLE REFLECTION OF THE POPULARITY OF CELLULAR
5 TELEPHONES?

6 A. Not at all. I have worked extensively on both wireless and wireline issues
7 (including payphone issues) since the passage of the Act. In my
8 experience, the facts simply do not support such an assumption.

9 The base of cellular subscribers has certainly grown over the past
10 six years, while the number of payphones has decreased. It would be
11 premature and incorrect, however, to conclude that the current mix of
12 cellular telephones and payphones represents the action of a freely
13 operating marketplace. Pursuant to the Act, cellular providers have the
14 right to interconnect with BellSouth and other ILECs at cost-based rates.
15 Pursuant to the Act and subsequent FCC *Payphone Orders*, independent
16 payphone providers also have the right to obtain the network
17 interconnection elements that they use at cost-based rates. An important
18 distinction exists, however: while cellular providers currently pay cost-
19 based rates to BellSouth, payphone providers are paying much higher rates
20 (even though BellSouth has been under the obligation to make cost-based

1 intrastate PAL rates available since prior to April 15, 1997). Rather than a
2 situation in which competitive market forces are picking the “winners”
3 and “losers” based on the merits of the service being offered to end users,
4 the current environment represents one in which payphone providers are
5 being hamstrung by a 6-plus year delay in the implementation of the rates
6 to which they are entitled by law. The adoption of cost-based PAL rates,
7 coupled with refunds of the excessive charges, is necessary to permit
8 FPTA members to continue to provide payphone service in the
9 marketplace.

10

11 Q. HOW SHOULD THE COMMISSION PROCEED IN THIS CASE?

12 A. In order to determine if BellSouth’s PAL rates meet each of the FCC
13 requirements, the Commission must have the information necessary to gain a clear
14 and complete understanding of the costs related to the provisioning of payphone
15 access services. Obviously, this cost data must be specific to the elements of
16 payphone access services (including access lines, usage, and features) and must be
17 fully documented.¹¹

¹¹ The FCC has set forth specific minimum requirements for ILEC cost submissions in support of rates that are compliant with the New Services Test. The Commission should apply both the FCC standards and its own requirements for cost documentation.

1

2 **Application of the Requirement that Rates be Cost-Based**

3 Q. WHAT TYPES OF COSTS WILL NEED TO BE CONSIDERED?

4 A. The Commission will need to examine three categories of costs: direct, shared,
5 and common. Direct costs are those costs that are specific to the service or
6 individual rate element being studied; in other words, it is the decision or
7 requirement to offer the specific service or rate element that *causes* the cost to be
8 incurred. For example, the local loop facilities used by BellSouth to provide a
9 payphone access line to a FPTA member is a direct cost. Shared costs are caused
10 by the decision or requirement to offer a group of services. For example, ILECs
11 incur marketing costs when offering competitive services. These services, as a
12 group, cause these costs to be incurred. Finally, common costs are caused simply
13 by the fact that the company is in business; they are not specific to (i.e., are not
14 caused by) any rate element, service, or group of services.

15 In order to apply the FCC's requirements that PAL rates be cost based and
16 compliant with the new services test, the Commission must consider each of these
17 categories of costs. Specifically, the rates for PAL service should equal - and
18 should under no circumstances be greater than - the total of the direct, shared, and
19 common costs that the ILECs *demonstrate* are reasonable and appropriate.

20

1 Q. ANOTHER TERM OFTEN USED TO DESCRIBE A CATEGORY OF COSTS
2 IS "OVERHEAD." WHAT ARE "OVERHEAD" COSTS?

3 A. Depending on the context, the term "overhead" sometimes refers only to common
4 costs, but sometimes is intended to mean both shared and common costs. When
5 analyzing cost studies or the orders of a regulator mandating a particular form of
6 costing, it is important to review the supporting documentation carefully in order
7 to determine how the term "overhead" has been applied.

8 When applying the FCC's new services test, the term "overhead" is
9 defined to include both shared and common costs. The "overhead loading" that is
10 to be evaluated pursuant to the new services test is the amount in excess of the
11 calculated direct cost.¹²

12 In its evaluation of the rates for payphone access services, therefore, the
13 Commission has two categories of costs to consider. First, it must review the
14 reported direct cost of providing the rate element to determine if BellSouth has
15 met its burden of demonstrating that the reported cost is reasonable. Second, it
16 must review the level of overhead loadings (BellSouth's calculation of shared and
17 common costs), again in order to determine if the ILEC has met its burden of
18 *demonstrating* that the reported cost is reasonable. Clearly, a rate that exceeds the

¹² The direct cost contemplated by the FCC is conceptually equivalent to TSLRIC or TELRIC.

1 level of direct cost plus overhead (i.e., direct + shared + common costs) that an
2 ILEC has demonstrated to be reasonable *cannot* meet the FCC requirements that
3 such a rate be both cost based and compliant with the new services test.
4

5 Q. DOES THE COMMISSION HAVE EXPERIENCE DEALING WITH THESE
6 DISTINCT CATEGORIES OF COSTS?

7 A. Yes. In arbitrations conducted pursuant to section 251 of the Act the Commission
8 faced the task of establishing rates for unbundled network elements that are based
9 on cost, pursuant to the requirements of section 252(d)(1). The cost-based rates
10 adopted in those proceedings were required to include the appropriate amount of
11 direct, shared, and common costs of the unbundled network elements at issue.

12 In this proceeding, the Commission faces the same fundamental task: to
13 determine cost-based rates (this time for payphone access services) that include
14 the appropriate amount of direct, shared, and common costs. In the absence of
15 adequate cost documentation provided by the ILEC, the Commission can and
16 should rely on its experience in these earlier proceedings when determining cost-
17 based rates for payphone access services.
18

19 Q. IS IT YOUR POSITION THAT THE REQUIREMENTS OF SECTION 252 OF
20 THE ACT APPLY TO PAYPHONE ACCESS SERVICES?

1 A. No. If experience in similar state proceedings is any guide, BellSouth will argue
 2 in their response to my testimony that I have mistakenly concluded that section
 3 252 applies to the pricing of intrastate payphone services. The presence of this
 4 question and answer in my testimony has not, to date, deterred any of the ILECs
 5 from serving up this red herring.

6 To be clear, I am *not* suggesting that Section 252 sets forth requirements
 7 that the Commission must apply to intrastate payphone access services. I *am*
 8 suggesting, however, that the task before the Commission in this proceeding is a
 9 familiar one: the Commission must now determine the level of "cost-based" rates
 10 (including appropriate and justified levels of direct, shared, and common costs).¹⁴

11 In the arbitrations and UNE cost proceeding, the Commission was faced with the
 12 task of determining the level of rates which were "based on cost" (including
 13 appropriate and justified levels of direct, shared, and common costs) for the same
 14 network facilities. BellSouth cannot seriously argue that a meaningful distinction
 15 can be drawn between the phrases "cost based" and "based on cost," and,
 16 therefore, they must acknowledge that the UNE costs and rates are an appropriate
 17 benchmark for evaluating the level of payphone access services rates. The use of

¹⁴ The *Wisconsin Orders* indicate that the FCC sees the task before this Commission in exactly this way.

1 such a benchmark is required if the ILEC fails to provide the Commission with
2 the necessary cost information to support the level of shared and common costs
3 included in its proposed rates.
4

5 Q. WHAT IS THE FIRST STEP THAT MUST BE TAKEN IN ORDER TO
6 DETERMINE THE RELEVANT COSTS OF PAYPHONE ACCESS SERVICE?

7 A. The first step in any costing process is to determine the cost methodology to be
8 followed. Are the costs to be a measure of embedded costs or should they instead
9 reflect the costs of an efficient provider on a forward-looking basis?

10 The forward-looking economic cost methodology should - and must - be
11 used here for several reasons. First, this methodology is the conceptually correct
12 one. If rates for payphone access services are set at a level that recovers these
13 costs, the ILEC will be fully compensated while the stated objectives of the Act --
14 to promote competition among payphone service providers and promote the
15 widespread deployment of payphone services to the benefit of the general public -
16 can be met. 47 U.S.C. 276(b)(1) sets forth this explicit objective.

17 Second, this methodology is consistent with previous orders of the FCC
18 describing a proper application of the new services test. For example, the FCC
19 has stated that "we recognize that competition depends on the ability of
20 competitors to purchase LEC facilities at rates that reflect economic costs, and not

1 rates that are calculated to deter entry by efficient providers".¹⁵

2 Last but certainly not least, the application of this costing methodology is
 3 consistent with the FCC's *Wisconsin Orders*. In those orders, the FCC states that
 4 in order to develop compliant rates, "LECs should use a forward-looking
 5 methodology that is consistent with the *Local Competition Order*" (§ 49). Noting
 6 that TELRIC and TSLRIC are equivalent except for the cost object being studied,
 7 the FCC confirmed that states may use TELRIC, TSLRIC, or another forward-
 8 looking methodology when considering the rates for PALs.

9
 10 Q. ONCE THE COST METHODOLOGY TO BE FOLLOWED IS DETERMINED,
 11 WHAT IS THE NEXT STEP THAT MUST BE TAKEN IN ORDER TO
 12 DETERMINE THE RELEVANT COSTS OF PAYPHONE ACCESS
 13 SERVICES?

14 A. The next step is to calculate the direct cost (TSLRIC, for example) of each rate
 15 element. BellSouth has presented conflicting direct cost results for certain
 16 elements and has not presented information that demonstrates the reasonableness
 17 of the existing level of overhead loadings.

¹⁵ Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, CC Docket No. 94-97, Phase I, Report and Order, 10 FCC Rcd 6375, 6404 (1995) ("*Virtual Collocation Overhead Prescription Order*").

Once the direct cost for PAL rate elements is developed, it is necessary to consider other rates that the purchaser of the PAL service must pay in order to ensure that no double recovery of costs takes place. If the direct costs have not been subjected to jurisdictional separations, for example, it will be necessary to consider any interstate rates designed to recover the same network costs when setting the intrastate rate.

Q. IS THERE A SPECIFIC EXAMPLE OF A PAL RATE ELEMENT THAT MUST BE ADJUSTED IN ORDER TO AVOID A DOUBLE RECOVERY OF THE SAME NETWORK COSTS?

A. Yes. It is essential that the total (jurisdictionally unseparated) cost of the local loop be reduced by the amount of the Subscriber Line Charge ("SLC") in order to calculate the cost-based rate for a payphone access line, or, alternatively, that the intrastate payphone access line rate be established that is inclusive of this federal charge (so that it is not also charged separately to the competing payphone provider). This adjustment is necessary in order to prevent the ILEC from (1) receiving a double recovery of its costs and (2) gaining an artificial and significant competitive advantage.

¹⁸ *West Virginia Order*, p. 16.

The danger of a double recovery of costs can easily be seen by example using only the local loop costs and the SLC. If, for example, the ILEC incurs a cost of \$20.00 (statewide average) when providing an UNE local loop, a rate of \$20.00 paid by a CLEC will permit it to fully recover those costs, but to only recover them once:

Total Cost (including direct, shared, and common): \$20.00

Intrastate Rate: \$20.00

Percentage of Total Cost Recovered 100%

Conversely, if a payphone access line is set at the level of the total cost reported by the ILEC, the cost recovery for the ILEC changes significantly:

Total Cost (including direct, shared, and common): \$20.00

Intrastate Rate \$20.00

Subscriber Line Charge \$ 7.00

Total Revenue: \$27.00

Percentage of Total Cost Recovered 135%

If the payphone access line rate is properly adjusted by the amount of the additional charges, however, the ILEC's cost recovery is appropriate:

Total Cost (including direct, shared, and common): \$20.00

1	Intrastate Rate	\$13.00
2	Subscriber Line Charge	\$ 7.00
3	Total Revenue:	<u>\$20.00</u>
4	Percentage of Total Cost Recovered	100%

5

6 Alternatively, establishing an intrastate rate that is inclusive of the
7 Subscriber Line Charge will accomplish the same objective:

8	Total Cost (including direct, shared, and common):	\$20.00
9	Intrastate Rate (<i>inclusive of SLC/CALC</i>)	\$20.00
10	Subscriber Line Charge	\$ N/A
11	Total Revenue:	<u>\$20.00</u>
12	Percentage of Total Cost Recovered	100%

13

14 Q. HAVE OTHER STATE REGULATORS EXPLICITLY CONSIDERED
15 ADDITIONAL APPLICABLE CHARGES WHEN ESTABLISHING COST-
16 BASED RATES FOR PAYPHONE ACCESS SERVICES?

17 A. Yes. The West Virginia Public Service Commission addressed this issue in the
18 Order referred to previously in my testimony. In that proceeding, Bell Atlantic-
19 West Virginia, like BellSouth in this proceeding, used an unseparated cost of the
20 local loop as the starting point for determining a cost-based rate for payphone

1 access lines. The West Virginia PSC noted that the cost numbers used by Bell
2 Atlantic-West Virginia are total costs (not separated into intrastate and interstate
3 components). Since total costs were being used, the West Virginia PSC correctly
4 reasoned, it is necessary to consider both intrastate and interstate sources of
5 revenue when determining how much of this total cost should be recovered by the
6 intrastate rate: "to allow BA-WV to include interstate costs into its payphone line
7 rates while the Company recovers an SLC would result in BA-WV double-
8 recovering its interstate costs associated with payphone lines."¹⁸

9 After reaching this conclusion, the West Virginia PSC indicated that it
10 agreed with a proposal that "BA-WV's payphone rates should be further reduced
11 by the SLC which BA-WV currently recovers." Id. In order to implement this
12 decision, the West Virginia PSC ordered that the total of the intrastate payphone
13 access line rate and the SLC could not exceed the Commission's determination of
14 Bell Atlantic's total cost of that line.

15 The Tennessee Regulatory Authority recently reached a consistent
16 conclusion. Specifically, the TRA found that

17 [P]ayphone rates that are based on jurisdictionally
18 unseparated costs are designed to recover a portion of the
19 same costs that the SLC, EUCL, and PICC are intended to
20 recover. The TRA further found that LECs are authorized
21 to collect the SLC, EUCL, and PICC revenues from PSPs.
22 Therefore, setting rates based on jurisdictionally
23 unseparated costs and allowing the LECs to assess the
24 federal charges on PSPs in addition to collecting the rate

would result in double recovery.¹⁹

The Maryland Commission also required that Bell Atlantic-Maryland provide the necessary data so that the intrastate PAL rates could be adjusted to reflect the federal charges.²⁰

In the *Wisconsin Orders*, the FCC reached the same conclusion:

[T]he BOC may not charge more for payphone line service than is necessary to recover from PSPs all monthly recurring direct and overhead costs incurred by BOCs in providing payphone lines. The forward-looking cost studies used to make these determinations are usually calculations of total costs, not jurisdictionally separated costs. If an incumbent BOC files in its state tariff a charge that fully recovers these unseparated costs and also assesses on the PSP its federally tariffed SLC, the BOC will over-recover its costs, and the PSP will overpay, in violation of the new services test and the cost-based rates requirement (emphasis added, ¶ 60).

The same adjustment to reflect the SLC must be made to intrastate rates here in Florida.

Q. YOU STATED THAT AN ADJUSTMENT TO REFLECT THESE ADDITIONAL CHARGES IS ALSO NECESSARY TO AVOID GIVING THE ILEC AN ARTIFICIAL AND SIGNIFICANT COMPETITIVE ADVANTAGE.

¹⁹ *Tennessee Order*, pp. 17-18.

1 PLEASE EXPLAIN.

2 A. This possibility is also best understood using a simple illustrative example.

3 Assume that the total cost for a payphone line (including the local loop and line
4 termination into the end office switch) incurred by BellSouth (including direct,
5 shared, and common costs) is \$15.00, and that a SLC of \$7.00 also applies. If the
6 rate for a payphone access line is set to recover the full \$15.00 cost, BellSouth
7 will receive a total of \$22.00 in revenue to recover a \$15.00 cost. An FPTA
8 member attempting to compete with the ILEC must pay \$22.00 (which to the
9 FPTA member is an unavoidable cost of doing business). In this scenario, the
10 ILEC goes forth to compete with an extra \$7.00 in its pocket (available potentially
11 to fund a reduction in rates to its payphone end user customers or pay a higher
12 commission to the owner of a desirable location). The equity objective of the
13 "cost-based" rate requirement will have been lost: the ILEC will have been
14 successful in artificially inflating the costs of its competitors. This outcome does
15 not create an equal competitive footing, and is inconsistent with the stated
16 objectives of Section 276 of the Act.

17 In contrast, if the rate for the payphone access line is established with the
18 correct consideration of the additional revenues, a level playing field will be
19 created. In this example, an intrastate payphone access line rate of \$8.00 will

²⁰ *Maryland Order*, p. 23.

1 mean that the ILEC will receive \$15.00 (\$8.00 intrastate rate plus \$7.00 SLC) to
2 recover a \$15.00 cost. The competing FPTA member will incur a cost of \$15.00
3 (as it is responsible for payment of the intrastate rate and the SLC), and the ILEC
4 will incur a cost of \$15.00 for the local loop that it uses for its own competing
5 payphone. In this scenario, the ability of either competitor to offer lower retail
6 prices or higher commission payments will be the result of its efficiency and
7 sound management, rather than being artificially created by an inflated access line
8 rate.

9
10 Q. IN ADDITION TO THE RATES FOR PAYPHONE ACCESS LINES, ARE
11 USAGE AND FEATURES CHARGES THAT ARE APPLIED TO PAYPHONE
12 ACCESS LINES SUBJECT TO THE FCC REQUIREMENTS?

13 A. Absolutely. The FCC's *Payphone Orders* set forth the standards to be applied for
14 the pricing of payphone services tariffed at the state level. These orders in no way
15 limit the application of the requirements to any subset of the rate elements that
16 competing providers of payphone services must purchase from BellSouth.

17 In the *Wisconsin Orders*, the FCC clarified its intent for the standard set
18 forth in the *Payphone Orders* to apply to all rate elements provided to PSPs. The
19 FCC specifically rejected the LEC Coalition argument that “[payphone usage]
20 rates that are equal to business usage rates are not ‘payphone specific’ and were

not intended to be covered by the new services test” (§ 63), and went on to state that cost-based rates for PAL usage “advances our purpose in requiring cost-based payphone line rates in the first place. A high usage rate would undermine our and the states’ efforts to set payphone services in accordance with a cost-based standard. A non cost-based usage rate would also constitute an impermissible ‘end run’ around the requirements of section 276” (§ 65).

Application of the Non-Discriminatory Standard

Q. THE SECOND PRONG OF THE FCC’S FOUR PART TEST REQUIRES THAT RATES FOR PAL SERVICES BE NONDISCRIMINATORY. PLEASE EXPLAIN WHY THIS IS IMPORTANT.

A. There are two readily apparent ways in which a discriminatory rate structure can be established that will impede the development of competition and the widespread deployment of telephones. First, as described above, a failure to adjust intrastate PAL rates for the amount of the SLC will give an ILEC’s payphone operation a significant and artificial competitive advantage. Second, because BellSouth’s payphone operations typically utilize “smart” PAL service²¹

²¹ So-called “smart” lines are sometimes denominated as “coin” lines, because much of the intelligence to operate the payphone’s functions originate in the ILEC central office and are provided as a part of the service. In contrast, a payphone set that is programmable and has the necessary intelligence within can be connected to a standard access line. Thus, “dumb”

1 while its competitors utilize other forms of PAL service, it is possible for the
2 ILEC to create a competitive advantage for its own payphone operation by
3 strategically setting the rates for each form of PAL service. In order to avoid such
4 an overt form of discrimination, it is necessary to carefully examine both the
5 direct cost and overhead loadings for each type of PAL service, and to examine
6 the rate treatment of the capabilities that are included only in a "smart" PAL line.
7

8 **Application of the "New Services Test" Requirement**

9 Q. THE FCC'S *PAYPHONE ORDERS* REQUIRE THE APPLICATION OF THE
10 SO-CALLED "NEW SERVICES TEST". WHAT IS THE NEW SERVICES
11 TEST?

12 A. The definition and application of the new services test has proven to be a source
13 of discussion in a number of recent state proceedings, including those cases in
14 which intrastate rates for payphone access services were at issue. It may be
15 useful, therefore, to review the elements of the new services test before embarking
16 on a discussion of its application.

17 The new services test has been described in a number of FCC orders
18 related to different ILEC-provided services. This test has been used to evaluate

phones are connected to "smart" lines, while "smart" phones can be connected to "dumb"
lines.

1 proposed rates for the elements of Open Network Architecture ("ONA"),
2 interconnection, virtual and physical collocation, and, most recently, payphone
3 access services. Because both the definition and the application of the new
4 services test have evolved over time, it is important to consider all relevant FCC
5 orders when attempting to understand both the definition and application of the
6 test.

7 The new services test has two fundamental parts. In order to justify a
8 proposed rate, the ILEC must fully demonstrate that the proposed rate is above the
9 direct costs of the service and at or below a total of the direct costs plus a
10 reasonable markup for overhead (in this context, overhead refers to the total of
11 shared and common costs). It is important to note that the application of the new
12 services test is a "bottom up" process: direct costs must be calculated and fully
13 justified, and any markup for overhead²² above this measure of direct costs must
14 be fully justified. Both the calculation of direct costs and the calculation of an
15 appropriate level of overhead can be considered key factors in the application of
16 the test.

17
18 Q. HAS THE FCC BEEN CLEAR IN ITS ORDERS THAT THE NEW SERVICES

²² This markup above direct cost is sometimes referred to as an "overhead loading."

1 TEST REQUIRES LECS TO FULLY JUSTIFY BOTH THE LEVEL OF
2 DIRECT COSTS AND THE LEVEL OF ANY OVERHEAD LOADINGS IN A
3 PROPOSED RATE?

4 A. Yes. When examining the level of proposed virtual collocation rates, for
5 example, the FCC made it clear that both fundamental components of the new
6 services test are important:

7 The *Phase I Designation Order* designated for investigation
8 the issue of whether the LECs had justified the level of
9 their overhead loadings, a key factor affecting the rates for
10 virtual collocation arrangements. We now continue our
11 analysis of the LECs' virtual collocation rates by reviewing
12 the LECs' direct costs of providing virtual collocation
13 service -- another key factor affecting virtual collocation
14 rates.²³
15

16 More recently, the FCC has applied the new services test to evaluate the
17 proposed rates for certain payphone features tariffed at the interstate level. Here
18 again, the FCC has reiterated the importance of examining both direct costs and
19 the level of any markup for overhead.

20 The FCC found, for example, that GTE's proposed direct cost for a
21 payphone feature (selective class of call screening) was excessive, and GTE
22 subsequently reduced the reported direct investment for this feature from \$50 to

²³ Order Designating Issues For Investigation, CC Docket No. 94-97 Phase II, 10 FCC Rcd 11,116 (Com. Car. Bur. 1995) , at ¶ 12.

1 \$6 before the resulting rate was approved by the FCC.²⁴

2 In the same order, again applying the new services test requirements, the
3 FCC found that Bell Atlantic had not justified the overhead loadings that it had
4 included in certain payphone features. Bell Atlantic subsequently made
5 substantial reductions in the level of the overhead loadings before the rates were
6 approved. In describing its requirement that the LECs must fully justify all
7 proposed overhead loadings, the FCC noted that "In Open Network Architecture
8 Tariffs for Bell Operating Companies, the Commission concluded that US West's
9 overhead rates for ONA features were unsupported *because it failed to provide a*
10 *reasonable explanation for its overhead loadings for those rates*" (emphasis
11 added).²⁵

12 In the *Wisconsin Orders*, the FCC rejected attempts by the LEC Coalition
13 to render the new services test standard meaningless by permitting large and
14 unsubstantiated overheads. The FCC rejected overhead loadings based on "any
15 plausible benchmark," rejected overhead loadings based on the overhead loading
16 in business line services, and rejected the argument that an extremely large
17 overhead loading (4.8x) - adopted in the specific context of a feature that was

²⁴ In the Matter of Local Exchange Carriers' Payphone Functions and Features, CC Docket No. 97-140, Memorandum Opinion and Order 12 FCC Rcd 17,996 (1997), at ¶¶ 15-16 (*"Payphone Features Order"*).

1 priced at “pennies per month” - was applicable to other PAL rates. Instead, the
 2 FCC reiterated its long standing policy that overhead loadings must be
 3 *demonstrated* by the ILEC to be reasonable.²⁵

4
 5 **Section 3: Analysis of available cost information and existing rates.**

6
 7 Q. HAVE YOU COMPARED BELLSOUTH’S EXISTING RATES FOR PAL
 8 SERVICE AND THE AVAILABLE COST INFORMATION?

9 A. Yes. Payphone Access Line service consists of a local loop, line port in the local
 10 switch, and local usage on that switch. In other words, a payphone access line
 11 utilizes the same network functionality as BellSouth provides as a UNE Platform,
 12 or UNE-P. The best-available cost information is instructive but imperfect; the
 13 UNE-P rates are based on geographically deaveraged loop costs, while the rate
 14 structure for BellSouth’s payphone access line service is also geographically
 15 deaveraged, but on a different basis.

16
 17 Q. PLEASE DESCRIBE THE RESULTS OF YOUR ANALYSIS.

18 A. This analysis is attached as Exhibit DJW-2. This analysis shows how the
 19 payphone access line charges in each BellSouth rate group compares to the UNE-

²⁵ *Id.*, at ¶ 13.

²⁶ *Second Wisconsin Order*, ¶¶ 56-57).

1 P cost/rate for each of the three deaveraged zones. This analysis shows that, in
2 almost every possible combination of rates and costs, BellSouth's existing rates
3 for payphone access line service are well in excess of cost and well in excess of a
4 level that would comply with the FCC's requirements.

5 My analysis is based on geographically deaveraged costs because cost
6 information is available on this form. FPTA is not proposing that a similarly
7 geographically deaveraged rate be adopted for payphone access lines. A statewide
8 rate would be more administratively workable and would provide the greatest
9 incentive for widespread deployment of payphones. It is anticipated that
10 BellSouth will produce cost information that is based on the statewide average
11 cost characteristics of payphone access lines. When this information is produced,
12 FPTA will develop and present a proposal for a statewide average rate.

13

14 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

15 A. Yes.

1 **FLORIDA PUBLIC TELECOMMUNICATIONS ASSOCIATION**

2 **REBUTTAL TESTIMONY OF DON J. WOOD**

3 **DOCKET NO. 030300-TP**

4 **DECEMBER 19, 2003**

5
6 Q. PLEASE STATE YOUR NAME.

7 A. My name is Don J. Wood.

8
9 Q. ARE YOU THE SAME DON J. WOOD WHO PRESENTED DIRECT
10 TESTIMONY ON BEHALF OF FPTA IN THIS PROCEEDING?

11 A. Yes, but my business address has changed since that time. My current business
12 address is 30000 Mill Creek Avenue, Suite 395, Alpharetta, Georgia 30022.

13
14 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

15 A. The purpose of my rebuttal testimony is to respond to the testimony of BellSouth
16 witnesses Kathy K. Blake and D. Daonne Caldwell, including the BellSouth cost
17 study of PTAS services presented as an exhibit to Ms. Caldwell's testimony.

18 My rebuttal testimony consists of three sections. Section 1 responds to the
19 various claims, many of them self-contradictory, made by Ms. Blake in her direct
20 testimony regarding BellSouth's obligation to charge a rate for PTAS that is
21 compliant with the requirements of the FCC's *Payphone Orders*. Section 2
22 responds to the testimony of Ms. Caldwell and the cost information that she
23 provides. At the time my direct testimony was filed, no Florida-specific,
24 statewide average cost information was available. At that time I presented an
25 analysis showing that BellSouth's existing rates for PTAS in its various rate

groups are well in excess of the level that is permitted by the FCC's four-part test, but did not make a rate proposal because of the absence of cost information at the necessary level of aggregation. BellSouth has now provided, through the testimony of Ms. Caldwell, the cost information necessary for FPTA to make such a proposal. This proposal is also contained in Section 2. Section 3 summarizes my testimony and recommendations.

Section 1: Bellsouth's Obligation To Tariff And Charge Compliant PTAS Rates

Q. PLEASE SUMMARIZE THE APPLICABLE FEDERAL STANDARDS THAT APPLY TO THE DEVELOPMENT OF INTRASTATE RATES FOR PAYPHONE ACCESS SERVICES.

A. In 1996, the FCC issued the series of *Payphone Orders* that set forth the requirements for rates for payphone access services in CC Docket 96-128 and related dockets. The basic requirements are summarized in the *Bureau Waiver Order* (§35): "LECs must have effective state tariffs that comply with the requirements" for PTAS rates and "these requirements are: that payphone services state tariffs must be cost based, consistent with section 276, nondiscriminatory, and consistent with Computer III tariffing guidelines." Subsequent to the adoption of the Payphone Orders, the FCC issued the *Second Wisconsin Order* that clarifies, , its intended application of the requirements previously adopted in the *Payphone Orders*.

1 The BellSouth witnesses, particularly Ms. Blake, have put forth several
 2 theories why BellSouth's PTAS rates need not now, or at any time during the past,
 3 actually comply with the standards established by Congress in 1996 and the FCC
 4 in 1997. These theories can be completely disposed of by an understanding of a
 5 few basic points:

6 **1. The FCC's cost-based pricing standard was established in 1997, and was**
 7 **not changed in any way by the FCC in the Wisconsin Orders.**

8
 9 **2. The FCC's cost-based pricing standard is based on a set of specific**
 10 **requirements; it is not simply a set of broad guidelines or suggestions subject**
 11 **to interpretation and alteration.**

12
 13 **2. There is not, and never has been, a presumptively valid "FCC range" of**
 14 **overhead loadings that may be used when applying the NST. In addition, the**
 15 **mere existence of a federal rate with a high overhead loading does not**
 16 **indicate that such an overhead loading has been "approved" by the FCC,**
 17 **and certainly does not suggest that the FCC would automatically approve**
 18 **any rate that includes an overhead loading of that magnitude.**

19
 20 **3. The application of the FCC's pricing standard to rates beginning on April**
 21 **15, 1997, and the refund of any overcharges since that date, is based on a**
 22 **written commitment made to the FCC by BellSouth and does not constitute**
 23 **"retroactive ratemaking."**

24
 25 **4. The legal and public policy reasons for the application of the FCC's**
 26 **pricing standards to intrastate rates for payphone access services are not**
 27 **currently subject to appeal, and their going-forward application is not**
 28 **"uncertain" in any way.**
 29

30

31 Q. AT PP. 2-3 OF HER TESTIMONY, MS. BLAKE DESCRIBES THE FCC'S
 32 REQUIREMENTS. IS HER DESCRIPTION ACCURATE?

33 A. Only in part. Unfortunately, the part she gets wrong is extremely important.

1 Ms. Blake states, “in 1996 and 1997, the Federal Communications
2 Commission (“FCC”) issued a series of orders implementing section 276 of the
3 federal Act.” I agree; the FCC’s requirements were established in the Payphone
4 Orders issued in 1996 and 1997 (Ms. Blake cites to the same list of orders that I
5 cited to in my direct testimony). She then goes on to state that “these orders
6 established that intrastate rates for PTAS line must comply with the new services
7 test (“NST”).” This is correct, but only partially so: as I described above and in
8 my direct testimony, the FCC’s *Payphone Orders* actually set forth a four-part
9 test: “LECs must have effective state tariffs that comply with the requirements”
10 for PTAS rates and “these requirements are: that payphone services state tariffs
11 must be cost based, consistent with section 276, nondiscriminatory, and consistent
12 with Computer III tariffing guidelines.” The new services test is one, but only
13 one, of the four applicable requirements.

14 Ms. Blake also goes on to mischaracterize the NST. She describes it as a
15 requirement “which generally requires a carrier to provide cost data to establish
16 that the rate for a service will not recover more than a just and reasonable portion
17 of the carrier’s overhead cost.” In reality, the FCC has been clear that the NST
18 means much more than this. As explained in the *First Wisconsin Order* (¶¶ 8-11,
19 confirmed in the *Second Wisconsin Order* ¶¶23-25), the FCC expects LECs to
20 “consistently and rigorously” apply the principles it has previously established for
21 the cost justification of rates subject to the NST, and “to satisfy the new services

1 test” BellSouth must *demonstrate* that the proposed rates do not recover more
2 than the direct costs it incurs to provide the service plus a just and reasonable
3 portion of its overhead costs. Direct costs “must be determined by the use of an
4 appropriate forward-looking, economic cost methodology,” and any overhead
5 allocations included in PTAS rates must also be “based on cost.” I will describe
6 in Section 2 of my testimony how the FCC has stated each of these requirements
7 may be met.

8
9 Q. AT PP. 5-8 OF HER TESTIMONY, MS. BLAKE DESCRIBES THE FCC’S
10 *SECOND WISCONSIN ORDER*. IS HER DESCRIPTION ACCURATE?

11 A. Again, only in part. She notes that the in the *Second Wisconsin Order*, “the FCC
12 stated its belief that ‘the Order will assist states in applying the new services test
13 to BOC’s intrastate payphone line rates in order to ensure compliance with the
14 Payphone Orders and Congress’ directives in section 276.” I agree: the FCC
15 produced the *Wisconsin Orders* in part to provide any needed clarification to the
16 states in the states’ efforts to apply the requirements set forth in the *Payphone*
17 *Orders* and § 276. The FCC is clear that the *Wisconsin Orders* are intended to
18 provide clarification, if needed, regarding requirements that were established in –
19 and have been in place since - 1996 and 1997; it does *not* create new requirements
20 or make material changes to existing standards (Ms. Caldwell correctly notes in
21 her testimony that the FCC’s guidance set forth in the *Wisconsin Orders* does not

1 change the underlying cost methodology).

2 In contrast, Ms. Blake argues (¶5) that the *Wisconsin Orders established*
3 certain principles to be followed when applying the NST, including the
4 requirements that direct costs be calculated pursuant to an established forward-
5 looking economic cost methodology, that reasonable overhead loadings be
6 calculated pursuant to established cost-based methodologies, that the SLC/EUCL
7 must be considered in order to avoid the double-recovery of costs, and that all
8 rates associated with PTAS service, not just the line rate, are subject to the
9 requirements of the *Payphone Orders*.

10 There is no support whatsoever for a conclusion that, through the
11 *Wisconsin Orders*, the FCC changed the applicable federal standard for the pricing
12 of intrastate payphone services. To the contrary, in the *Second Wisconsin Order*
13 (¶ 14) the FCC reiterated its 1996 finding that “even if LEC payphone tariffs were
14 filed at the state level, they should nevertheless comply with section 276 as
15 implemented by the Commission and, as such, should be cost-based,
16 nondiscriminatory, and consistent with both section 276 and our Computer III
17 tariffing guidelines.” In upholding elements of the Common Carrier Bureau’s
18 *First Wisconsin Order*, the FCC (¶ 23) described that order as one in which the
19 Bureau “summarized the guidelines to be applied under Computer III and other
20 Commission proceedings concerning the application of the new services and cost-
21 based ratemaking principles,” and one (¶ 24) in which the Bureau “confirmed

1 *longstanding* [FCC] policy” (emphasis added). Similarly, the FCC continuously
2 referred to its conclusions as being based directly on its existing and longstanding
3 precedent.

4
5 Q. DID THE *WISCONSIN ORDERS* CHANGE THE EXISTING FCC PRICING
6 STANDARD OR ESTABLISH NEW ELEMENTS OF THAT STANDARD?

7 A. Not at all. In the *Second Wisconsin Order*, the FCC responded to various LEC
8 Coalition claims that LECs need not follow existing FCC precedent when
9 applying parts of the four-part test to PTAS rates. The FCC consistently
10 responded that the LEC Coalition was incorrect, and reaffirmed its previous
11 policies. As a result, the requirements set forth in the *Wisconsin Orders* represent
12 a reaffirmation of existing FCC requirements, and not a change in those
13 requirements.

14 Ms. Blake first suggests that the *Second Wisconsin Order* established a
15 change in the requirement that forward-looking economic costs must be used to
16 calculate direct costs. In reality, the FCC stated clearly (§ 43, not cited by Ms.
17 Blake) that “contrary to the claims of the LEC Coalition, *the Commission’s*
18 *longstanding precedent shows that we have used forward-looking cost*
19 *methodologies where we have applied the new services test*” (emphasis added).

20 There is no reason to confuse an explicit reaffirmation of “longstanding
21 precedent” regarding the application of the new services test with a “change” in

1 the application of that same test.

2 Ms. Blake next suggests that the FCC somehow “changed” the federal
3 pricing requirement when it concluded that ILECs and state regulators are not
4 required to use unbundled network element (“UNE”) overhead levels when
5 pricing payphone services. This assertion turns reality on its head to a certain
6 degree. In the *Second Wisconsin Order*, the FCC rejected the LEC Coalition’s
7 claims that certain conclusions made by the Bureau in the *First Wisconsin Order*
8 represented a change from the standard as set forth in the *Payphone Orders*; the
9 exact position taken by Ms. Blake in her testimony.

10 Also in the Second Wisconsin Order, the FCC repeatedly struck down the
11 LEC Coalition’s assertions that its long standing policies should not apply to
12 PTAS Rates. The following are a few examples. In response to a claim by the
13 LEC Coalition that the section 251/252 pricing regime should not apply to
14 payphone service offerings of the LECs, the FCC noted (§ 48) that it had
15 “previously reached the same conclusion in the *First Payphone Order*.” In
16 response (§ 49) to a LEC Coalition assertion that “the *Bureau Order* mandates
17 exclusive use of the TELRIC pricing methodology and that this mandate is
18 improper,” the FCC noted that the order “contains no such directive.” With
19 regard to the calculation of overhead loadings to be applied, the FCC again
20 affirmed *longstanding precedent* by referring to the use of overhead loading
21 methodologies used in previous applications of the NST. The FCC’s reference to

1 a methodology for calculating overhead loadings that was first adopted in 1993
2 cannot seriously be argued to be a “new” requirement or a “change” in the
3 application of the NST.

4 Ms. Blake next suggests that the FCC “changed” the federal pricing
5 standard by upholding the conclusion of the Bureau in the *First Wisconsin Order*
6 that the development of cost-based rates requires the recognition of additional
7 revenues sources, including the Subscriber Line Charge (“SLC”). In reality, the
8 FCC (pp. 59-60) simply affirmed the Bureau’s observation that “cost-based
9 payphone line service rates *calculated pursuant to the Payphone Order*
10 *requirements*” must take this charge into account. In other words, the FCC agreed
11 with the Bureau that *the necessity of making an adjustment to prevent the double*
12 *recovery of costs in a cost-based rate is a part of the original requirements set*
13 *forth in the Payphone Orders.*

14 Finally, Ms. Blake suggests that the FCC “changed” the federal pricing
15 requirements in order to include local usage rates in the category of rates subject
16 to the requirements of the *Payphone Orders*. A review of the language of the
17 *Second Wisconsin Order* makes it clear that, once again, the FCC is simply
18 rejecting a claim by the LEC coalition that such a requirement was not established
19 in 1996: “we reject the LEC Coalition’s interpretation of the Commission’s
20 orders.” *Referring to a requirement previously set forth in the Payphone Orders,*
21 *the FCC concluded that “providing only a line, without allowing local calls over*

1 the line, *does not satisfy this requirement*. We *required* payphone lines services to
2 be priced at cost-based rates in accordance with the new services test. Therefore,
3 any rate for local usage billed to a payphone line. . . must be cost-based” (§ 64,
4 emphasis added). The FCC finally concluded (§ 65) that the attempt by the LEC
5 Coalition to remove usage rates from the federal pricing requirements would
6 “constitute an impermissible ‘end run’ around the requirements of section 276.”
7 According to the FCC, the requirement for cost-based rates for local usage began
8 not with the *Wisconsin Orders* or even with the *Payphone Orders*, but with the
9 passage of the Act itself.

10 At the end of the day, the FCC took the opportunity in the *Second*
11 *Wisconsin Order* to reaffirm longstanding (in some instances more than ten years)
12 precedent and to deny the various requests by the LEC Coalition to seek
13 exceptions to this longstanding precedent. There is no basis whatsoever for a
14 conclusion that the requirements set forth in the *Wisconsin Orders* – requirements
15 that the FCC itself plainly characterizes as either clarifications to, or
16 reaffirmations of, existing policy – represent a new set of requirements that
17 BellSouth (1) could not have foreseen when making its commitment to the FCC in
18 1997 to refund amounts by which its tariffs failed to include cost-based rates in
19 compliance with Section 276 and the Payphone Orders, and (2) was somehow
20 unaware of during the period from April 15, 1997 to the present.

1 Q. MS. BLAKE SUGGESTS (P. 13) THAT THE COMMISSION HAS THE
2 AUTHORITY TO ORDER BELLSOUTH TO REVISE ITS PTAS RATES
3 BASED ON THE FCC'S "CLARIFICATION" IN THE *SECOND WISCONSIN*
4 *ORDER*, BUT CAN ONLY DO SO ON A PROSPECTIVE BASIS. DO YOU
5 AGREE?

6 A. No. Ms. Blake suggests that the effective date of any such revision can only be
7 prospective because "BellSouth at all times has and is currently charging rates in
8 Florida that comply with binding, effective and unchallenged orders of this
9 Commissions. Ms. Blake fails to recognize that, notwithstanding this
10 Commission's order, at all times since April 15, 1997 BellSouth has charged and
11 collected from payphone services providers rates that are undoubtedly in violation
12 of the Section 276 of the Act and the *Payphone Orders*.

13 Ms. Blake first refers to the FCC's discussion of the need to adjust
14 intrastate rates to reflect the SLC/EUCL in order to avoid the double recovery of
15 costs. As described above, the FCC was clear that rates calculated in a manner
16 consistent with the 1996 Payphone Orders must include such an adjustment. This
17 requirement is *not* a new requirement established by the FCC in the *Wisconsin*
18 *Orders*, and is *not* a requirement that BellSouth can seriously argue that it was
19 unaware of until the *Wisconsin Orders* were issued. Ms. Blake's statement (p. 9)
20 that "BellSouth was not required to reduce its payphone line rates by the amount
21 of the EUCL on a specific date" is simply wrong: BellSouth was required to make

1 such an adjustment effective April 15, 1997.

2 Second, Ms. Blake argues that “additional guidelines on how the overhead
3 loadings should be calculated” provided by the FCC in the *Second Wisconsin*
4 *Order* represent a requirement to be reflected in BellSouth’s PTAS rates, but only
5 on a prospective basis. What Ms. Blake fails to note is that the overhead loading
6 methodology that Ms. Caldwell used in the cost studies filed with her testimony in
7 this proceeding is a methodology first adopted by the FCC in 1993 – in a
8 proceeding in which BellSouth took part and which was clearly denominated as
9 an application of the NST. BellSouth cannot seriously argue that it has been
10 unaware of this existing NST standard since April 1997 or that it has somehow
11 forgotten that it took part in the FCC’s 1991-1993 ONA pricing investigation.
12 Again, BellSouth should have developed compliant overhead loadings for some
13 PTAS rate elements pursuant to this methodology on April 15, 1997.

14 Ms. Blake’s argument that the Commission can only require BellSouth’s
15 PTAS rates to be compliant with the FCC’s requirements on a going-forward
16 basis ignores the fact that BellSouth has been aware of the requirements, including
17 the requirements addressed by the FCC’s clarifications, since 1997. She cannot
18 seriously argue that BellSouth was somehow “blindsided” by the FCC’s
19 clarification of the requirements, particularly since the FCC’s clarification in the
20 *Wisconsin Orders* comes most often in the form of the rejection of a LEC
21 Coalition claim that the requirements are something other than the “longstanding

1 precedent” of the FCC.

2

3 Q. MS. BLAKE ARGUES THAT BECAUSE BELLSOUTH’S PTAS RATES
4 WERE APPROVED BY THE COMMISSION IN 1998, BELLSOUTH HAS NO
5 OBLIGATION TO HAVE FCC-COMPLIANT PTAS RATES IN EFFECT
6 TODAY AND NO OBLIGATION TO ISSUE REFUNDS FOR
7 OVERCHARGES. DO YOU AGREE?

8 A. Absolutely not. Ms. Blake states (p. 12) that “as this Commission has found,
9 BellSouth’s PTAS rates have been, and are currently, in compliance with the
10 FCC’s new services test.” This statement is absurd on its face. Again, Ms. Blake
11 fails to recognize that, notwithstanding this Commission’s order, BellSouth has
12 charged and collected rates that, undoubtedly, violate Section 276 of the Act and
13 the *Payphone Orders*. At no time in its 1998 order did this Commission conclude
14 that BellSouth’s rates in effect in 1998 would be FCC-compliant in 2003, nor
15 could it have. The Commission had no crystal ball or other means of divining
16 what BellSouth’s costs would be five years in the future, and made no claim that it
17 did. The most that the Commission could have concluded was that, based on its
18 understanding of the FCC requirements at that time, BellSouth’s rates appeared to
19 be in compliance at that time.

20 Two things have happened in the interval. First, the FCC has clarified the
21 application of the standard adopted in 1996 (and in effect since that time). Based

1 on this clarification, it is clear that BellSouth's rates were not in compliance with
2 the applicable standard in 1998 (at a minimum, they were overstated by the
3 amount of the SLC/EUCL). Second, BellSouth's costs have changed, as its cost
4 studies provided to this Commission during the intervening years illustrate. Even
5 if BellSouth's rates had been in compliance in 1998, it is almost certain, based on
6 the magnitude of the changes in BellSouth's costs, that these rates cannot be
7 compliant today. Ms. Blake cannot seriously argue that BellSouth was unaware of
8 the FCC requirements, unaware of its obligation to offer cost-based rates for
9 PTAS, and unaware that the relevant costs were changing over time. Yet she
10 argues for complete absolution of BellSouth's willful failure to comply with the
11 FCC requirements based on the theory that the FPTA and this Commission did
12 not act to force such compliance. In other words, because BellSouth has
13 knowingly gotten away with charging excessive rates until now, it is too late for
14 this Commission to require that it comply.

15 A simple analogy puts BellSouth's position into perspective. Assume that
16 after reviewing the records of a deposit, I notice that the bank has accidentally
17 credited a deposit twice, so that my account balance is overstated. I could not
18 seriously argue that I do not know that the account is overstated. I would have
19 two options: I could notify the bank immediately (at which time an adjustment
20 would be made), or I could wait until someone else, in this case the bank, notices
21 the error (at which time an adjustment would be made, including the accrued

1 interest on the overstated amount). At that day of reckoning, I could not argue
2 that even though I knew that the account was overstated I was nevertheless
3 entitled to keep the money because the bank had not taken it from me right away.
4

5 Q. WOULD AN ADJUSTMENT OF BELL SOUTH'S PTAS RATES TO FCC-
6 COMPLIANT LEVELS - BEGINNING ON THE DATE THAT BELL SOUTH
7 COMMITTED TO THE FCC THAT IT WOULD HAVE COMPLIANT RATES
8 IN EFFECT – CONSTITUTE RETROACTIVE RATE MAKING?

9 A. No. BellSouth knew prior to April 15, 1997 that compliant rates would have to be
10 in effect as of that date. The *Second Bureau Waiver Order* reiterated the mandate
11 that payphone access services tariffed at the state level must comply with the
12 federal pricing standard and, at the request of the LECs, granted a limited
13 extension of time for LECs to file tariffs that contained rates in compliance with
14 the four-part test. The Bureau noted (§ 18) that in requesting this limited waiver,
15 the "RBOC coalition concedes that the Commission's payphone orders, as
16 clarified by the *Bureau Waiver Order*" will determine the basis for how new and
17 existing payphone access service rates will be set.

18 There can be no real argument that BellSouth was not aware of this
19 requirement, including the elements of the four-part test and the "longstanding
20 precedent" regarding the FCC's past application of these requirements. Rather
21 than file compliant rates, BellSouth (along with the other members of the LEC

Coalition) has devoted significant resources since 1997 to its efforts to have the requirements eliminated or to exempt certain rates from compliance. That gambit has now failed, and it is time for compliant rates – developed according to the FCC’s pricing requirements established prior to April 15, 1997 and consistent with the FCC’s “longstanding precedent” regarding the application of those requirements – to be put into place. BellSouth should then refund the amount of any overcharges since April 15, 1997 in order to make good on its commitment to the FCC and in order to comply with applicable law.

Section 2: BellSouth’s Cost Analysis

Q. WHAT METHODOLOGY HAS BELL SOUTH USED TO CALCULATE THE DIRECT COSTS OF PTAS SERVICE?

A. Ms. Caldwell states (pp. 4-5) that the study was conducted pursuant to a Total Service Long Run Incremental Cost (“TSLRIC”) methodology, and is based on local loop characteristics that are specific to PTAS (p. 9). I agree with Ms. Caldwell that this methodology is appropriate.

Q. WHAT METHODOLOGY HAS BELL SOUTH USED TO CALCULATE OVERHEAD LOADINGS TO BE INCLUDED IN PTAS RATES AND DO YOU AGREE WITH BELL SOUTH’S UTILIZATION AND APPLICATION OF THAT METHODOLOGY IN THIS DOCKET?

1 A. As indicated in Ms. Caldwell's testimony (p. 7) and in the cost study, BellSouth
2 has elected to rely exclusively on its version of the methodology set forth in the
3 *ONA Tariff Order*. I have three fundamental problems with BellSouth's
4 approach: (1) BellSouth did not actually apply the methodology contained in the
5 *ONA Tariff Order*, (2) the methodology is for the purpose of developing a ceiling
6 for overhead loadings, rather than for developing the level of a reasonable
7 overhead loading, and (3) BellSouth has not demonstrated that it is reasonable to
8 use a methodology developed and adopted specifically for the very low rates
9 associated with non-essential switching features and to apply this methodology
10 broadly to all rate elements, including the monthly access line rate.

11

12 Q. HOW HAS BELLSOUTH CALCULATED ITS PROPOSED OVERHEAD
13 LOADINGS FOR PTAS?

14

15 BellSouth has elected to broadly apply a revised version of the *ONA Tariff Order*
16 methodology, one, but only one, of the methodologies described in the *Second*
17 *Wisconsin Order*. I disagree with BellSouth's process, and its justification of that
18 process, for several reasons: the FCC's guidelines for the development of a
19 reasonable overhead loading have been specific, rather than general and infinitely
20 flexible suggestions; and the methodologies are applicable in specific
21 circumstances, but are not necessarily applicable to all rates.

Ms. Caldwell states (p. 4) that the FCC has “outlined ‘a flexible approach to calculating BOCs’ overhead allocation for intrastate payphone lines’.”

Unfortunately, her quote is out of context. In the paragraphs preceding her cited language, the FCC (§§ 51-57) described the specific requirements of the methodologies previously used to develop compliant overhead loadings, including the explicit limitations inherent in the application of those methodologies. It also explicitly rejected claims of the LEC Coalition that the permitted flexibility should be broader: “the LEC Coalition argues that any overhead loading a BOC might choose is ‘reasonable’ for purposes of the new services test so long as it is justified by ‘some plausible benchmark’ ... We reject the LEC Coalition’s argument. As noted above, *under the new services test and our precedent*, BOCs bear the burden of affirmatively justifying their overhead allocations. In general, in our decisions applying the new services test to services offered to competitors, we have allowed the BOCs *some* flexibility in calculating overhead allocations, *but we have carefully reviewed the reasonableness* of the BOCs’ overhead allocations” (§§ 55-56, emphasis added). The FCC concluded: “we have *not* simply accepted any ‘plausible benchmark’ proffered by a BOC” (§ 56, emphasis in original).

In the Second Wisconsin Order, the FCC makes it clear that not all overhead loadings are reasonable in all circumstances: “We also reject the Coalition’s argument that the Commission’s *Payphone Features Order* supports

1 the proposition that any overhead allocation within a wide range is ‘reasonable’
2 for purposes of the new services test. In fact, that decision shows that our
3 evaluation of overhead allocations under the new services test has been very fact-
4 specific. We did permit an unusually high overhead loading in that matter based
5 on adequate justification. We stressed, however, that our decision was specific to
6 the circumstances of that particular investigation, which involved payphone
7 features whose monthly costs did not exceed a few cents per line. We specifically
8 ruled that ‘we do not find that it will necessarily be determinative in evaluating
9 overhead loadings for other services’” (§57).

10 The flexibility cited to by Ms. Caldwell clearly has limits: not all
11 benchmarks are meaningful, and not all overhead loadings are applicable to all
12 rates (specifically, unusually high overhead loadings are limited to rates that,
13 because of very low direct costs, will still be low if a large overhead loading is
14 added). And most importantly, the FCC has been abundantly clear that any
15 flexibility in the process does not relieve the LEC of its responsibility to fully
16 justify any proposed loading: “Consistent with Commission precedent, the BOCs
17 bear the burden of justifying their overhead allocations and demonstrating
18 compliance with our standards.”

19 In summary, the Commission should not permit BellSouth to take the
20 FCC’s language that deviations from a uniform overhead loading can be used, if
21 but only if demonstrated to be reasonable, and turn it into broad conclusion that

1 all of the FCC's requirements are infinitely flexible in their application. The FCC
2 concluded that states can use UNE overhead loadings (with an adjustment to
3 include retail costs, *if* the LEC demonstrates that such costs exist), the
4 methodology set forth in the *Physical Collocation Tariff Order*, or the
5 methodology set forth in the *ONA Tariff Order*. The FCC did *not* conclude that
6 LECs could alter these methodologies to their liking or that state regulators could
7 rely upon the LEC's altered versions of these methodologies in order to ascertain
8 whether existing or proposed rates are reasonable. The FCC also did *not* conclude
9 that all methodologies are applicable for all rates; in fact in found just the
10 opposite: some overhead loadings are reasonably applicable only to very low
11 rates.

12
13
14 Q. MS. CALDWELL ARGUES (P. 7) THAT SIMPLY BY USING ARMIS DATA
15 BELLSOUTH CAN COMPLY WITH THE METHODOLOGY IN THE *ONA*
16 *TARIFF ORDER*. IS SHE RIGHT?

17 A. No. The *ONA Tariff Order* includes a specific and detailed methodology
18 previously relied upon by the FCC in the application of the *Computer III*
19 requirements. Any suggestion that the FCC did not actually intend to permit the
20 use of the methodology found in the *ONA Tariff Order*, but instead intended to
21 say that the LECs should be permitted to use any methodology that they wish as

long as they begin with accounting data from ARMIS, ignores this fact. The *Second Wisconsin Order* (§54) specifically states that it is permissible to “determine overhead assignments using *the methodology* that the Commission used to evaluate the reasonableness of ONA tariffs in the *ONA Tariff Order*” (emphasis added). An interpretation that equates the specific and detailed calculations found in the *ONA Tariff Order* with a general suggestion to simply begin with ARMIS data and make calculations as you see fit is not at all consistent with what the FCC has permitted.

Q. PLEASE DESCRIBE THE METHODOLOGY FOR THE DETERMINATION OF A CEILING FOR REASONABLE OVERHEAD LOADINGS AS DEVELOPED BY THE FCC IN THE *ONA TARIFF ORDER*.

A. In the *ONA Tariff Order*, the FCC utilized ARMIS data to calculate a ceiling for LEC overhead loadings based on a ratio of direct costs to total costs. An attachment to that order spells out, in detail, how this calculation is to be made.

As described above, two elements of the *ONA Tariff Order* need to be specifically considered. First, the task before the FCC was the determination of reasonable rates for Basic Service Elements (“BSEs”). BSEs were a part of the FCC’s ONA regime for network unbundling, and (1) represent switching features (rather than network facilities such as a local loop) that were (2) considered to be optional to the purchaser, as “distinguished from the essential, underlying

1 switching and transmission services called basic serving arrangements (“BSAs”),
2 and (3) which were offered at very low rates. It is important to consider the *ONA*
3 *Tariff Order* methodology in this specific context: it is a methodology used to
4 calculate an overhead ceiling for the rates for optional features, not essential
5 switching and transmission services.

6 Second, it is important to consider that the *ONA Tariff Order* is an
7 approach for calculating a ceiling, not a *per se* reasonable level of overhead
8 loadings. For those accounts that include both direct and shared costs, the FCC
9 treated the total amount as shared in its calculation. As a result, the FCC formula
10 calculates a theoretical maximum overhead loading that is reasonable if, but only
11 if, all of the costs in those accounts are properly treated as shared rather than
12 direct. There is no reason to assume that this is true.

13 This approach has proven to be complex in application. Because it
14 produces a theoretical maximum that may (and almost certainly does) yield an
15 overhead loading that is much higher than a reasonable level, and because its
16 application is limited to features (rather than network transmission and switching
17 of calls), this methodology has not, to my knowledge, been relied upon by any
18 state regulator to determine a reasonable overhead loading for PTAS rate
19 elements.

20
21 Q, BASED ON ITS VARIATION OF THE *ONA TARIFF ORDER*

1 METHODOLOGY, WHAT OVERHEAD LOADING DOES BELL SOUTH
2 ARGUE IS REASONABLE FOR ALL PTAS RATES?

3 A. Based on a variation of this methodology (not the exact methodology used by the
4 FCC in its ONA investigation), a methodology that is specifically for the purpose
5 of calculating a *maximum overhead loading for rates to be applied to features that*
6 *are non-essential and offered at very low cost*, BellSouth has concluded that a
7 overhead loading of 50.42% ought to be considered presumptively reasonable and
8 applied to all PTAS rate elements, including those for the local access line and
9 local usage.

10 The FCC's NST permits a LEC to add a reasonable amount of overhead
11 cost to its calculation of direct cost, but the LEC bears the burden of
12 demonstrating that this "overhead loading" is reasonable *for that rate*. The
13 permitted overhead loading is expressly for the purpose of recovering a portion of
14 the costs that are incurred to provide the service or element but that are not
15 specifically caused by the provisioning of the service or element being studied.
16 The permitted overhead loading is *not* analogous to the "markup" that a retailer
17 might add to its cost of acquiring goods at wholesale, because such a markup
18 includes, at a minimum, the retailer's return on assets that is beyond the scope of a
19 permitted overhead loading (as the Commission is aware, BellSouth's return is
20 included in its annual charge factors and therefore already reflected in the direct
21 cost).

1 What BellSouth is seeking in this proceeding is well beyond reasonable,
2 and well above what would be allowed by the FCC's pricing requirements.

3

4 Q. THE FCC'S SECOND WISCONSIN ORDER ALSO PERMITS THE USE OF
5 THE METHODOLOGY SET FORTH IN THE *PHYSICAL CO-LOCATION*
6 *TARIFF ORDER*. DID BELLSOUTH ELECT TO RELY UPON THIS
7 METHODOLOGY?

8 A. No.

9

10 Q. IF BELLSOUTH'S ONA TARIFF ORDER CALCULATION IS INACCURATE
11 AND ITS APPLICATION LIMITED TO NON-ESSENTIAL FEATURES WITH
12 LOW RATES, WHAT METHOD REMAINS FOR THE COMMISSION TO
13 DEVELOP A REASONABLE OVERHEAD LOADING FOR THE PTAS
14 RATES ASSOCIATED WITH THE LOCAL ACCESS LINE AND LOCAL
15 USAGE?

16 A. The remaining option set forth in the *Wisconsin Orders* is to base the overhead
17 loadings included in these PTAS rates on the overhead loading accepted by the
18 Commission to develop BellSouth UNE rates.

19 As I described in my direct testimony, the application of the overhead
20 loading approved by the Commission for inclusion in the UNE represents a
21 reasonable approach and has been relied upon extensively both other state

1 regulators. As the FCC points out in the *Second Wisconsin Order* (§52), “the
2 Bureau approved the use of UNE loading factors to determine an appropriate
3 overhead calculation for payphone services. We agree with the Bureau that UNE
4 overhead loadings may be used in this manner, and states that have used this
5 methodology are in full compliance with section 276 and our *Payphone Orders*.”
6 UNE overhead loadings represent the level of such loadings last demonstrated by
7 BellSouth to be reasonable. The one potential adjustment to the UNE overhead
8 loading, as noted by the FCC, is the possibility of including retail costs – if, but
9 only if, BellSouth demonstrates that such incremental retail costs exist – when
10 developing rates for PTAS. Since BellSouth has not offered any information to
11 support such a retail increment, this point is moot for the purposes of this
12 proceeding.

13 Q. IS THIS METHODOLOGY AN APPROPRIATE AND LOGICAL MEANS OF
14 EVALUATING THE REASONABLENESS OF THE LEC’S RATES FOR
15 INTRASTATE PAYPHONE ACCESS SERVICES?

16 A. Yes. To date, it is the only method whose results are available. As its testimony
17 makes clear, BellSouth has not applied the FCC’s *Physical Collocation Tariff*
18 *Order* methodology and has applied a modified version of the *ONA Tariff Order*
19 methodology (whose application is limited to features, anyway). The UNE
20 methodology remains the only option available for which supporting underlying
21 data are available.

1

2 Q. THE UNE OVERHEAD LOADING ADOPTED BY THE COMMISSION
3 APPLIES TO DIRECT COSTS BASED ON A TELRIC METHODOLOGY.

4 BELL SOUTH'S DIRECT COSTS IN THIS PROCEEDING ARE BASED ON
5 TSLRIC. DOES THIS MEAN THAT AN ADJUSTMENT TO THE
6 OVERHEAD LOADING IS NEEDED?

7 A. No. BellSouth may argue that because the cost objects are different, applying a
8 TSLRIC versus a TELRIC methodology is likely to yield a different measure of
9 direct cost and thereby justify a different overhead loading. This would not be
10 correct.

11 As an initial matter, it is important to note that TSLRIC and TELRIC are,
12 by definition, the same methodology (the FCC defines TELRIC in terms of
13 TSLRIC, and in the *Second Wisconsin Order* (¶45) the FCC refers to "TELRIC
14 and TSLRIC," not "TELRIC versus TSLRIC." The distinction is in the cost
15 object: TSLRIC focuses on services (or more precisely, the rate elements of a
16 service) and TELRIC focuses on network elements. Depending on the network
17 functionality being studied, TSLRIC and TELRIC results may be different. "May
18 be" is not the same as "will be," however, and in this case such a concern would
19 not apply. In its cost studies, BellSouth has treated the direct and shared costs for
20 the network functions in question in a consistent manner. As Ms. Caldwell points
21 out, BellSouth has used the last-approved TELRIC inputs in its TSLRIC study.

1 While it is true that TSLRIC and TELRIC results *may* be different, it is also
 2 possible – as is the case in this proceeding – that TSLRIC and TELRIC results
 3 may be the same.

4
 5 Q. BASED ON THE BELL SOUTH COST INFORMATION, CAN YOU DEVELOP
 6 A RATE PROPOSAL FOR PTAS?

7 A. Yes.

8 BellSouth reports that the local loop, switch port, and local usage needed
 9 to provide PTAS has a statewide average TSLRIC of ~~\$16.05~~^{16.40}. Applying an
 10 overhead loading of 10% (higher than the factor applied to a comparable value in
 11 BellSouth's UNE cost studies) yields a rate of ~~\$17.65~~^{18.04}. This is the amount of
 12 revenue needed by BellSouth to recover both its direct costs and a reasonable
 13 overhead amount. Because BellSouth charges both an intrastate rate and a
 14 SLC/EUCL on these lines, the total charge should be equal to ~~\$17.65~~^{18.04}. The
 15 assessment of a SLC/EUCL of \$7.13 yields an intrastate rate of ~~\$10.52~~^{10.91}.

16 For the blocking and screening feature, the results of the *ONA Tariff Order*
 17 methodology, if performed correctly, would be applicable. While I do not believe
 18 that BellSouth has in fact applied this methodology correctly in their analysis, I
 19 am giving them the benefit of the doubt and accepting the 50.42% overhead
 20 loading that they calculate. This overhead loading results in a monthly rate of
 21 \$.22 for this feature.

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Section 3: Summary and Recommendations

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. ⁸ The pricing requirements for intrastate payphone access service rates set forth in the FCC’s *Payphone Orders* remain unchanged since adopted in 1997. In order to provide clarification and to respond to LEC attempts to limit the scope and effectiveness of these requirements, the Common Carrier Bureau and FCC issued the *Wisconsin Orders*.

The FCC’s *Second Wisconsin Order* leaves no doubt regarding the following: The LECs must demonstrate that both the direct cost and overhead loadings that form the basis for payphone access service rates are reasonable, and that, consistent with longstanding precedent, (1) direct costs must be based on a measure of forward-looking economic costs, (2) all rate elements must meet the requirements, (3) all relevant revenue sources must be considered when evaluating the reasonableness of a cost-based rate, and (4) the LECs cannot simply point to overhead loadings in other rates as a presumptively valid “FCC approved range,” but instead must demonstrate the reasonableness of any proposed overhead loading. The FCC described three methodologies that could be used to calculate a ceiling for reasonable overhead loadings and permitted flexibility regarding the choice of methodology, but did not grant the LECs the flexibility to change or alter these methodologies.

1 The testimony of the BellSouth witnesses is clear that it has not applied
2 *the Physical Collocation Tariff Order* methodology and its application of the *ONA*
3 *Tariff Order*, applicable only to nonessential features with very low rates, is not
4 consistent with the FCC methodology. The only method for determining a
5 reasonable overhead loading for which the Commission has supporting data is the
6 UNE method. Although the UNE overhead may be adjusted to include retail costs
7 if the LECs can demonstrate the existence of such costs, BellSouth has not
8 presented any evidence of incremental retail costs.

9 As a result, the highest monthly revenue that BellSouth can justify for
10 PTAS is \$17.65 (a SLC/EUCL of \$7.13 and an intrastate rate of \$10.52), and an
11 incremental \$.22 per month if the blocking and screening feature is added. Going-
12 forward rates should be established at these levels immediately. For the period
13 between April 15, 1997 and the Commission's order (January 19, 1999),
14 BellSouth should be ordered to refund, with interest, the amount of any
15 SLC/EUCL charges assessed to FPTA members. For the period January 19, 1999
16 to the present, BellSouth should be ordered to refund, with interest, the amount of
17 any charges in excess of \$17.65 per month.

18
19 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

20 A. Yes.

1 COMMISSIONER DEASON: Is your witness tendered for
2 cross?

3 MR. TOBIN: Thank you. The witness is tendered for
4 cross.

5 COMMISSIONER DEASON: Yes. Thank you.

6 MS. WHITE: Thank you, Commissioner.

7 CROSS EXAMINATION

8 BY MS. WHITE:

9 Q Mr. Wood, Nancy White for BellSouth
10 Telecommunications.

11 A Good morning Ms. White.

12 Q Good morning. Let's start out with your, your
13 curriculum vitae. You've been employed by BellSouth before in
14 your career, have you not?

15 A Yes, ma'am.

16 Q And is that the only ILEC by which you've been
17 employed?

18 A As an employee, yes, that's correct.

19 Q Okay.

20 A And I guess it was -- to be precise, it was BellSouth
21 Services rather than BellSouth Telecommunications that was the
22 entity that I was employed by.

23 Q Right. And in your employment with BellSouth
24 Services did you develop regulatory policy for BellSouth?

25 A I did not develop regulatory policy for BellSouth. I

1 conducted cost analysis primarily.

2 Q In your employment with BellSouth did you develop
3 business strategy?

4 A No, ma'am.

5 Q If you would look at Page 1-1 of your Exhibit
6 DJW-1 which is attached to your direct testimony, and if you
7 would look at the second paragraph, the last two sentences of
8 that paragraph. You state that prior to your work as a
9 consultant you were employed at a major local exchange company.
10 Was that local exchange company BellSouth?

11 A That's the only one that I was an employee in terms
12 of working on a contract basis. And subsequent to that I've
13 worked for some independent ILECs beyond BellSouth.

14 Q And in the last sentence of that paragraph you state
15 that in your capacity with BellSouth you were directly involved
16 in the development of regulatory policy and business strategy.
17 Do you see that?

18 A Well, it doesn't actually say that. It says, "in
19 each capacity." And I guess to be clear, in the employment
20 capacity at the interexchange carrier certainly involved in
21 development and implementation of regulatory policy and
22 business strategy. To be more precise, in terms of the ILECs,
23 that would have been on a contract rather than an employee
24 basis.

25 Q Well, I'm a little confused because you said that you

1 were employed in a management capacity at a major LEC. And you
2 told me that that LEC was BellSouth, didn't you?

3 A That's right.

4 Q And in your employment capacity with BellSouth, you
5 told me you were not involved with the development of
6 regulatory policy and business strategy; is that correct?

7 A Yes, ma'am. That's right.

8 Q So that last sentence of the second paragraph is
9 incorrect as regards your employment with BellSouth; is that
10 right?

11 A Well, I guess I hadn't really meant it to apply to
12 BellSouth. And to the extent it's unclear, then I was trying
13 before to clarify it.

14 On the, on the LEC side of the house I'm referring,
15 when I'm talking about regulatory policy and business strategy,
16 to contract work for some independent ILECs, not for BellSouth.
17 So I, I see what you're saying, and I guess I may change that
18 language going forward because I hadn't really -- I have
19 certainly not meant to create any confusion there.

20 Q Let's look at Page 5 of your direct testimony,
21 Footnote 3, if you will. In that footnote, you state -- and
22 this is the second, I'm sorry, the third sentence -- that, "In
23 this proceeding, the Commission can and should apply the FCC
24 standards to both Verizon and Sprint." And I guess that
25 confused me a little bit.

1 In this case today, are you asking the Commission to
2 do something with regard to Verizon and Sprint or just
3 BellSouth?

4 A No, ma'am. As I understand, the complaint now
5 revolves or involves specifically BellSouth. It certainly
6 should, as a matter of policy, should the situation arise,
7 apply the same standard to Verizon and Sprint. But you're
8 correct, that's not part of this proceeding.

9 Q And has the FPTA filed a similar petition at this
10 Commission against Verizon and Sprint?

11 A Not to my knowledge as of this point in time.

12 Q And do you know whether they intend to?

13 A I don't know.

14 Q Now on Page 9 and 10 of your direct testimony you
15 list four questions that you believe must be answered in any
16 analysis of BellSouth's rates. Do you see that?

17 A Yes, ma'am, for the payphone rates.

18 Q Now the first of those questions were whether
19 BellSouth's pay telephone rates were cost-based.

20 Would you agree that the Commission, this Commission
21 found that to be the case in Order Number PSC-98-1088 issued on
22 November, I mean, excuse me, September 11th, '98?

23 A I recall language about the new services test. I'm
24 not sure about cost-based. The problem, of course, is they
25 only had half the costs that they're required to consider.

1 BellSouth didn't -- they only provided the direct half, they
2 didn't provide the overhead half. So I'm not sure how the
3 Commission could ultimately reach a decision regarding
4 BellSouth's overhead costs in that case because you didn't give
5 them any.

6 Q Do you have that January -- I mean, excuse me, I keep
7 using a different month -- the September 11th, '98, order with
8 you?

9 A I don't have it over here with me, but --

10 Q It's in Tab 2.

11 A But I believe it's in your book.

12 Q Right. Tab 2 of the book, if you still have that, or
13 I'd be happy to -- would you look at -- it's Tab 2 of that
14 book. And if you look at Page 3 of that order.

15 A Yes, ma'am.

16 Q If you'd look, actually look at the first sentence on
17 Page 3. Would you agree that the Commission recognized in that
18 order that a LEC's payphone service offering must be
19 cost-based?

20 A Yes, ma'am. Then, of course, the important question
21 is what does that mean? The ILECs, including BellSouth, were
22 arguing fairly strenuously that it meant something other than
23 what the FCC has now been clear that it intended.

24 When we look at the Wisconsin orders, they don't say,
25 well, we're now going to clarify because we weren't clear

1 before. What they say is we're now going to reiterate our
2 long-standing policy.

3 So it was FCC policy at that time, but it's not what
4 the Commission applied and it's not the information that
5 BellSouth provided.

6 Q Well, let's look at Page 5 of that order, first full
7 paragraph. If you'd look at the last sentence, would you agree
8 that the Commission stated in that sentence that the LECs'
9 current tariffed rates were cost-based?

10 A Yes, ma'am. I think if we go to the beginning of
11 that sentence, it says, "Based on our review of these studies."
12 And, again, you gave them a TSLRIC study; you didn't give them
13 an overhead study at all.

14 Q All right. Well, let's look --

15 A So they could --

16 Q I'm sorry.

17 A They could bless your direct costs, but they couldn't
18 really bless your overhead load.

19 Q Well, why don't we look at Page 6, and why don't we
20 look at the quote they have with regard to the first paragraph.
21 Do you agree that that states that no market has received as
22 much attention, scrutiny and evaluation from this Commission as
23 the pay telephone market?

24 A I see that.

25 Q And would you agree that in the first paragraph under

1 the conclusion the Commission stated that there's not been a
2 significant change in circumstances within the pay telephone
3 industry regarding the wholesale services offered to pay
4 telephone providers?

5 A I also see that.

6 Q Okay. And let's look at the second question you
7 think needs to be answered, and that's whether BellSouth's pay
8 telephone access rates are consistent with the requirements of
9 276, Section 276 of the Act, and let's stay with that 1998
10 Commission order.

11 If you look at Page 3, the first paragraph, first
12 sentence, would you agree that the Commission in this case
13 looked to see whether BellSouth's payphone service offering was
14 consistent with the requirements of Section 276?

15 A Yes, ma'am.

16 Q And would you agree that on Pages 6 and 7 this
17 Commission said that BellSouth's payphone offerings were
18 consistent with the requirements of Section 276?

19 A Yes, ma'am.

20 Q Now your third question is whether BellSouth's rates
21 are nondiscriminatory. Would you agree that the order we've
22 been discussing, the '98 order from this Commission, found that
23 to be the case?

24 A I would agree that the Commission considered that
25 part of the test on Page 3. I don't recall the conclusion.

1 And, of course, these are four independent requirements.
2 BellSouth has to meet all four. Meeting one of the four won't
3 do it; you've got to meet all four. So a Commission finding
4 on, consistent with 276, whatever that might be based on,
5 wouldn't overcome the fact that your rates weren't cost-based
6 and weren't consistent with the Computer III requirements.

7 Q Well, let's look at Page 7 of the order, the first
8 paragraph on Page 7. Would you agree that in that paragraph
9 the Commission stated that they had found that the LEC tariff
10 was cost-based?

11 A I'm sorry. My pages aren't numbered. Oh, there it
12 is. It's at the top.

13 Q And the Commission said in that same sentence that
14 BellSouth's telephone offerings, pay telephone offerings was
15 consistent with Section 276 of the Act, did it not?

16 A It did indeed. And, again, it did so based on half
17 of the essential cost information that the FCC has now
18 clarified was required not only at the time of the Wisconsin
19 order, but the FCC also made it very clear that was
20 long-standing policy, the ILEC bears the burden of
21 demonstrating the reasonableness of the overhead loading, and
22 you didn't provide this Commission with any of that
23 information. So they couldn't have reached these conclusions
24 based on the standard that the FCC says applied; in other
25 words, the long-standing FCC policy that gave you the burden to

1 demonstrate an overhead loading.

2 Q And I appreciate that, Mr. Wood. All I'm asking you
3 is whether this Commission found in 1998 that BellSouth's
4 offerings were consistent with Section 276 of the Federal Act.

5 A Yes, ma'am. And I had agreed with you on that.

6 Q And this Commission also found that BellSouth's pay
7 telephone offering was nondiscriminatory; isn't that correct?

8 A Yes, ma'am.

9 Q And it also found that BellSouth's pay telephone
10 access rates were compliant with the new services test; isn't
11 that correct? And if you're --

12 A I'm actually looking at the bottom of Page 6 where
13 the Commission says, "A tariff whose rates and terms mirror
14 those of a tariff previously approved by this Commission will
15 be presumed to have satisfied the new services test and will be
16 handled administratively."

17 I think what I said before about cost-based applies
18 here, too. The FCC has clarified now that its long-standing
19 policy on new service test requirements requires something more
20 than that application that the Commission is describing here.
21 It actually imposes a specific burden on BellSouth to
22 demonstrate the reasonableness of both direct and overhead,
23 which you didn't do.

24 So if the Commission relied on simply a previously
25 approved tariff, intrastate tariff as evidence of new service

1 test compliance, that just isn't the FCC standard.

2 Q And but the bottom line is that this Commission did
3 say that BellSouth's pay telephone access rates were compliant
4 with the new services test; isn't that correct? And I would
5 refer you to Page 5, the first full paragraph, last sentence.

6 A Well, I'm sorry. For the first paragraph what they
7 say is that the new services test requires that the rates for
8 the service does not recover more than a reasonable portion of
9 the carrier's overhead cost, and the costs must be supported by
10 a cost study.

11 Q I'm sorry. I'm looking at Page 5, the first full
12 paragraph. It starts, "While we required cost information,"
13 and specifically I'm looking at the last sentence that states,
14 and I quote, "We believe that these LECs' current tariffed
15 rates for intrastate payphone services are cost-based and thus
16 meet the new services test," end quote.

17 A I see that. I can't really, given what the FCC has
18 very clearly stated is its long-standing policy, reconcile that
19 sentence with the last sentence of the previous paragraph where
20 it says that the overhead cost must be supported by a cost
21 study. Because I've reviewed the record in that case pretty
22 carefully, and BellSouth has also responded in discovery in
23 this case that it did not supply an overhead cost study.

24 Q So is it your position -- your position is that the
25 Commission got it wrong in 1998; is that what you're saying?

1 A Well, I'm leaving the lawyering to the lawyering to
2 the extent that I can -- lawyers to the extent that I can.
3 What I'm saying is that as a factual matter, based on my
4 understanding and knowledge of the FCC's application of the new
5 services test starting back in 1991 when I was first involved
6 with it and going through the Wisconsin order where the FCC
7 clarifies, and clarifies that it's not adding or changing, it's
8 simply restating long-standing policy for how it should be done
9 and must be done, that the FCC requires an affirmative
10 demonstration through a cost study by the ILEC that its
11 overhead loading is reasonable. And it looks like the
12 Commission noted that in this first paragraph on Page 5, but
13 then reached a conclusion without actually getting a cost study
14 from you in the next paragraph. So I, I don't know how to
15 reconcile that. I can tell you factually you have to make an
16 affirmative demonstration, and you didn't in that case.

17 Q So in your opinion the Commission got it wrong in
18 1998, yes or no?

19 A I can't give you a legal answer to that.

20 Q I'm not asking for a legal answer. I'm asking for
21 your opinion.

22 A My opinion is that the FCC has been clear, was clear
23 at that time and is still clear: Overhead loadings must be
24 demonstrated to be reasonable by the ILEC and accompanied by a
25 cost study to do that. And if this Commission reached a

1 finding of new service test compliance without such a cost
2 study being provided by BellSouth, then that's inconsistent
3 with the way the FCC has consistently said that test has to be
4 applied.

5 Q But the --

6 A You can't --

7 Q I'm sorry.

8 A You can't do it without the cost information.

9 Q You can't do it without the cost support. So, but
10 the FPTA was a party to the Commission's docket in which this
11 '98 order came out, weren't they?

12 A I, I don't know in terms of their involvement in this
13 proceeding. I don't know the history on it.

14 Q So you don't know if they were a party or not?

15 A I believe they were involved in terms of their
16 participation. I simply don't know. I wasn't --

17 Q Do you know -- I'm sorry.

18 A I wasn't involved with them in that proceeding.

19 Q Do you know whether they appealed this order?

20 A I don't know.

21 Q Do you know whether since this order came out in
22 August of, of 1998 they've ever filed anything with this
23 Commission saying please look at the rates again?

24 A I don't know. It wouldn't be unusual if they
25 haven't. That's -- the strategy in a lot of states has been to

1 wait for the final clarification from the FCC rather than to go
2 back and try to reargue this at the states.

3 Q And that was a strategic decision; correct?

4 A Again, I don't know what decision they made or why
5 they made it. I can just tell you my experience from other
6 states is that it wouldn't be unusual to wait for the
7 clarification.

8 Q Do you know whether the FPTA ever sent a letter to
9 this Commission saying, hey, we'd like to have these rates
10 looked at again?

11 A I don't know.

12 Q Now the FCC first looked at Wisconsin -- or the FCC's
13 first look at Wisconsin was by the Common Carrier Bureau of the
14 FCC; is that right?

15 A Yes, ma'am. On delegated authority from the FCC.

16 Q And they, they issued an order on, excuse me, in
17 March of 2000; right?

18 A I believe.

19 Q And I think that's in Tab 4 of our --

20 A Yes, ma'am. The release date is March 2nd, 2000.

21 Q And let's just be absolutely clear here. The only
22 reason that the Common Carrier Bureau even took up this issue
23 for Wisconsin was because the Wisconsin commission determined
24 that it didn't have jurisdiction; **isn't that right?**

25 A I, like Mr. Renard, do not agree with that because I

1 was actually involved very extensively, in fact a little more
2 than he was in terms of meetings at the FCC during this period
3 of time.

4 And, in fact, starting on paragraph eight of that
5 bureau order, they actually stop talking about Wisconsin and
6 start talking about providing guidance to state regulators to
7 avoid unnecessary confusion and delay in the implementation of
8 payphone order compliant tariff filings. And they, you know,
9 provided what apparently was necessary clarification, although
10 ultimately it was simply a restatement of long-standing FCC
11 policy.

12 And so it was certainly taken up in the context of
13 replying to Wisconsin, but the stated purpose of the bureau
14 order and then later the Commission order is not simply to
15 respond to Wisconsin, but to provide needed guidance to the
16 states.

17 Q I'm sorry. So it's your opinion that the Common
18 Carrier Bureau's order of March 2nd, 2000, with regard to
19 Wisconsin applied to the entire nation?

20 A No, ma'am. What I'm saying is that the stated
21 purpose of this order and the stated purpose of the FCC's order
22 the following year is, A, to address the Wisconsin-specific
23 issues, but, B, specifically to provide guidance to the states
24 to apply the FCC standards, the long-standing FCC standards,
25 not any new ones. And I guess to put a fine point on it,

1 specifically to respond and reject the arguments that were
2 being made by the ILEC Coalition including BellSouth that
3 sought to change the long-standing FCC precedent.

4 So in both orders they're very clear, yes, we're
5 discussing Wisconsin, but we're also trying to provide guidance
6 to the extent we can for every other state. And paragraph 8,
7 9, 10, 11 and 12 all refer to things that have nothing to do
8 specifically with Wisconsin but are general application of the
9 FCC standards.

10 And then when you get to the next order, they
11 actually say that's their purpose, to assist states in applying
12 the new services test to BOCs intrastate payphone line rates in
13 order to assure compliance with the payphone orders and
14 Congress's directives in 276. And that's in paragraph 2.

15 So that's -- when you get to the Commission level,
16 they say straight up-front, this is the purpose of this order.

17 Q I'm sorry, Mr. Wood. I kind of lost my question
18 there for a minute.

19 The only -- let me start this over. The Common
20 Carrier Bureau received a letter from the Wisconsin commission,
21 did they not, saying they did not have jurisdiction over this
22 issue and they weren't going to deal with it; would you agree
23 with that?

24 A Yes, I do agree with that.

25 Q And that is the initial reason that the Common

1 Carrier Bureau took up this issue to begin with; correct?

2 A That is one of the two stated reasons that they took
3 up this issue.

4 Q And would you also agree that the Common Carrier
5 Bureau specifically only applied to certain ILECs in Wisconsin?

6 A In terms of the requirements, yes. In terms of the
7 clear language stating that it's intended to provide guidance
8 beyond Wisconsin, the answer is no. I mean, there were quite a
9 few ex parte meetings at the bureau level prior to the bureau
10 order or prior to this being taken up by the bureau in terms of
11 deciding Wisconsin, and the discussion was whether the
12 commission was going to, or the bureau was going to take up the
13 issue to provide guidance independently of any state request
14 such as Wisconsin. When the Wisconsin letter came in, the
15 bureau took the opportunity to do both, and the FCC at the
16 commission level in the next order was very clear it was taking
17 the opportunity to do both.

18 So I'm just not -- having been involved in all those
19 ex parte meetings about how important it was to get
20 clarification from the states, I'm not comfortable with the
21 characterization that says this was just about, ever just about
22 Wisconsin, because that's, that's just not true.

23 Q Mr. Wood, on Page 23 of your direct I believe you
24 indicate that your position is that the implementation of
25 appropriate PTAS rates will increase competition for payphone

1 services and ensure the widespread development of payphones.

2 Is that a fair assessment?

3 A I think I say that doing that, ensuring widespread
4 deployment and increasing competition are the stated objectives
5 of 276. I don't think I say that lowering the rates will
6 ensure that those are met. But certainly having the cost-based
7 rates in place is a necessary condition to meet those, those
8 objectives.

9 Q Well, I believe you would agree that FPTA's stated
10 purpose in this case, I believe from Mr. Renard, is to increase
11 competition for payphone services and ensure widespread
12 deployment of payphones; correct?

13 A That's right. And all I'm saying is that having
14 cost-based rates in effect is necessary to obtain those.
15 Having cost-based rates won't necessarily guarantee them.
16 There are other factors involved, and I haven't suggested that
17 there aren't. But certainly having the cost-based rates in
18 place is a necessary condition to do that. I mean, that's --
19 that goes back to the original, the very first FCC payphone
20 order.

21 Q On Page 21 and 22 of your, of your, of your direct
22 testimony you list some decisions from Delaware, West Virginia,
23 South Carolina, Maryland and Tennessee as states that applied
24 the FCC's four-part test to determine whether PTAS rates were
25 appropriate and lawful. Do you see that?

1 A Yes, ma'am.

2 Q I'm going to hand you an excerpt from the FCC's 2001
3 Trends in Telephone Service Report. Ms. Mays is handing them
4 out. And I would direct your attention to the last two pages
5 of that handout. The pages are numbered at the bottom 8-8 and
6 8-9.

7 And I'd like to have this marked as the next exhibit.
8 It could be called the August 2001 FCC Trends in Telephone
9 Service.

10 COMMISSIONER DEASON: It will be identified as
11 Exhibit 9.

12 (Exhibit 9 marked for identification.)

13 BY MS. WHITE:

14 Q And do you see the last two pages of that handout we
15 just passed that are labeled or entitled, Number of Payphones
Owned by LECs and Independent Operators?

A Yes, ma'am. I'm familiar with this report. I think
there's a more recent version, but, yes, I see those pages.

Q And you will be getting to that. I'd like to talk
about this one first.

I'd like you to look at the last column on the Page
8.8, Table 8.5 as of March 31st, 2000, the last column
entitled, Grand Total for Delaware, and I'd like you to compare
that number to the Page 8.9 and the grand total for Delaware.

A All right.

1 Q Would you agree that the grand total of payphone
2 lines decreased in Delaware from 2000 to 2001?

3 A Yes, ma'am.

4 Q And I believe the Delaware order, PTAS order was
5 issued in 1997; isn't that correct?

6 A I believe that's right. It was one of the very first
7 ones. So, you know, we saw a couple of hundred lines go out of
8 service in that period, and the question is how many more lines
9 would have gone out of service, how many more phones would have
10 been removed had the Delaware commission not acted as early as
11 it did to get these rates right.

12 Q And let's look at those same columns for West
13 Virginia. Would you also agree that the grand totals decrease
14 from 2000 to 2001 for West Virginia?

15 A Just a bit, not much. But, yes, I see that. And,
16 again, the question is how much would they have been reduced
17 without the action by the West Virginia commission?

18 Q And the West Virginia order was also, on the PTAS
19 rates was also issued in 1997; correct?

20 A Yes, ma'am. And to be clear, I'm not suggesting that
21 getting these cost-based rates in effect is going to cause some
22 net increase in the number of phones. What I'm saying is that
23 widespread deployment includes keeping as many phones in place
24 as possible for the benefit of the public. And if you've got a
25 slight decline as a result of a cost-based rate and what you

1 otherwise would have had is a dramatic decline where people
2 don't have access to those phones, whether it's 911, whether
3 it's primary use, whatever it is, if you didn't have the
4 cost-based rate, then there's clearly a public interest element
5 to having the rate in effect.

6 And if you look at some of these states on this
7 report and in the most recent reports where the cost-based
8 rates are not in effect, you see much more precipitous declines
9 in the payphones in service.

10 What we've looked at here for Delaware and West
11 Virginia are actually fairly modest declines over this one year
12 to the next, and part of that is attributable to having the
13 cost-based rates in effect.

14 Q And I appreciate that, that explanation.

15 I'd like you to look at South Carolina and Maryland
16 and Tennessee, and would you agree that for those three states
17 the number of payphones decreased from 2000 to 2001?

18 A Yes, ma'am. Same answer.

19 MS. WHITE: Thank you. And Ms. Mays is going to hand
20 out an excerpt from the 2003, it's the same report, and I'd ask
21 that this be marked for identification, and it could be called
22 the August 2003 FCC Trends in Telephone Service Report.

23 COMMISSIONER DEASON: Exhibit 10.

24 MS. WHITE: Thank you.

25 (Exhibit 10 marked for identification.)

1 BY MS. WHITE:

2 Q And if you look at the page, the page number at the
3 bottom, 7.7, which is the number of payphones owned by LECs and
4 independent operators as of March 31st, 2002, and if you look
5 at the next page, which is the page at the bottom labeled 7.8,
6 excuse me, 7-8, is the number of payphones owned by LECs and
7 independent operators as of March 31st, 2003. Do you agree
8 with that characterization of these pages?

9 A Yes, ma'am.

10 Q If you looked at the states that you cited in your
11 direct testimony, Delaware, West Virginia, South Carolina,
12 Maryland and Tennessee, would you agree that each of these
13 states continued to show a decline in total payphones from 2002
14 to 2003?

15 A Yes, ma'am. Same response as before. If the
16 question is how much more decline would we have seen without
17 those rates, and when you compare these states to some other
18 states that didn't have cost-based rates into effect for those
19 other states, you'd see a much more precipitous decrease. And
20 I think in terms of making these phones available to the public
21 and people who need them, that's important.

22 Q And if you look at the last page of that handout,
23 Exhibit 10 that I just gave you, the page labeled at the bottom
24 7-9, which is the number of payphones over time, would you
25 agree that the total payphones in existence from 1997 and 2003

1 declined, and this is a national number?

2 A It did, although the primary contributor to that are,
3 if you look in the first column, the LEC-owned phones, not the
4 independent phones. While the independent phones went down,
5 they didn't go down by nearly the same percentage that the
6 LEC-owned phones did. And, of course, that in part reflects
7 several of the LECs exiting the market. And I know some of the
8 independent providers were able to make up some of that market
9 in some of those locations. But the primary cause of the
10 decrease shown in the grand total is revealed in the first
11 column, and that is that the LEC-owned phones are being
12 removed.

13 Q Would you agree --

14 A And several of the LECs were exiting the market. And
15 I think when we see the next version of this report, we're
16 going to see the impact of BellSouth exiting the market, which
17 will be a very dramatic decrease as well.

18 Q Would you agree that if you look at the payphone
19 lines by each state from 2002 to 2003, there isn't one state
20 that's experienced growth in payphones?

21 A I suspect the answer is yes. And when you look at
22 the states with cost-based rates, you see less of a decline
23 than the cost -- than the states where you don't have
24 cost-based rates.

25 Q Give me just a second.

1 Mr. Wood, would you agree that from 1993 to 2003 in
2 Florida households with an annual income of less than \$10,000
3 have increased telephone penetration?

4 A That's part of this report, but I don't know offhand
5 without looking.

6 Q If you look at Tab 9, and unfortunately I believe
7 this was from discovery you provided or the FPTA provided in
8 response to BellSouth discovery or staff's discovery. It's a
9 report about the percentage of households to telephone service,
10 and I believe this is a Florida-specific number.

11 A I didn't create the table, so I, I, I can't say one
12 way or the other. But I'll accept your representation.

13 Q And would you see that the penetration rates have
14 gone up?

15 A Yes, ma'am, they have. But they're not 100, and
16 times several million people, that leaves a lot of people
17 without a telephone.

18 Q Some of these people --

19 A I don't think they count any less than the people who
20 do have a telephone.

21 Q Some of these people may have cell phones and not use
22 home phones; is that correct?

23 A Some may. But I've actually looked at that recently
24 on behalf of some cellular providers that I've been doing work
25 for, and prior to number portability last fall the cut-the-cord

1 rate was very, very low, less than one percent. It's a little
2 higher now since then. But in terms of what would be reflected
3 on this report, I, I would expect very little, if any,
4 wireless-for-wireline substitution to be reflected.

5 Q Is it your position that more payphone providers will
6 come into the state of Florida if the PSC adopts the rate
7 you're suggesting here?

8 A They might. Existing providers may be able to keep
9 more phones in place for an extended period of time and not
10 have to remove those phones. I did a lot of work for the APCC
11 at the FCC and presented some information exactly on that, as
12 did BellSouth. And my results and BellSouth's results are
13 actually within a penny of each other in terms of looking at
14 these location-specific costs. And it's the line rates that
15 drive the ability more than, far more than anything else, the
16 ability of the provider, whether it's a LEC provider or whether
17 it's an independent provider, to keep that phone in place.

18 Q And you will agree with me that the payphone provider
19 wants to keep the phone in place because they want to make
20 money off it; right?

21 A Well, of course they do.

22 Q Yeah. I mean, it's --

23 A That's the business they're in. And when they remove
24 it, they do it reluctantly and it's because they cannot make
25 money on it.

1 And what I'm telling you is that having looked at
2 this and come up with essentially the same results as your
3 analyst did in that FCC proceeding, within a penny of our final
4 result, we found that the line rate, by far and away the
5 greatest contributor, the largest fixed cost, the greatest
6 contributor to whether the provider can keep the phone in place
7 or not. It matters more than, far more than anything else.

8 Q Mr. Wood, what's the percentage of overhead you're
9 recommending in this case?

10 A I'm applying a 10 percent to your calculation of
11 direct and shared cost. So it's essentially a 10 percent
12 common factor. But, of course, the FCC defines overhead as
13 shared and common, so the actual markup would be a little
14 higher than 10 percent.

15 Q What's the basis for that 10 percent?

16 A It is consistent with what other states have done.
17 It is higher than what the FCC, I'm sorry, what this Commission
18 authorized for UNEs, which it has characterized as it has with
19 telephone -- with payphone service as a wholesale service. I
20 think it would be reasonable to go back to the UNE case and
21 actually put just BellSouth's common factor in from that case,
22 which is well less than 10 percent.

23 I went higher than that to account for the
24 possibility, as the FCC pointed out, that there might be some
25 retail related costs. Now technically in order to include them

1 BellSouth is supposed to demonstrate their existence and their
2 association with payphone service, which it hasn't done here.

3 But to go ahead and put something in for that, I took
4 your common cost, wholesale common cost factor and marked it up
5 and increased it to 10 percent.

6 Q Can you tell me what element that was from?

7 A I'm sorry. What element?

8 Q In the UNE case you got the 10 percent from or the
9 ess, what was less than 10 percent.

10 A Your BellSouth cost calculator output, similar to
11 what you provided in this case, **includes your common cost**
12 **factor.** I think in what was provided in this case you simply
13 zeroed that out.

14 But you have a common -- I was under the assumption
15 that that was a proprietary number and I hadn't wanted to
16 reveal it, but it is less than 10 percent.

17 MS. WHITE: Thank you. I have nothing further.

18 COMMISSIONER DEASON: Okay. Staff?

19 MR. FORDHAM: No questions, Commissioner.

20 COMMISSIONER DEASON: Commissioners? Redirect?

21 MR. TOBIN: None.

22 COMMISSIONER DEASON: Exhibits?

23 MS. WHITE: BellSouth would ask that Exhibits 9 and
24 10 be moved into the record.

25 COMMISSIONER DEASON: Without objection, hearing

1 none, show that Exhibits 9 and 10 are admitted.

2 (Exhibits 9 and 10 admitted into the record.)

3 COMMISSIONER DEASON: Mr. Tobin, do you move Exhibit
4 8, which is the prefiled exhibits?

5 MR. TOBIN: Yes, Commissioner.

6 COMMISSIONER DEASON: Without objection, show that
7 Exhibit 8 is admitted.

8 (Exhibit 8 admitted into the record.)

9 Thank you, Mr. Wood. You may be excused.

10 THE WITNESS: Thank you, Commissioner.

11 COMMISSIONER DEASON: We'll take ten minutes and come
12 back and hear BellSouth's, the first BellSouth witness.

13 (Recess taken.)

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1 STATE OF FLORIDA)
 : CERTIFICATE OF REPORTER
2 COUNTY OF LEON)

3

4 I, LINDA BOLES, RPR, Official Commission
Reporter, do hereby certify that the foregoing proceeding was
5 heard at the time and place herein stated.

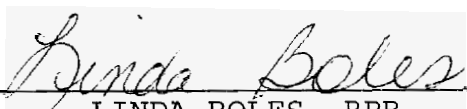
6 IT IS FURTHER CERTIFIED that I stenographically
reported the said proceedings; that the same has been
7 transcribed under my direct supervision; and that this
transcript constitutes a true transcription of my notes of said
8 proceedings.

9 I FURTHER CERTIFY that I am not a relative, **employee**,
attorney or counsel of any of the parties, nor am I a relative
10 or employee of any of the parties' attorneys or counsel
connected with the action, nor am I financially interested in
11 the action.

12 DATED THIS 18TH DAY OF MAY, 2004.

13

14


LINDA BOLES, RPR
FPSC Official Commission Reporter
(850) 413-6734

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EXHIBIT NO. 1

DOCKET NO.: 030300-TP

WITNESS: BST- STIP-1

PARTY: BELL SOUTH

DESCRIPTION:

1. BellSouth's Responses to Staff's First Set of Interrogatories (Nos. 1-22) and First Request for Production of Documents (Nos. 1-8), p. 1
2. BellSouth's Responses to the Florida Public Telecommunications Association's First Set of Interrogatories (Nos. 1-39) and First Request for Production of Documents (Nos. 1-30), p.58
3. BellSouth's Responses to Staff's Second Request for Production of Documents (Nos. 9-10), p.292
4. BellSouth's Responses to Staff's Second Set of Interrogatories (Nos. 23-28), p.306

PROFFERING PARTY: STAFF

I.D. #BST STIP-1

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET

NO. 030300-TP EXHIBIT NO. 1

COMPANY/ Bell South

WITNESS: BST-STIP-1

DATE: 05-12-04

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited review of)	
BellSouth Telecommunications, Inc.'s	)	Docket No. 030300-TP
Intrastate tariffs for pay telephone access)	
Services (PTAS) rate with respect to rates for	)	Filed: March 25, 2004
Payphone line access, usage, and features, by)	
<u>Florida Public Telecommunications Association</u>)	

BELLSOUTH TELECOMMUNICATIONS, INC.'S
RESPONSES TO STAFF'S FIRST SET OF INTERROGATORIES (NOS. 1-22) AND
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1-8)

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.340 and 1.280, Florida Rules of Civil Procedure, hereby files the following Responses to the Florida Public Service Commission Staff First Set of Interrogatories (Nos. 1-22) and First Request for Production of Documents (Nos. 1-8), dated March 5, 2004.

BellSouth incorporates herein by reference all of its general and specific objections filed on March 15, 2004. Any responses provided by BellSouth in response to this discovery will be provided subject to and without waiving any of BellSouth's previously filed objections.

SPECIFIC RESPONSES

000001

- REQUEST: (a) If this Commission were to order the refund that FPTA has proposed, does BellSouth know the total amount to be refunded? What is that amount?
- (b) If known, how was that amount determined?
- (c) If unknown, how would this Commission determine such a refund?
- (d) How would those refunds be implemented, collected, and distributed?
- (e) If the Commission were to order refunds, what would happen to the refund amounts intended for payphone providers that may no longer exist?

- RESPONSE: (a) BellSouth does not know "the total amount to be refunded" and affirmatively states this Commission has no authority to enter an order in this proceeding that provides refunds.
- (b) Not applicable.
- (c) This Commission cannot "determine such a refund" as it has no authority in this docket to enter such an order.

In the event this Commission had the authority to consider a refund (which it does not in this docket), the first step of such a consideration would be to evaluate the impact of applicable tariff provisions. Pursuant to BellSouth's General Subscriber Service Tariff ("GSST") Section A2.5.5. BellSouth shall not be liable for any damages when a claim is not presented within sixty days after the alleged delinquency occurs. Payphone service providers ("PSPs") have presented no such claim in this case; thus, notwithstanding the legal prohibition against refunds, this Commission has no basis to proceed.

The Commission would also need to apply Section A2.4.3 of the GSST, which requires customers to "promptly report" objections to billed charges. (This Section also precludes interest or other charges). To date, BellSouth is not aware of any such objections reported by payphone service providers in Florida. This presents additional grounds for rejection of the FPTA's claims.

RESPONSE: (Cont.)

If, notwithstanding the lack of authority and the application of effective tariffs, this Commission sought additional information (which it should not), then strict proof of any damages alleged on behalf of each separately affected individual PSP would be necessary. Such strict proof would have to include, at a minimum, the name of the individual PSP that was allegedly damaged, the number of lines purchased from BellSouth on a monthly basis between April 1997 to present, and the amounts allegedly paid for PTAS and SLC (or EUCL) on a monthly basis from April 1997 to present.

It would also be necessary to determine any offsets. BellSouth's Answer included affirmative defenses, including the right to offset discounts and incentives. For any individual PSP claiming a refund, a calculation of the applicable discounts and incentives received over a similar timeframe would need to be determined to effectuate such offsets.

- (d) BellSouth incorporates its response to (a) and (c) above. In circumstances in which refunds have occurred that are consistent with applicable legal principles (which would not be the case with a refund in this proceeding), such refunds have been provided as credits to customer bills, once the appropriate calculations and offsets have been determined.
- (e) Refunds intended for payphone providers that may no longer exist would be turned over to the State of Florida.

RESPONSE PROVIDED BY: Bill Jones
Kathy Blake
Meredith Mays

000003

REQUEST: Please refer to page 7, lines 7-10, of witness Wood's Direct Testimony. On that page witness Wood references a letter dated April 10, 1997 in which the RBOC Payphone Coalition counsel, Michael Kellogg, promised "...to issue a refund back to April 15, 1997 in the event its PTAS rates did not conform to the new services test." Refer also to text from the actual letter which appears below (Document No. 07443-03):

Once the new state tariffs go into effect, to the extent that the new tariff rates are lower than the existing ones, we will undertake to reimburse or provide a credit to those purchasing the services back to April 15, 1997. (I should note that the filed-rate doctrine precludes either the state or federal government from ordering such a retroactive rate adjustment. However, we can and do voluntarily undertake to provide one, consistent with state regulatory requirements, in this unique circumstance. Moreover, we will not seek additional reimbursement to the extent that tariff rates are raised as a result of applying the "new services" test.)

- (a) When did the BellSouth tariff(s) which were addressed by this Commission in Docket No. 970281-TL go into effect?
- (b) Were those tariffed rates higher or lower than the existing tariffed rates?
- (c) Did Mr. Kellogg and the RBOC Payphone Coalition intend for that offer to extend beyond the Commission's initial finding that the new services test (NST) had been met?
- (d) Based on Order Nos. PSC-98-1088-FOF-TL and PSC-99-0493-FOF-TL in Docket No. 970281-TL, did this Commission find that BellSouth met the NST at that time?
- (e) Has FPTA provided any new information that would lead this Commission to come to a different conclusion regarding BellSouth meeting the NST in this docket?

REQUEST: (Cont.)

- (f) Given Mr. Kellog's letter, and this Commission's finding in Order No. PSC-98-1088-FOF-TL that "[e]xisting incumbent local exchange company tariffs for smart and dumb line payphones services are cost-based, consistent with Section 276 of the Telecommunications Act of 1996, and nondiscriminatory," why should refunds be ordered back to April 15, 1997 if BellSouth met the NST and the letter only provided for refunds "in the event its PTAS rates did not conform to the new services test?"

- RESPONSE: (a) The BellSouth tariff addressed in Docket No. 970281-TL went into effect on January 19, 1999.
- (b) The tariffed rates effective January 19, 1999 were equal to the previously existing tariffed rates.
- (c) No.
- (d) Yes.
- (e) No.
- (f) Refunds should not be ordered; moreover, this Commission has no authority to order refunds in this proceeding.

RESPONSE PROVIDED BY: Kathy Blake

000005

- REQUEST: (a) If BellSouth's rates became noncompliant "immediately after the August 11, 1998 order was issued" as alleged in witness Wood's Direct Testimony (p.8, lines 3-5), can BellSouth explain through first-hand knowledge why the FPTA did not bring this before the Commission at that time?
- (b) Has any party challenged the rates at issue in this docket as being noncompliant?
- (c) If yes, who challenged the rates?
- (d) If yes, when were they challenged?
- (e) If yes, what was the outcome?

- RESPONSE: (a) No.
- (b) Aside from this petition, no.
- (c) BellSouth incorporates its response to (b) above.
- (d) BellSouth incorporates its response to (b) above.
- (e) This proceeding has not yet been concluded.

RESPONSE PROVIDED BY: Kathy Blake

000006

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
Staff's 1st Set of Interrogatories
March 5, 2004
Item No. 4
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REQUEST: Does BellSouth have any first-hand knowledge why FPTA's Petition protesting Order No. PSC-98-1088-FOF-TP withdrawn on December 31, 1998?

RESPONSE: It is BellSouth's understanding that FPTA withdrew its petition as a result of negotiations between it and BellSouth.

RESPONSE PROVIDED BY: Nancy Sims

000007

REQUEST: On p. 9-10 of his direct testimony, witness Wood cites four specific areas of inquiry he used in his analysis of the rates and related cost information.

- (a) Did this Commission address those four areas in Order No. PSC-98-1088-FOF-TP?
- (b) If not, which area was omitted?

RESPONSE: (a) Yes.

(b) N/A.

RESPONSE PROVIDED BY: Bernard Shell
Kathy Blake

000008

REQUEST: Please refer to pp. 21-22 of witness Wood's direct testimony where he addresses the actions of several other state commission in regards to the application of the FCC's four part test. This Commission found in Order Nos. PSC-98-1088-FOF-TL and PSC-99-0493-FOF-TL that BellSouth's tariffed rates met the NST, were cost-based, nondiscriminatory, and consistent with section 276 of the Act. How is what this Commission found different than the decisions of those Commissions?

RESPONSE: The cases cited by Witness Wood are analogous to FPSC Order Nos. PSC-98-1088-FOF-TL and PSC-99-0493-FOF-TL. The cases cited represent various state commissions' initial rulings concerning the application of the new services test.

RESPONSE PROVIDED BY: Kathy Blake

000009

REQUEST: In witness Wood's direct testimony he states "the same adjustment to reflect the SLC must be made to intrastate rates here in Florida." (p. 36, lines 20-21)

- (a) Didn't BellSouth already make the requested adjustment when it filed its revised tariff in October 2003?
- (b) If yes, does this eliminate the need for Issue 1(a)?
- (c) If not, explain why.

RESPONSE: (a) Yes.

(b) Yes.

(c) Not applicable.

RESPONSE PROVIDED BY: Kathy Blake

000010

REQUEST: In witness Renard's rebuttal testimony (p.2, lines 15-17), he states, "[t]o the extent that the *PAA Order* is shown to be in conflict with the clarification provided in *Second Wisconsin Order*, this Commission is simply fulfilling its administrative and equitable obligations to correct that conflict."

- (a) Wouldn't this Commission's obligation be to "correct that conflict" on a going forward or prospective basis alone?
- (b) Why or why not?

RESPONSE: (a) Yes.

- (b) In its *Wisconsin Order*, 17 FCC Rcd 2051 the FCC acknowledged "the administrative record . . . shows disparate applications of the new services test in various state proceedings." (*Id.* at 2052). The FCC also indicated 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." (*Id.* at 2055). The FCC recognized that payphone line services are not the same as local interconnection services in that LECs "may include . . . 'retail' costs, such as marketing and billing" in their prices for payphone service. (at 2066). Finally, the FCC found that "[a]t whatever point in time a state reviews a BOC's payphone line rates for compliance with the new services test, it must apply an offset for the SLC that is *then in effect*." (*Id.* at 2070). As such, the language of the *Wisconsin Order* suggests that a state commission's review and implementation of the new services test should be prospective in nature. Had the FCC intended for state commission to act otherwise it would have included language, presumably in the section of the order recognizing the "disparate" state decisions, clarifying any intended retroactive impact.

RESPONSE PROVIDED BY: Kathy Blake

- REQUEST: (a) Does BellSouth have a legal obligation "to voluntarily comply with the requirement of those Payphone Orders" as alleged in FPTA witness Renard's rebuttal testimony, p.2, lines 21-23?
- (b) If so, where is this obligation found?

- RESPONSE: (a) BellSouth has no affirmative obligation to change approved rates. Witness Renard's testimony is misleading in any event, because the *Wisconsin Order* upon which the FPTA heavily relies in this proceeding was appealed and was not concluded until July 2003.
- (b) Not applicable.

RESPONSE PROVIDED BY: Meredith Mays

REQUEST: (a) Would you agree that this industry and the regulations that govern it are constantly in flux?

(b) If not, why not?

RESPONSE: (a) Yes.

(b) Not applicable.

RESPONSE PROVIDED BY: Kathy Blake

000013

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
Staff's 1st Set of Interrogatories
March 5, 2004
Item No. 11
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REQUEST: Did the FCC's "clarifications" that the FPTA witnesses refer to come after the
FPSC issued Order Nos. PSC-98-1088-FOF-TP and PSC-99-0493-FOF-TL?

RESPONSE: Yes.

RESPONSE PROVIDED BY: Kathy Blake

000014

REQUEST: Do you believe that this Commission is limited to basing its decisions on the best available information possessed at a given point and time? Explain your answer.

RESPONSE: Yes. As stated in response to Item No. 10, the telecommunications industry is in a constant state of flux. Therefore, it would not be feasible or appropriate for this Commission to revisit each of its rulings based on subsequent changes in facts, or on subsequent rulings. As stated in my rebuttal testimony (pp. 3-4), if this Commission were not limited to basing its decisions on the best available information possessed at a given point and time, its decisions would have to be continually revised. For instance, any time a state commission issues an order in a generic cost docket, such an order would be obsolete the very next day if any of the ILEC's cost study inputs changed.

RESPONSE PROVIDED BY: Kathy Blake

000015

REQUEST: Given the widespread availability of wireless service in Florida, do you agree that for many citizens and visitors, payphone accessibility is less of an issue today than it was in the past?

RESPONSE: Yes.

RESPONSE PROVIDED BY: Kathy Blake

000016

REQUEST: FPTA witness Renard states in his rebuttal testimony that "[a] lower rate for calls from payphones will in turn make payphone calling more competitive with its current real-world competitor – wireless calling." (p.10, lines 18-20)

- (a) Would most consumers consider wireless service and payphone service direct competitors?
- (b) Does BST consider payphones to be a "real-world" competitor to wireless service? Explain your answer.
- (c) Will lower rates for payphone calling alone make it more competitive? Explain.

RESPONSE: (a) No.

- (b) BellSouth objects to this request on the grounds that it seeks to impose an obligation on BellSouth to respond on behalf of its wireless affiliate, which affiliate is not a party to this case. BellSouth is not a provider of wireless service.
- (c) Not according to BellSouth's experience. In rebuttal testimony of BellSouth witness Kathy Blake, at p. 8, BellSouth provided data for three BellSouth states that reduced PTAS rates in 1999 and 2001. For each state, BellSouth showed the number of PTAS retail lines in place at the date of the rate change, and at various intervals up to November 2003. In each case, even though the rates had decreased, the number of lines decreased rather than increased.

RESPONSE PROVIDED BY: Bill Jones
Kathy Blake

000017

- REQUEST: (a) Has BellSouth completed its exit from the payphone market in Florida?
- (b) If yes, when was that exit completed?
- (c) If not, when will the exit from the payphone market in Florida be completed?
- (d) In what other states has BellSouth exited the payphone market?
- (e) For the states listed in 15(d), when was that exit completed?
- (f) In those states where BellSouth has exited the payphone market, what effect has that had on those respective markets? Explain.

- RESPONSE: (a) Yes.
- (b) All dial tone has been removed from BellSouth payphones in Florida. Some payphone enclosures remain in place, but are scheduled for removal by March 31, 2004.
- (c) N/A.
- (d) Alabama, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.
- (e) BellSouth has exited the payphone business concurrently in all states. Dial tone has been removed from all payphones except for two special cases, one in Louisiana and one in Kentucky. In both cases, existing payphones (numbering less than 400 payphones) will be transitioned to another Payphone Service Provider before the end of March 2004. Removal of dial tone from all payphones was accomplished on or about March 15, 2004, with removal of enclosures expected to be completed by March 31, 2004.
- (f) BellSouth has not conducted any analysis to determine the effect of its exit on the payphone market.

RESPONSE PROVIDED BY: Ken Minzenberger

BellSouth Telecommunications, Inc.

000018

REQUEST: Are BellSouth's 1FB basic business line rates cost-based? Explain your answer.

RESPONSE: BellSouth objects to this Interrogatory on the grounds that the information requested is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this action. BellSouth also objects to this interrogatory on the grounds that the use of the term "cost-based" as applied to retail rates is vague and ambiguous. To the extent that any filings made in Docket No. 030867-TL contain information that is responsive to this Interrogatory, BellSouth directs staff to that docket and objects to providing additional information on the grounds that it is available as a matter of public record.

- REQUEST: (a) Does In the Matter of Informal Complaint Filed by Independent Payphone Service Providers Against Various Local Exchange Carriers Seeking Refunds of End User Common Line Charges (FCC File No. 89-170) address issues similar to those raised in this docket?
- (b) If so, would that be a more appropriate venue to address the issues raised in this docket?
- (c) If not, why?

- RESPONSE: (a) There may be similarities in the cited docket and this case; however, the FCC cases cited address the recovery of EUCL charges assessed prior to April 15, 1997, while the FPTA is seeking a refund in this docket for the EUCL after April 15, 1997.
- (b) No.
- (c) See BellSouth's response to (a) above.

RESPONSE PROVIDED BY: Meredith Mays

000020

REQUEST: Refer to page 6, lines 12-17 of FPTA witness Wood's Rebuttal Testimony. Witness Wood states, "...in the Second Wisconsin Order (§14) the FCC reiterated its 1996 finding that 'even if LEC payphone tariffs were filed at the state level, they should nevertheless comply with section 276 as implemented by the Commission and, as such, should be cost-based, nondiscriminatory, and consistent with both section 276 and our Computer III tariffing guidelines.'"

- (a) Didn't this Commission use those very standards in making its decision in Docket No. 970281-TL, Order Nos. PSC-98-1088-FOF-TL and PSC-99-0493-FOF-TL?
- (b) If not, what standards did this Commission use?

RESPONSE: (a) Yes.

(b) Not applicable.

RESPONSE PROVIDED BY: Kathy Blake

REQUEST: On pp. 14-15 of his rebuttal testimony, FPTA witness Wood uses the following "simple analogy" to "put BellSouth's position into perspective."

Assume that after reviewing the records of a deposit, I notice that the bank has accidentally credited a deposit twice, so that my account balance is overstated. I could not seriously argue that I do not know that the account is overstated. I would have two options: I could notify the bank immediately (at which time an adjustment would be made), or I could wait until someone else, in this case the bank, notices the error (at which time an adjustment would be made, including the accrued interest on the overstated amount). At that day of reckoning, I could not argue that even though I knew that the account was overstated I was nevertheless entitled to keep the money because the bank had not taken it from me right away.

- (a) Does the analogy provided by witness Wood accurately reflect the situation surrounding the issues in this docket? Explain.
- (b) Using the analogy above, would a bank or any other business entity wait an extended period of time before making "adjustments" to an account?
- (c) Would most "adjustments" take place prior to the end of that business entity's accounting period?
- (d) Can you foresee any problems that might arise when trying to recover information after an extended period of time?
- (e) If so, what are they?
- (f) If so, would the same problems exist in this docket if the Commission were to order refunds?

REQUEST: (Cont.)

- (g) Are there typically safeguards in place to prevent this type of delayed notice and recovery from occurring in most business settings?
- (h) If so, what are they?
- (i) Are you aware of any general contract provisions that would address such problems?
- (j) Would those provisions typically be included in agreements between an ILEC and payphone service providers?
- (k) Are there any statute of limitations, state or federal, which may apply to the current docket in regards to FPTA's requested refunds?

RESPONSE: BellSouth objects to this Interrogatory to the extent that it seeks to impose an obligation on BellSouth to respond on behalf of "a bank" or a "business entity", neither of which are parties to this case. BellSouth's response will be limited to matters within its knowledge.

- (a) No. Witness Wood's analogy is based on the premise of an accidental deposit, and knowledge of overstatement. In this proceeding, BellSouth has charged PSPs in Florida approved tariffed rates. The underlying PTAS rates are set forth in BellSouth's state tariffs, while the SLC is set forth in BellSouth's FCC tariffs. BellSouth is legally obligated to charge its filed rates – Courts have held that a tariff "constitutes the law and is not merely a contract." *Mellman v. Sprint*, 975 F.Supp. 1458, 1462 (N.D. Fla. 1996). To suggest that an accidental deposit equates to BellSouth charging filed and approved tariff rates is absurd.

RESPONSE: (Cont.)

- (b) BellSouth cannot address the business practices of other companies; however, as set forth in GSST Sections A2.4.3 and A.2.5.5, BellSouth requires that customers present claims in writing within sixty (60) days after any alleged delinquency and only adjusts customers bills "to the extent that records are available." To the extent that BellSouth has failed to charge customers in Florida, BellSouth cannot backbill "in excess of twelve months." These tariff provisions collectively demonstrate that BellSouth would not adjust accounts after an extended period of time.
- (c) See (b)
- (d) Problems which may arise are inability to make refunds due to lack of available information, for instance, for customers who have gone out of business or, for other reasons, are no longer BellSouth customers.
- (e) See (b)
- (f) Yes.
- (g) See (b)
- (h) See (b)
- (i) See (b) for applicable tariff provisions. In addition, BellSouth's standard interconnection agreement provides in Attachment 7, Section 2.1 under Billing Disputes, that, in the event of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) calendar days of the notification date. If the Parties are unable within the 60 days period to reach resolution, then the aggrieved Party may pursue dispute resolution in accordance with the General Terms and Conditions of the Agreement (i.e., may petition the Commission for a resolution of the dispute).
- (j) Most Payphone Service Providers purchase pay telephone access services from BellSouth's tariff, not pursuant to an interconnection agreement.

RESPONSE: (Cont.)

- (k) Yes. Notwithstanding that this Commission has no authority to order refunds in this proceeding, and that applicable tariff provisions referenced herein preclude the FPTA's claims, the FPTA's refund claims relating to the federal SLC are governed by federal statutes of limitations which is the 2-year timeframe cited in Interrogatory No. 21. This precludes the FPTA's claims.

BellSouth's tariffs likewise preclude the FPTA's refund claims relating to the underlying PTAS rates. The five year Florida statute of limitations applicable to written contracts (*see* Fla. Stat. 95.11 (2)(b)) would not -- by its express terms -- preclude the FPTA's refund claims which arguably could have been filed up to January 20, 2004; however, as stated previously this Commission has no authority to order a refund in this docket.

RESPONSE PROVIDED BY: Kathy Blake
Meredith Mays

000025

- REQUEST: (a) Are you aware of any other state commissions in the BellSouth operating territory that have ordered a refund similar to what the FPTA is asking this Commission to order in this docket?
- (b) If so, which state commissions have ordered such refunds.
- (c) If so, what amounts were refunded by each state?
- (d) If so, how did those state commissions determine the amount of the refunds?

- RESPONSE: (a) There is one such order. The Public Service Commission of Kentucky – when faced with a similar refund claim – initially rejected the Kentucky Payphone Association's claim for refunds. (Administrative Case No. 361, Order dated May 1, 2003) Subsequently, the Kentucky Commission determined that refunds from January 31, 2002, were appropriate. (Administrative Case No. 361, Order dated June 5, 2003) This matter is currently on appeal in the Commonwealth of Kentucky, Franklin Circuit Court, Division II, Civil Action No. 03-CI-00797.
- (b) See (a).
- (c) The Circuit Court has not yet made a decision as to whether a refund is required, and, if so, what amount. However, BellSouth deposited with the Franklin Circuit Court the amount of \$447,750.24, pending a decision on the appeal. The deposit was based on BellSouth's estimated calculation using a snapshot of retail PTAS lines by month by customer, from February 1, 2002 through April 30, 2003, times the EUCL amount in effect during the period (\$7.84), excluding amounts owed to BellSouth Public Communications.
- (d) See (c).

RESPONSE PROVIDED BY: Kathy Blake
Bill Jones

BellSouth Telecommunications, Inc.
Florida Public Service Commission
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REQUEST: FCC Division Orders DA 99-1854 (§7) and DA 00-923 (§2) appear to limit the operative statute of limitations to the following:

...the period of time for which damages may be recovered at two years prior to the filing of a complaint, irrespective of whether the complaint is a formal or informal complaint. In this instance, the period for recovery will be no longer than two years prior to the filing of the informal complaints, as provided by both the statute and section 1.718 of the Commission's rules.

Does this have any impact on the issues contained in this docket? Please explain your response.

RESPONSE: Yes. BellSouth incorporates its response to subpart (k) of Interrogatory No. 19.

RESPONSE PROVIDED BY: Kathy Blake
Meredith Mays

000027

- REQUEST: (a) Are BellSouth and FPTA continuing to negotiate at this time?
- (b) If so, what (if any) progress has been made on resolving some of the outstanding issues here?
- (c) If not, when will the parties meet again to discuss the outstanding issues?

- RESPONSE: (a) No.
- (b) Not applicable.
- (c) Not applicable.

RESPONSE PROVIDED BY: Kathy Blake

BellSouth Telecommunications, Inc.
Florida Public Service Commission
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Item No. 1
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REQUEST: Provide all documents used in determining the refund amount in Staff Interrogatory 1.

RESPONSE: There are no such documents.

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BellSouth Telecommunications, Inc.
Florida Public Service Commission
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Staff's 1st Request for Production
March 5, 2004
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REQUEST: Provide all documents listed in response to Staff Interrogatory 9(a) and (b) which identify BellSouth's legal obligation "to voluntarily comply with the requirements of those Payphone Orders." If too voluminous, please provide a citation containing the page and line number where BellSouth's obligation may be found.

RESPONSE: Not applicable.

000030

BellSouth Telecommunications, Inc.
Florida Public Service Commission
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REQUEST: Referring to Staff Interrogatory 14(c), provide all documents which support your position.

RESPONSE: See Rebuttal Testimony of Kathy Blake, at p. 8.

000031

BellSouth Telecommunications, Inc.
Florida Public Service Commission
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March 5, 2004
Item No. 4
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REQUEST: To the extent discussed in Staff Interrogatory 15(f), provide any documents that illustrate the effect that BellSouth's exit from the payphone market has had on those payphone markets.

RESPONSE: There are no such documents.

000032

REQUEST: Referring to Staff Interrogatory 16, provide all documents that illustrate that BellSouth's 1FB basic business line rates are cost-based.

RESPONSE: BellSouth objects to this Request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this action. BellSouth also objects to this Request on the grounds that the use of the term "cost-based" as applied to retail rates is vague and ambiguous. To the extent that any filings made in Docket No. 030867-TL contain information that is responsive to this Request, BellSouth directs staff to that docket and objects to providing additional information on the grounds that it is available as a matter of public record.

BellSouth Telecommunications, Inc.
Florida Public Service Commission
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March 5, 2004
Item No. 6
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REQUEST: To the extent that BellSouth includes language in its agreements addressing the concerns raised in Staff Interrogatory 19(g)-(j), please provide a copy of the applicable language. If applicable, also identify the section from which the text may be located and date of it's most recent revision.

RESPONSE: Documents responsive to this request, BellSouth's Florida General Subscriber Service Tariff, A2.4.3 and A2.5.5 and related sections of BellSouth's standard interconnection agreement, Attachment 7, Section 2.1 and General Terms and Conditions, Section 10, are being provided.

000034

REQUEST: For each state commission identified in response to Staff Interrogatory 20(b), provide a copy of each commission's order.

RESPONSE: The following documents responsive to this request are being provided:

- (1) Kentucky Public Service Commission Order in Case No. 361, dated May 1, 2003
- (2) Kentucky Public Service Commission Order in Case No. 361, dated June 5, 2003.
- (3) Designation Pursuant to KRS 278.420(2) of Record on Appeal, Commonwealth of Kentucky, Franklin Circuit Court, Division I, Civil Action No. 03-CI-00921.
- (4) The January 6, 2004 Order of the Commonwealth of Kentucky, Franklin Circuit Court, Division II, consolidating the three appeals of the Kentucky orders into one docket, Civil Action No. 03-CI-00797.

BellSouth Telecommunications, Inc.
Florida Public Service Commission
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REQUEST: Please provide any additional documents relied upon in responding to Staff's Interrogatories.

RESPONSE: BellSouth objects to this Request to the extent that it may seek documents relating to settlement negotiations. Any such documents are not reasonably calculated to lead to the discovery of admissible evidence.

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BellSouth Telecommunications, Inc.
Florida Public Service Commission
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BST 000007

BellSouth Telecommunications, Inc.
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000038

BST000001

Respectfully submitted this 25th day of March 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

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530715

000039

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

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Cancels First Revised Page 18

ISSUED: August 5, 2002
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: August 20, 2002

A2. GENERAL REGULATIONS**A2.4 Payment Arrangements and Credit Allowances (Cont'd)****A2.4.2 Credit and Deposits for Applicants (Cont'd)****F. Responsibility For Payment**

The fact that a deposit has been made in no way relieves the applicant or subscriber from complying with the Company's regulations as to advance payments and the prompt payment of bills on presentation nor does it constitute a waiver or modification of the regular practices of the Company providing for the discontinuance of service for nonpayment of any sums due for service rendered.

(T)

A2.4.3 Payment for Service

- A. The subscriber is responsible for payment of all appropriate charges for completed calls, services, and equipment. All charges due by the subscriber are payable at the Company's Business Office or at any agency duly authorized to receive such payments. Any objection to billed charges should be promptly reported to the Company. Adjustments to customers bills shall be made to the extent that records are available and/or circumstances exist which reasonably indicate that such charges are not in accordance with approved rates or that an adjustment may otherwise be appropriate. Where any undercharge in billing of the subscriber is the result of a Company mistake, the Company may not backbill in excess of twelve months. Where overbilling of a subscriber occurs, due either to Company or subscriber error, no liability exists which will require the Company to pay any interest, dividend or other compensation on the amount overbilled.
- B. The subscriber shall pay monthly in advance or on demand all charges for service and equipment and shall pay on demand all charges for long distance service. The subscriber is responsible for payment of all charges for services furnished the subscriber, including charges for services originated or charges accepted at the subscriber's station.

Payment for Federal Government customers will be in compliance with the Federal Acquisition Regulations Clause 52.232-25 - Prompt Payment.

(N)

1. Effective April 1, 1996, a charge of \$20.00 or 5 percent of the face value of the check, whichever is greater, will apply whenever a check or draft presented for payment for service is not accepted by the institution on which it is written. For a check or draft written prior to this date, a charge of \$15.00 will apply.¹

Note 1: Nonpayment of the charge in 1. above will not constitute sufficient cause for interruption or cancellation of service.

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BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: July 1, 1996
BY: Joseph P. Lacher, President - FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 27

EFFECTIVE: July 15, 1996

A2. GENERAL REGULATIONS¹

(N)

A2.5 Liability of the Company (Cont'd)**A2.5.1 Service Irregularities (Cont'd)**

The Company shall not be liable for damage arising out of mistakes, omissions, preemptions, interruptions, delays, errors or defects in transmission or other injury, including but not limited to injuries to persons or property from voltages or currents transmitted over the service of the Company, (1) caused by customer-provided equipment (except where a contributing cause is the malfunctioning of a company-provided connecting arrangement, in which event the liability of the Company shall not exceed an amount equal to the proportional amount of the Company billing for the period of service during which such mistake, omission, interruption, preemption, delay, error, defect in transmission or injury occurs), or (2) not prevented by customer-provided equipment but which would have been prevented had company-provided equipment been used.

A2.5.2 Use of Facilities of Other Connecting Carriers

When suitable arrangements can be made, facilities of other connecting carriers may be used in conjunction with this Company's facilities in establishing connections to points not reached by this Company's facilities. Neither this Company nor any connecting carrier participating in a service shall be liable for any act or omission of any other company or companies furnishing a portion of such service.

A2.5.3 Indemnifying Agreement

The Company shall be indemnified and saved harmless by the subscriber or subscribers against claims for libel, slander, or the infringement of copyright arising directly or indirectly from the material transmitted over the facilities or the use thereof; against claims for infringement of patents arising from combining with, or using in connection with, facilities furnished by the Company, apparatus and systems of the subscriber; and against all other claims arising out of any act or omission of the subscriber in connection with the facilities provided by the Company.

A2.5.4 Defacement of Premises

The Company is not liable for any defacement of or damage to the premises of a subscriber resulting from the furnishing of service or the attachment of the equipment and associated wiring furnished by the Company on such premises or by the installation or removal thereof, when such defacement or damage is not the result of negligence of employees of the Company.

A2.5.5 Period for the Presentation of Claims

The Company shall not be liable for damages or statutory penalties in any case where a claim is not presented in writing within sixty days after the alleged delinquency occurs.

Note 1: Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this Filing.

discontinuance of services purchased by <customer_short_name> under this Agreement provided for in Section 1.7.2 of this Attachment shall be sent via certified mail to the individual(s) listed in the Notices provision of the General Terms and Conditions of this Agreement.

- 1.10 Rates. Rates for Optional Daily Usage File (ODUF), Access Daily Usage File (ADUF), Enhanced Optional Daily Usage File (EODUF) and Centralized Message Distribution Service (CMDS) are set out in Exhibit A to this Attachment. If no rate is identified in this Attachment, the rate for the specific service or function will be as set forth in the applicable BellSouth tariff or as negotiated by the Parties upon request by either Party.

2. BILLING DISPUTES

- 2.1 Each Party agrees to notify the other Party in writing upon the discovery of a billing dispute. <customer_short_name> shall report all billing disputes to BellSouth using the Billing Adjustment Request Form (RF 1461) provided by BellSouth. In the event of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) calendar days of the notification date. If the Parties are unable within the 60 day period to reach resolution, then the aggrieved Party may pursue dispute resolution in accordance with the General Terms and Conditions of this Agreement.
- 2.2 For purposes of this Section 2, a billing dispute means a reported dispute of a specific amount of money actually billed by either Party. The dispute must be clearly explained by the disputing Party and supported by written documentation, which clearly shows the basis for disputing charges. A billing dispute will not include the refusal to pay all or part of a bill or bills when no written documentation is provided to support the dispute, nor shall a billing dispute include the refusal to pay other amounts owed by the billed Party until the dispute is resolved. Claims by the billed Party for damages of any kind will not be considered a billing dispute for purposes of this Section. If the billing dispute is resolved in favor of the billing Party, the disputing Party will make immediate payment of any of the disputed amount owed to the billing Party or the billing Party shall have the right to pursue normal treatment procedures. Any credits due to the disputing Party, pursuant to the billing dispute, will be applied to the disputing Party's account by the billing Party immediately upon resolution of the dispute.
- 2.3 If a Party disputes a charge and does not pay such charge by the payment due date, or if a payment or any portion of a payment is received by either Party after the payment due date, or if a payment or any portion of a payment is received in funds which are not immediately available to the other Party, then a late payment charge and interest, where applicable, shall be assessed. For bills rendered by either Party for payment, the late payment charge for both Parties shall be calculated based on the portion of the payment not received by the payment due date multiplied by the

disclosure or dissemination to anyone except employees of Recipient with a need to know such Information solely in conjunction with Recipient's analysis of the Information and for no other purpose except as authorized herein or as otherwise authorized in writing by the Discloser. Recipient will not make any copies of the Information inspected by it.

- 9.3 **Exceptions.** Recipient will not have an obligation to protect any portion of the Information which:
- 9.3.1 (a) is made publicly available by the Discloser or lawfully by a nonparty to this Agreement; (b) is lawfully obtained by Recipient from any source other than Discloser; (c) is previously known to Recipient without an obligation to keep it confidential; or (d) is released from the terms of this Agreement by Discloser upon written notice to Recipient.
- 9.4 Recipient agrees to use the Information solely for the purposes of negotiations pursuant to 47 U.S.C. 251 or in performing its obligations under this Agreement and for no other entity or purpose, except as may be otherwise agreed to in writing by the Parties. Nothing herein shall prohibit Recipient from providing information requested by the FCC or a state regulatory agency with jurisdiction over this matter, or to support a request for arbitration or an allegation of failure to negotiate in good faith.
- 9.5 Recipient agrees not to publish or use the Information for any advertising, sales or marketing promotions, press releases, or publicity matters that refer either directly or indirectly to the Information or to the Discloser or any of its affiliated companies.
- 9.6 The disclosure of Information neither grants nor implies any license to the Recipient under any trademark, patent, copyright, application or other intellectual property right that is now or may hereafter be owned by the Discloser.
- 9.7 **Survival of Confidentiality Obligations.** The Parties' rights and obligations under this Section 9 shall survive and continue in effect until two (2) years after the expiration or termination date of this Agreement with regard to all Information exchanged during the term of this Agreement. Thereafter, the Parties' rights and obligations hereunder survive and continue in effect with respect to any Information that is a trade secret under applicable law.
10. **Resolution of Disputes**
- Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the aggrieved Party shall petition the Commission for a resolution of the dispute. However, each Party reserves any

rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

11. Taxes

11.1 Definition. For purposes of this Section, the terms "taxes" and "fees" shall include but not be limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) imposed, or sought to be imposed, on or with respect to the services furnished hereunder or measured by the charges or payments therefore, excluding any taxes levied on income.

11.2 Taxes and Fees Imposed Directly On Either Providing Party or Purchasing Party.

11.2.1 Taxes and fees imposed on the providing Party, which are not permitted or required to be passed on by the providing Party to its customer, shall be borne and paid by the providing Party.

11.2.2 Taxes and fees imposed on the purchasing Party, which are not required to be collected and/or remitted by the providing Party, shall be borne and paid by the purchasing Party.

11.3 Taxes and Fees Imposed on Purchasing Party But Collected And Remitted By Providing Party.

11.3.1 Taxes and fees imposed on the purchasing Party shall be borne by the purchasing Party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing Party.

11.3.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.

11.3.3 If the purchasing Party determines that in its opinion any such taxes or fees are not payable, the providing Party shall not bill such taxes or fees to the purchasing Party if the purchasing Party provides written certification, reasonably satisfactory to the providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing Party has determined and certified not to be payable, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In any such contest, the purchasing Party shall promptly furnish the providing Party with copies of all filings in any

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DEREGULATION OF LOCAL EXCHANGE	)	ADMINISTRATIVE
COMPANIES' PAYPHONE SERVICE	)	CASE NO. 361

O R D E R

In 1999 the Commission established payphone access line rates for BellSouth Telecommunications Inc. ("BellSouth"), Cincinnati Bell Telephone Company ("CBT"), and Kentucky ALLTEL, Inc. ("ALLTEL") formerly known as GTE South Incorporated and Verizon South, Inc.¹ The Commission set payphone access line rates in accordance with Section 278 of the Telecommunications Act of 1996 that required state commissions to examine payphone access rates and ensure that they complied with the New Services Test.

On October 14, 2002, Kentucky Payphone Association ("KPA") filed a petition requesting that the Commission reopen Administrative Case No. 361. The KPA requested modification of the Commission's Orders based on an order from the Federal Communications Commission ("FCC"), referred to as the "Wisconsin Order,"² in which the FCC explained how it intended the state commissions to implement the New Services Test. Of issue in the Wisconsin Order is the treatment of the End User Common Line Charge ("EUCL") also known as the Subscriber Line Charge ("SLC"). The

¹ Administrative Case No. 361, January 5, 1999.

² In the matter of Wisconsin Public Service Commission Order Directing Filings, CPD No. 00-01, FCC No. 0-25, Rel. January 31, 2002

Wisconsin Order directed state commissions to consider the revenue received from the SLC when determining cost-based rates that complied with the New Services Test.

The Staff has met with the parties in an informal conference and discussed the issues; additionally the parties have filed written responses and replies to each other. No party in the case has requested a formal hearing. Therefore, the Commission will rely on the written record for its decision.

In this Commission's Orders the SLC was not considered as a source of revenue for recovery of payphone access line rates. At the time the Commission made its decision there was no guidance from the FCC indicating that the SLC should be considered as a source of revenue for recovery of the payphone access line rate. The only guidance from the FCC's orders was that the SLC should be charged on all payphone access lines.³ Based on a review of the Wisconsin Order, this Commission believes that the KPA correctly understands the Wisconsin Order. Accordingly, carriers should reduce the amount of their payphone access line rates by an amount equal to the SLC.

The KPA also requested that the Local Exchange Carriers ("LECs") provide refunds of amounts paid for the SLC back to April 15, 1997, asserting that the rates that have been in place since that time have been in violation of the New Services Test and the findings of the Wisconsin Order. Section 276 required that, after April 15, 1997, payphone access line rates must comply with the New Services Test. Furthermore, if a state commission found that rates were not in compliance after April 15, 1997, refunds

³ In the matter of Implementation of the Payphone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128 and 91-35, Report and Order, Rel. September 20, 1996, at ¶ 187.

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were to be issued retroactive to April 15, 1987. This Commission's January 5, 1999 Order did, in fact, require refunds to be given to payphone providers retroactive to April 15, 1997.

The Commission, however, disagrees with the KPA that refunds now should be given. The Commission made its 1999 decision based on the facts that were known at that time. The FCC had not provided any guidance with regard to the SLC in consideration of setting payphone access line rates. Additionally BellSouth, CBT and ALLTEL believe that refunds should not be given. If the KPA believed that the Commission had erred in its decision, it should have contested the Order. Rates are final until this Commission modifies them. They may not lawfully be changed and refunded based upon issues that were unknown at the time that they were set.

The KPA also petitions that the payphone access line rates be reduced by the amount of the SLC for BellSouth, CBT, and ALLTEL. The Wisconsin Order indicates that Section 276 is only applicable to Bell Operating Companies ("BOCs") but that a state commission may find it appropriate to apply the decisions in the Wisconsin Order to all LECs. CBT and ALLTEL both assert that since they are not BOCs, the Wisconsin Order should not apply to them. Since the Commission has previously held CBT and ALLTEL to the same standard as BellSouth, the only BOC in this state, it is appropriate that it should continue to do so. Section 276 of the Act was designed to make payphone services competitive. Applying the New Services Test to CBT and ALLTEL furthers that goal.

The Commission finds that the SLC should be considered a source of revenue for the recovery of the payphone access line rate in accordance with the Wisconsin Order. This finding should apply also to ALLTEL and CBT, but no refunds should be given for past amounts paid.

IT IS THEREFORE ORDERED that:

1. BellSouth, ALLTEL, and CBT shall provide a credit equal to the amount of the SLC for each payphone access line that is billed for service rendered after the date of this Order.
2. BellSouth, ALLTEL, and CBT shall modify their tariffs to include language incorporating the decision herein and file the modifications within 20 days of the date of this Order.

Done at Frankfort, Kentucky, this 1st day of May, 2003.

By the Commission

ATTEST:


Executive Director

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BST 000011

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DEREGULATION OF LOCAL EXCHANGE	)	ADMINISTRATIVE
COMPANIES' PAYPHONE SERVICE	)	CASE NO. 361

O R D E R

On May 23, 2003, the Kentucky Payphone Association ("KPA") filed an application for rehearing requesting that the Commission reconsider its determination with respect to ordering refunds for allegedly unlawful and excessive overcharges imposed against payphone providers since April 15, 1997 in its decision in its May 1, 2003 Order.

In our May 1, 2003 Order, we held that BellSouth Telecommunications Inc. ("BellSouth"), Cincinnati Bell Telephone ("CBT"), and Kentucky ALLTEL, Inc. ("ALLTEL") formerly known as GTE South Incorporated and Verizon South, Inc. should adjust the payphone rates set by the Commission in its earlier orders to comply with the 2002 decisions of the Federal Communications Commission ("FCC") concerning implementation of the New Services Test.¹ At issue in the Wisconsin Order is the treatment of the End User Common Line Charge ("EUCL"), also known as the Subscriber Line Charge ("SLC"). In the Wisconsin Order, the FCC directed state commissions to consider the revenue received from the SLC when determining cost-based rates that comply with the New Services Test.

¹ In the matter of Wisconsin Public Service Commission Order Directing Filings, CPD No. 00-01, FCC No. 0-25, Rel. January 31, 2002 ("Wisconsin Order").

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The KPA requests, as it did prior to our May 1, 2003 Order, that the Local Exchange Carriers ("LECs") refund amounts paid for the SLC back to April 15, 1997, because the payphone access rates that have been in place since that time have been in violation of the New Services Test and the findings of the January 31, 2002 Wisconsin Order.

Our Order of January 5, 1999 in this case did in fact require refunds for overpayments from April 15, 1997 on. However, at that time the FCC had not directed state commissions to consider revenue from the SCL, and we did not do so. The KPA argues nonetheless that refunds based on the SCL should be retroactive to April 15, 1997, essentially because the Wisconsin Order determinations with respect to the SLC are merely a restatement of "what the law according to the agency is and has always been...."² The KPA argues that, as the New Services Test has always required, the LECs take into account the SLC when setting payphone access rates, and as the Wisconsin Order changed nothing, it is appropriate to order refunds back to April 15, 1997. At a minimum, KPA contends, the refunds should be ordered back to the date of the issuance of the Wisconsin Order, January 31, 2002.

For reasons fully explained in our May 1 Order, we disagree that it is appropriate to change the rates retroactive to April 15, 1997. As we stated in our May 1, 2003 Order, at 3, the FCC had provided no guidance at the time the rates were set in 1999, and rates set in the 1999 Order were not appealed. However, we find persuasive a portion of KPA's argument, and conclude that the LECs themselves should have taken

² Kentucky Payphone Association Application for Reconsideration of the Commission's May 1, 2003 Order, page 8.

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action to adjust their rates – at least on a going-forward basis – when the FCC issued its January 31, 2002 Order explaining that the SCL must be considered when setting payphone access rates. On January 31, 2002, the rules implementing the New Services Test were at last fully in place. We therefore modify our May 1, 2003 determination to require the LECs to refund amounts paid by payphone providers since January 31, 2002, the date of the FCC's Wisconsin Order, that are in excess of the appropriate payphone access rate.

The Commission, being sufficiently advised, HEREBY ORDERS that KPA's petition is granted in part and denied in part as stated herein.

Done at Frankfort, Kentucky, this 5th day of June, 2003.

By the Commission

ATTEST:


Executive Director

Administrative Case No. 361

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BST 000014

JUL 25 2003

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CIVIL ACTION NO. 03-CI- 00921
DIVISION I

BELLSOUTH TELECOMMUNICATIONS,
INC.

PLAINTIFF/APPELLANT

v. DESIGNATION PURSUANT TO KRS 278.420(2) OF RECORD ON
APPEAL

PUBLIC SERVICE COMMISSION OF
KENTUCKY, ET AL.

DEFENDANTS/APPELLEES

* * * * *

BellSouth Telecommunications, Inc. ("BellSouth") for its designation of the record
pursuant to KRS 278.420 states:

BellSouth designates the entire record in Administrative Case No. 361 between March 6,
1997 and the time the record is certified for judicial review, including all exhibits and transcripts.



Mark R. Overstreet
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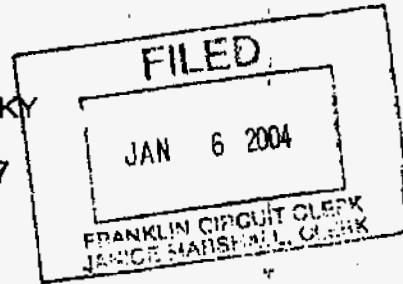
COUNSEL FOR PLAINTIFF/APPELLANT,
BELLSOUTH TELECOMMUNICATIONS, INC.

BE107:00BE1:9614:1:FRANKFORT

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COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CIVIL ACTION NO. 03-CI-00797
DIVISION II



KENTUCKY PAYPHONE ASSOCIATION,
INC.

PLAINTIFF
RECEIVED

JAN 07 2004

v.

LEGAL DEPT. (KY)

PUBLIC SERVICE COMMISSION OF
KENTUCKY, ET AL.

DEFENDANTS

And

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CIVIL ACTION NO. 03-CI-00896
DIVISION II

KENTUCKY ALLTEL, INC. and
CINCINNATI BELL TELEPHONE COMPANY

PLAINTIFF

v.

PUBLIC SERVICE COMMISSION OF KENTUCKY,
ET AL.

DEFENDANTS

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BST 000016

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CIVIL ACTION NO. 03-CI-00921
DIVISION II

BELLSOUTH TELECOMMUNICATIONS,
INC.

PLAINTIFF/APPELLANT

v.

PUBLIC SERVICE COMMISSION OF
KENTUCKY, ET AL.

DEFENDANTS/APPELLEES

* * * * *

By agreement of the parties and the Court being otherwise sufficiently advised,

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. The caption in these consolidated cases shall be:

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CIVIL ACTION NO. 03-CI-00797
DIVISION II

KENTUCKY PAYPHONE ASSOCIATION,
INC.

PLAINTIFF/APPELLANT/CROSS-
APPELLEE

v.

PUBLIC SERVICE COMMISSION OF
KENTUCKY

DEFENDANT

and

BELLSOUTH TELECOMMUNICATIONS,
INC., KENTUCKY ALLTEL, INC. AND
CINCINNATI BELL TELEPHONE
COMPANY

DEFENDANTS/APPELLEES/CROSS-
APPELLANTS

2. The third ordering paragraph of this Court's November 14, 2003 Order (entered November 20, 2003) in this proceeding is amended and clarified as follows:

(1) The Kentucky Payphone Association, Inc.; BellSouth Telecommunications, Inc.; Kentucky ALLTEL, Inc.; and Cincinnati Bell Telephone Company shall file their initial briefs on the merits on or before December 19, 2003;

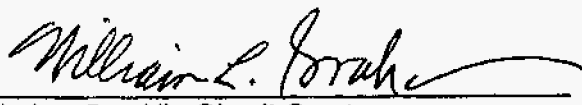
(2) The Public Service Commission of the Commonwealth of Kentucky; the Kentucky Payphone Association, Inc.; BellSouth Telecommunications, Inc.; Kentucky ALLTEL, Inc.; and Cincinnati Bell Telephone Company may file their response briefs on or before January 19, 2004;

(3) The Kentucky Payphone Association, Inc.; BellSouth Telecommunications, Inc.; Kentucky ALLTEL, Inc.; and Cincinnati Bell Telephone Company may, on or before February 3, 2004, file reply briefs to any response briefs filed in this proceeding; and

(4) Any party to these consolidated proceedings may, on or before February 10, 2004, file a further reply brief in response to the February 3, 2004 filings any party.

3. Further pleadings and other papers required to be served shall served only on those persons or entities filing an answer in any of these consolidated proceedings.

This 6 day of January, 2004.



Judge, Franklin Circuit Court

Agreed to:

Mark R. Overstreet

Mark R. Overstreet
Stiles & Harbison PLLC
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P.O. Box 634
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BE107:0BE64:10258:2:FRANKFORT

CLERK'S DISTRIBUTION CERTIFICATE

This is to certify that a true and accurate copy of the foregoing Order was served by United States Postal Service, postage prepaid, upon the following:

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Ann Jouett Kinney
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201 East Fourth Street, 102-890
Cincinnati, Ohio 45202

This the _____ day of _____, 2004

JANICE MARSHALL
FRANKLIN CIRCUIT COURT CLERK

000057

BST 000020

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited review of)	
BellSouth Telecommunications, Inc.'s	)	Docket No. 030300-TP
Intrastate tariffs for pay telephone access)	
Services (PTAS) rate with respect to rates for	)	Filed: May 3, 2004
Payphone line access, usage, and features, by)	
<u>Florida Public Telecommunications Association</u>)	

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
RESPONSES TO THE FLORIDA PUBLIC TELECOMMUNICATIONS
ASSOCIATION'S FIRST SET OF INTERROGATORIES (NOS. 1-39) AND
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1-30)**

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.340 and 1.280, Florida Rules of Civil Procedure, hereby files the following Responses to the Florida Public Telecommunications Association's (FPTA) First Set of Interrogatories (Nos. 1-39) and First Request for Production of Documents (Nos. 1-30), dated April 13, 2004.

BellSouth incorporates herein by reference all of its general and specific objections filed on April 23, 2004. Any responses provided by BellSouth in response to this discovery will be provided subject to and without waiving any of BellSouth's previously filed objections.

SPECIFIC RESPONSES

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BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Set of Interrogatories
April 13, 2004
Item No. 1
Page 1 of 1

REQUEST: State, in as much detail as you intend to provide in this matter, all facts that support your allegation on page 1 of your Answer filed in this docket that "FPTA is not entitled to any refunds because BellSouth at all times has and is charging PTAS rates in Florida that comply with binding, unchallenged orders of this Commission." As part of your response, identify all documents discussed, referred to, or utilized in making your response.

RESPONSE: BellSouth directs FPTA to Order Nos. PSC-98-1088-FOF-TL and PSC-99-0493-FOF-TL, both of which remain valid and effective. BellSouth also directs FPTA to § 364.08, Florida Statutes.

RESPONSE PROVIDED BY: Kathy Blake
Meredith Mays

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REQUEST: State, in as much detail as you intend to provide in this matter, all facts that support your allegation in Paragraph 4 of your Answer filed in this docket that "in Order No. PSC-98-1088-FOF-TL this Commission specifically reviewed cost information for wholesale payphone offerings provided by BellSouth, finding that BellSouth's rates were 'cost based and thus meet the new services test.'" As part of your response, identify all documents discussed, referred to, or utilized in making your response.

RESPONSE: Order No. PSC-98-1088-FOF-TL states at page 5 "we required cost information for wholesale payphone offerings to be filed on March 31, 1997 BellSouth . . . had this information available [w]e have reviewed the information provided and believe that when viewed in the aggregate the existing rates for payphone services are appropriate. This aggregate level assessment considers both required and typically purchased features and functions . . . based on our review of these studies, we believe that these LECs' current tariffed rates for intrastate payphone services are cost-based and thus meet the 'new services' test."

In Docket No. 970281-TL, BellSouth's filed cost studies followed the same methodology to identify direct costs that was used to calculate the direct costs in this proceeding; however, there was no explicit overhead loading methodology and no "overhead-loading factor" was applied to the direct costs.

The FCC did not detail the methodology for allocating overhead for intrastate payphone rates until its *Wisconsin Order* in 2002, which order was not affirmed on appeal until 2003. See *New England Public Comm. Council v. FCC*, 334 F.3d 69 (D.C. Cir. 2003), cert. denied 2004 U.S. LEXIS 3066 (Apr. 26, 2004). Nonetheless, this Commission's decision in Order No. PSC-98-1088-FOF-TL, is consistent with that methodology which can be seen as follows. The cost information provided to the Commission in Docket No. 970281-TL showed direct costs of \$24.66. The ONA overhead loading factor for the upper limit is calculated to be 50.42% when using the ONA Tariff Order methodology as specified in Attachment C of that order. Application of this factor to BellSouth's direct costs produces total costs of \$37.09. BellSouth's tariffed intrastate PTAS rates ranged from \$29.10 (RG 12) to \$19.80 (RG1) prior to November 2003. The federal EUCL/SLC rate has varied from 1997 to November 2003; the average rate over this timeframe is \$7.58. The addition of the average federal EUCL to BellSouth's tariffed intrastate rates produces total rates ranging from \$36.68 (\$29.10 plus \$7.58) to \$27.38 (\$19.80 plus \$7.58). The foregoing rates do not exceed BellSouth's total costs of \$37.09, calculated using the overhead allocation methodology set forth in the ONA Tariff Order, and approved in the *Wisconsin Order*.

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RESPONSE PROVIDED BY: Bernard Shell
Kathy Blake
Bill Jones

000061

REQUEST: State, in as much detail as you intend to provide in this matter, all facts that support your allegation in Paragraph 21 of your Answer filed in this docket that "the FCC has established 'a flexible approach to calculating BOC's overhead allocation.'" As part of your response, identify all documents discussed, referred to, or utilized in making your response.

RESPONSE: The Wisconsin Order states at ¶ 52 that "The Bureau Order correctly states our policy that our pricing requirements do not mandate uniform overhead loading." Thus, there is no one "correct" overhead for all services. Second, at ¶¶ 52-54, the Wisconsin Order outlines three different methodologies that can be used to determine the overhead level associated with payphone service - UNE, Physical Collocation Tariff Order, or ONA Tariff Order. Third, the Wisconsin Order itself states at ¶ 58 that the Order "establish[es] a flexible approach to calculating BOCs' overhead allocation for intrastate payphone line rates"; this negates any FPTA contention that BellSouth's statement is an "allegation." BellSouth's Answer quoted directly from the Wisconsin Order.

RESPONSE PROVIDED BY: Bernard Shell

000062

BellSouth Telecommunications, Inc.
Florida Public Service Commission
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REQUEST: State, in as much detail as you intend to provide in this matter, all facts that support your allegation in Paragraph 21 of your Answer filed in this docket that "the overhead allocation ceiling does not have to be related to UNEs and can instead be determined based on the FCC's Physical Collocation Tariff Order or the ONA Tariff Order." As part of your response, identify all documents discussed, referred to, or utilized in making your response.

RESPONSE: BellSouth directs FPTA to its response to Interrogatory No. 3. In addition, the Wisconsin Order states at ¶ 52 that "[w]e do not agree, however, with the Bureau that UNE overhead loadings must serve as a default ceiling."

RESPONSE PROVIDED BY: Bernard Shell

000063

BellSouth Telecommunications, Inc.
Florida Public Service Commission
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REQUEST: State, in as much detail as you intend to provide in this matter, all facts that support your allegation in Paragraph 27 [sic] of your Answer filed in this docket that "BellSouth...agreed to provide a credit only to the extent that new PTAS tariff rates implemented after the Commission's review and approval were lower than existing rates." As part of your response, identify all documents discussed, referred to, or utilized in making your response.

RESPONSE: BellSouth directs FPTA to the prefiled Direct and Rebuttal testimony of Kathy K. Blake and its response to Staff's First Interrogatories No. 2(c). BellSouth notes that in *Re: Independent Payphone Association of New York, Inc. v. Public Service Commission of the State of New York and Verizon New York, Inc.*, 2004 NY App Div LEXIS 3442 (2004), the court interpreted the April 10, 1997 letter from Mr. Kellogg as contemplating refunds only for a time period ending May 19, 1997.

RESPONSE PROVIDED BY: Kathy Blake
Meredith Mays

000064

BellSouth Telecommunications, Inc.
Florida Public Service Commission
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REQUEST: State, in as much detail as you intend to provide in this matter, all facts that support your allegation in Paragraph 27 [sic] of your Answer filed in this docket that "this Commission addressed BellSouth's PTAS rates finding same to be in compliance with the new services test, thus no further refund or credit is due." As part of your response, identify all documents discussed, referred to, or utilized in making your response.

RESPONSE: BellSouth directs FPTA to its responses to Interrogatories 1 - 2.

REQUEST: State, in as much detail as you intend to provide in this matter, all facts that support your allegation in Paragraph 26 of your Answer filed in this docket that "TSLRIC (plus a reasonable allocation of overhead costs) studies for PTAS are appropriate and BellSouth has no obligation to conduct and/or justify deviations from UNE cost studies adopted by this Commission." As part of your response, identify all documents discussed, referred to, or utilized in making your response.

RESPONSE: The Florida Public Service Commission's ("Commission's") Rule 25-4.046 issued May 8, 1995 outlines cost study requirements for incumbent Local Exchange Companies. That rule does not require that a cost study include a comparison to any other cost filing. Notwithstanding the foregoing, the main differences between TSLRIC and UNE cost studies are due to the vintages of the data/input and cost object -- an element (UNE) and a service (PTAS) -- under study. Furthermore, the costs filed in this proceeding reflect PTAS-specific characteristics.

In addition, this Commission has conducted an exhaustive investigation into cost methodology to be used by Local Exchange Companies in Docket No. 900633-TL. Its findings established Total Service Long Run Incremental Cost ("TSLRIC") as the appropriate methodology to be used for cost support. Moreover, the *Wisconsin Order* clearly states at ¶ 49: "It is consistent with the *Local Competition Order* for a state to use its accustomed TSLRIC methodology (or another forward-looking methodology) to develop the direct costs of payphone line service costs."

BellSouth also directs FPTA to its responses to Staff's Second Interrogatories, No. 24.

RESPONSE PROVIDED BY:

Bernard Shell

000066

REQUEST: State, in as much detail as you intend to provide in this matter, all facts that support BellSouth's First Affirmative Defense in you Answer filed in this docket. As part of your response, identify all documents discussed, referred to, or utilized in making your response.

RESPONSE: BellSouth's PSP Reward Plan is detailed in Section A.7.4.5 of BellSouth's General Subscriber Services Tariff. The plan currently provides payphone service providers (PSPs) a reward up to 6.0 percent of the PTAS line rate based upon a PSP's agreement to enter into a term agreement. Rewards provided to PSPs are reflected as bill credits. The reward percentage has varied over time.

The PSP Reward Plan is based upon the underlying PTAS rates. In the event that this Commission ordered refunds (which the Commission should not do under any circumstances) based upon the FPTA's erroneous theory that PTAS rates should have been lower in the past, then such a finding would require an adjustment – or offset – against any credits provided to those PSPs that subscribed to the PTAS reward plan.

The following scenario is provided by way of illustration:

Suppose Mr. Wood's bank charges him a monthly service fee of \$10.00. Mr. Wood is eligible for a program that provides him with a 10% reward, as a result his monthly fee is \$9.00. Mr. Wood challenges the monthly fee and the rate is reduced to \$8.00 per month. A finding is also made that Mr. Wood should have been paying \$8.00 per month for the last 12 months, rather than the standard rate of \$10.00 per month.

In this scenario, Mr. Wood would presumably be eligible for a \$24.00 credit (\$2/month x 12 months). Rather than provide Mr. Wood with the full credit, the bank asserts its right to an offset of the 10% reward because the reward would not have been provided but for the fact that the rate was \$10.00 per month. The bank sets off the 10% credit (\$1/month reward x 12 months) against the \$24.00 credit, thus, the actual credit due should be \$12.00, rather than \$24.00.

RESPONSE PROVIDED BY: Kathy Blake
Bill Jones
Meredith Mays

000067

BellSouth Telecommunications, Inc.
Florida Public Service Commission
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PUBLIC

REQUEST: State, in as much detail as you intend to provide in this matter, all facts, which support BellSouth's Second Affirmative Defense in you Answer filed in this docket. As part of your response, identify all documents discussed, referred to, or utilized in making your response.

RESPONSE: From January to May 1999, BellSouth and the FPTA engaged in confidential settlement negotiations. As a result of such negotiations, *** BEGIN
CONFIDENTIAL ***

*** END CONFIDENTIAL ***

In the event that this Commission ordered refunds (which the Commission should not do under any circumstances) based upon the FPTA's erroneous theory that PTAS rates should have been lower in the past, then BellSouth would assert its right to adjust or offset concessions it made to PSPs that received the benefit of other plans that were modified in connection with the parties' confidential negotiations.

BellSouth also directs FPTA to the illustration provided in response to Interrogatory No. 8 to demonstrate the application of any offsets.

RESPONSE PROVIDED BY: Nancy Sims
Meredith Mays

000068

BellSouth Telecommunications, Inc.
Florida Public Service Commission
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REQUEST: State, in as much detail as you intend to provide in this matter, all facts that support BellSouth's Third Affirmative Defense in you Answer filed in this docket. As part of your response, identify all documents discussed, referred to, or utilized in making your response.

RESPONSE: BellSouth directs the FPTA to the following documents that contain information responsive to this Interrogatory:

Direct Testimony of Kathy K. Blake, page 5; FPTA withdrew its petition to Order No. PSC-98-1088-FOF-TL, which became final by Order No. PSC-99-0493-FOF-TL

Direct Testimony of Kathy K. Blake, page 10; FPTA never pursued any further action concerning BellSouth's PTAS rates, and waited over a year after the *Wisconsin Order* to raise any issue with BellSouth and this Commission

BellSouth's responses to Staff's First Interrogatories; including, but not limited to, Item No. 2 (a) and (b), 3 - 5, 8 - 10, 19(b), (i), (j), (k), and 21

FPTA's responses to Staff's First Interrogatories, Item No. 3(a)

May 22, 1998 letter from Angela B. Green, FPTA to Ms. Laura V. King, Florida Public Service Commission

BellSouth also directs FPTA to the documents produced in response to Request for Production No. 9.

RESPONSE PROVIDED BY: Kathy Blake
Meredith Mays

000069

BellSouth Telecommunications, Inc.
Florida Public Service Commission
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REQUEST: State, in as much detail as you intend to provide in this matter, all facts which support your contention on page 7 of your Motion to Dismiss filed in this docket that "BellSouth cannot simply be required to issue refunds for charging rates that comply with valid and effective Orders of the Commission. Any such refunds would clearly violate the prohibition against retroactive ratemaking." As part of your response, identify all documents discussed, referred to, or utilized in making your response.

RESPONSE: BellSouth directs FPTA to Order Nos. PSC-98-1088-FOF-TL and PSC-99-0493-FOF-TL, both of which remain valid and effective. BellSouth also directs FPTA to § 364.14, Florida Statutes, which provides the Commission's ability to set rates "to be thereafter observed and in force"

RESPONSE PROVIDED BY: Kathy Blake
Meredith Mays

000070

BellSouth Telecommunications, Inc.
Florida Public Service Commission
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REQUEST: State, in as much detail as you intend to provide in this matter, all facts which support your contention on page 7 of your Motion to Dismiss filed in this docket that "[t]he filed rate doctrine also prohibits the FPTA's claims for a refund." As part of your response, identify all documents discussed, referred to, or utilized in making your response.

RESPONSE: BellSouth directs FPTA to § 364.08, Florida Statutes. BellSouth also directs FPTA to Section A7 (Coin Telephone Service) of the Florida GSST and Section 4 End User Access Service of Tariff F.C.C. No. 1, as well as prior versions of these tariffs.

RESPONSE PROVIDED BY: Kathy Blake
Meredith Mays

000071

BellSouth Telecommunications, Inc.
Florida Public Service Commission
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REQUEST: State, in as much detail as you intend to provide in this matter, all facts which support Daonne D. Caldwell's statement, on page 3 of her Rebuttal Testimony filed in this docket that "[t]he inputs and assumptions in BellSouth's cost study are consistent with those that would have been used to support a TSLRIC analysis of a service. Thus, the studies reflect the forward-looking, long-run incremental costs that BellSouth incurs in providing payphone lines to companies...and reflect the unique characteristics of the service under study." As part of your response, identify all documents discussed, referred to, or utilized in making your response.

RESPONSE: BellSouth's adherence to the TSLRIC methodology is fully explained in the direct testimony of Daonne Caldwell filed November 17, 2003 at pages 3-6; BellSouth also directs FPTA to its responses to Staff's Second Interrogatories, No. 23.

RESPONSE PROVIDED BY: Bernard Shell

000072

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Set of Interrogatories
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Item No. 14
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REQUEST: State, in as much detail as you intend to provide in this matter, all facts which support Daonne D. Caldwell's statement, on page 3 of her Rebuttal Testimony filed in this docket that BellSouth's use of ARMIS data "is consistent with the FCC's evaluation of the reasonableness of Open Network Architecture ('ONA') tariffs." As part of your response, identify all documents discussed, referred to, or utilized in making your response.

RESPONSE: BellSouth directs FPTA to its response to Interrogatory No. 26 to Staff's Second Set of Interrogatories.

RESPONSE PROVIDED BY: Bernard Shell

000073

REQUEST: State, in as much detail as you intend to provide in this matter, all facts which support Daonne D. Caldwell's statement, on pages 3 through 4 of her Rebuttal Testimony filed in this docket that "direct costs must [not] be adjusted to account for the application of Federal charges, such as the SLC, in order to prevent a double-recovery of costs." As part of your response, identify all documents discussed, referred to, or utilized in making your response.

RESPONSE: Ms. Caldwell's rebuttal testimony at pp. 3-4 was in response to Mr. Wood's erroneous assertion that "[d]irect costs must be adjusted to account for the application of federal charges, such as the SLC" (Wood Direct Testimony at p. 20) (emphasis added). Mr. Wood incorrectly relied upon the *Wisconsin Order* to support his testimony. However, the *Wisconsin Order* provides that payphone rates must be adjusted to take account of the federal SLC. *Wisconsin Order*, ¶ 59. Thus, costs should be calculated without any adjustments for potential cost recovery or the resulting rate structure. BellSouth has appropriately determined the costs it incurs to provide PTAS service; the manner in which those costs are recovered through application of the Florida GSST tariff rate and the FCC EUCL tariff rate should be determined afterward.

RESPONSE PROVIDED BY: Bernard Shell

000074

REQUEST: State, in as much detail as you intend to provide in this matter, all facts which support Daonne D. Caldwell's statement, on page 4 of her Rebuttal Testimony filed in this docket that "UNE costs and rates are [not] an appropriate benchmark for evaluating the level of payphone access service rates." As part of your response, identify all documents discussed, referred to, or utilized in making your response.

RESPONSE: With respect to rate development, UNE rates were developed for network elements and those rates were ordered by this Commission after the Commission made adjustments to the costs proposed by BellSouth. BellSouth does not agree with a number of the modifications ordered by the Commission including the cost of capital parameters, depreciation lives, and modifications to the bottoms-up inputs and assumptions.

While UNE rates are theoretically equal to UNE costs (if the costs are developed appropriately), rates for a service (e.g., PTAS) must cover the TSLRIC of that service, not be set at or equal to the TSLRIC. UNE costs are developed utilizing the FCC's current TELRIC methodology that requires costs to reflect those of a least-cost, most efficient, hypothetical provider. PTAS costs should reflect BellSouth's actual costs incurred in providing that service, rather than the costs of a hypothetical carrier.

BellSouth also directs FPTA to its response to Staff's Second Set of Interrogatories, No. 24.

RESPONSE PROVIDED BY: Bernard Shell

BellSouth Telecommunications, Inc.
Florida Public Service Commission
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REQUEST: Describe, in as much detail as you intend to provide in this matter, BellSouth's determination of the flat-rate usage calculation utilized by BellSouth in the cost study filed in this docket with the Direct Testimony of Daonne D. Caldwell. Please include the specific overhead allocation that was utilized in calculating such rate and the reason(s) BellSouth utilized that overhead [sic] allocation percentage in calculating that rate. As part of your response, identify all documents discussed, referred to, or utilized in making your response.

RESPONSE: The calculation of the flat-rate usage cost is detailed on page 11 of Exhibit DDC-1 (cost study). An overhead factor of 50.42% is reflected in the calculation – see page 12 of Exhibit DDC-1. This overhead factor is developed using the ONA tariff methodology as specified in Attachment C of that order.

RESPONSE PROVIDED BY: Bernard Shell

000076

REQUEST: State, in as much detail as you intend to provide in this matter, all facts which relate to BellSouth's decision, as state on Page 7 of the Direct Testimony of Daonne D. Caldwell filed in this docket, to utilize ARMIS data in calculating overhead loading for PTAS. As part of your response, identify all documents discussed, referred to, or utilized in making your response. Also as part of your response, state the following:

- (a) Describe, in as much detail as you intend to provide in this matter, the precise methodology utilized by BellSouth in calculating overhead loading for PTAS;
- (b) Whether the precise methodology utilized by BellSouth varies from the methodology outlined by the FCC in the *ONA Tariff Order* and, if so, in what manner the methodology utilized by BellSouth varies from the methodology outlined in the *ONA Tariff Order*;
- (c) To the extent that the methodology utilized by BellSouth varies from the precise methodology outlined in the *ONA Tariff Order*, state all facts that justify each such variation;
- (d) To the extent that the methodology utilized by BellSouth varies from the precise methodology outlined in the *ONA Tariff Order*, state why and how said methodology complies with the FCC's *Wisconsin Order* and *Second Wisconsin Order*; and
- (e) State whether BellSouth examined or considered other methodologies for calculating overhead loading for PTAS; whether any studies, models, or analyses were conducted utilizing those other methodologies, and provide a summary of the results thereof; and why those other methodologies were, ultimately, rejected by BellSouth.

RESPONSE: (a) BellSouth directs FPTA to its response to No. 26 to Staff's Second Set of Interrogatories.

(b) The methodology utilized by BellSouth does not vary from the methodology outlined by the FCC.

RESPONSE: (Continued)

- (c) See the above response to (b).
- (d) See the above response to (b).
- (e) BellSouth directs FPTA to its response to No. 24 of Staff's Second Interrogatories.

RESPONSE PROVIDED BY: Bernard Shell

000078

BellSouth Telecommunications, Inc.
Florida Public Service Commission
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REQUEST: State, in as much detail as you intend to provide in this matter, all facts which evidence or suggest that the methodology by which BellSouth utilized ARMIS data to calculate overhead loading, as described in pages 6 through 7 of the Direct Testimony of Daonne D. Caldwell filed in this docket, was and is in compliance with the methodology outlined by the FCC in the *ONA Tariff Order*. As part of your response, identify all documents discussed, referred to, or utilized in making your response.

RESPONSE: BellSouth directs FPTA to its response to No. 26 to Staff's Second Set of Interrogatories.

RESPONSE PROVIDED BY: Bernard Shell

000079

BellSouth Telecommunications, Inc.
Florida Public Service Commission
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REQUEST: State, in as much detail as you intend to provide in this matter, all facts that evidence or suggest that BellSouth's utilization of ARMIS data in calculating overhead loading for PTAS, as described in pages 6 through 7 of the Direct Testimony of Daonne D. Caldwell filed in this docket, is in compliance with the FCC's *Wisconsin Order* and *Second Wisconsin Order*. As part of your response, identify all documents discussed, referred to, or utilized in making your response.

RESPONSE: BellSouth directs FPTA to its responses to Nos. 24 and 26 to Staff's Second Set of Interrogatories.

RESPONSE PROVIDED BY: Bernard Shell

000080

REQUEST: State, in as much detail as you intend to provide in this matter, all facts which relate to BellSouth's decision not to utilize the other methodologies for calculating overhead loadings described in the FCC's *Second Wisconsin Order*, to wit: the methodology set forth in the *Physical Collocation Tariff Order* or UNE overhead loading factors. As part of your response, identify all documents discussed, referred to, or utilized in making your response. Also as part of your response, state the following:

- (a) Whether the methodology set forth in the *Physical Collocation Tariff Order* and UNE overhead loading factors are appropriate methodologies for calculating overhead loading for PTAS;
- (b) Whether BellSouth conducted any tests, studies, models, or analyses utilizing the methodology set forth in the *Physical Collocation Tariff Order* or UNE overhead loading factors, and, if so, provide a summary of the results thereof. If not, state the reasons why no test, study, model, or analysis was deemed necessary; and
- (c) State why the methodology set forth in the *Physical Collocation Tariff Order* and UNE overhead loading factors were, ultimately, rejected by BellSouth as a method for calculating overhead loading factors.

RESPONSE: BellSouth directs FPTA to its response to No. 24 to Staff's Second Set of Interrogatories.

RESPONSE PROVIDED BY: Bernard Shell

REQUEST: Was BellSouth was [sic] a member of the RBOC Coalition on the following dates:

- (a) April 11, 1997?
- (b) April 15, 1997
- (c) March 2, 2000?
- (d) January 31, 2002?
- (e) July 21, 2003?
- (f) April 1, 2004?

RESPONSE: BellSouth has objected to this Interrogatory. Subject to, and without waiving its previously filed objections, BellSouth was a member of the RBOC Coalition on all of the above dates.

RESPONSE PROVIDED BY: Pat Caldwell
Kathy Blake

REQUEST: Did Bellsouth [sic] collect EUCL or SLC charges from FPTA member PSPs in the State of Florida during the time periods indicated below, and, if so, how much did BellSouth collect?

- (a) April 15, 1997 until March 1, 2001
- (b) March 2, 2001 until January 31, 2002
- (c) February 1, 2001 until July 21, 2003
- (d) After July 21, 2003

RESPONSE: BellSouth collects EUCL charges from all PSPs in Florida pursuant to its filed and approved FCC tariff. To the extent that any PSP is also an FPTA member, the monthly federal EUCL/SLC rates during the time frames listed above are as follows:

- (a) \$6.00 through June 1997; \$6.97 from July – December 1997; \$8.17 from January – June 1998; \$8.14 from July – December 1998; \$8.25 from January – June 1999; \$7.90 from July – October 1999; \$7.85 from November 1999 – March 2000; \$7.84 beginning April 2000
- (b) \$7.84
- (c) \$7.84 through June 30, 2003; \$7.13 beginning July 1, 2003
- (d) \$7.13

RESPONSE PROVIDED BY: Bill Jones

BellSouth Telecommunications, Inc.
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REQUEST: How were the prices charged to independent payphone providers for PTAS access changed, it [sic] at all, by this Commission's August 11, 1998 Order No. PSC-98-1088-FOF-TL, in Docket No. 970281-TL approving BellSouth's rates for PTAS?

RESPONSE: BellSouth directs FPTA to its response to Staff's Interrogatory No. 2.

RESPONSE PROVIDED BY: Kathy Blake

000084

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
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REQUEST: Were the Florida PTAS rates charged by BellSouth "cost-based" on January 20, 1999? For purposes of this interrogatory request, use the same definition of "cost-based" and same methodology used by BellSouth to calculate the \$24.36 rate set forth in the testimony of Kathy Blake in this docket. If the answer is yes, provide the overhead-loading factor utilized to calculate the PTAS rate on that date. If the answer is no, on what date did those rates first become non-compliant?

RESPONSE: BellSouth has objected to this Interrogatory. Subject to, and without waiving its previously filed objections, BellSouth's rates are "cost based" as ordered by this Commission in Order No. PSC-98-1088-FOF-TL, p. 5, which order remains valid and effective.

RESPONSE PROVIDED BY: Kathy Blake
Bernard Shell

000085

BellSouth Telecommunications, Inc.
Florida Public Service Commission
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REQUEST: Were the Florida PTAS rates charged by BellSouth "cost-based" on January 20, 2000? For purposes of this interrogatory request, use the same definition of "cost-based" and same methodology used by BellSouth to calculate the \$24.36 rate set forth in the testimony of Kathy Blake in this docket. If the answer is yes, provide the overhead-loading factor utilized to calculate the PTAS rate on that date. If the answer is no, on what date did those rates first become non-compliant?

RESPONSE: BellSouth directs FPTA to its response to Interrogatory No. 26.

000086

BellSouth Telecommunications, Inc.
Florida Public Service Commission
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REQUEST: Were the Florida PTAS rates charged by BellSouth "cost-based" on January 20, 2001? For purposes of this interrogatory request, use the same definition of "cost-based" and same methodology used by BellSouth to calculate the \$24.36 rate set forth in the testimony of Kathy Blake in this docket. If the answer is yes, provide the overhead-loading factor utilized to calculate the PTAS rate on that date. If the answer is no, on what date did those rates first become non-compliant?

RESPONSE: BellSouth directs FPTA to its response to Interrogatory Item 26.

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BellSouth Telecommunications, Inc.
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REQUEST: Were the Florida PTAS rates charged by BellSouth "cost-based" on January 20, 2002? For purposes of this interrogatory request, use the same definition of "cost-based" and same methodology used by BellSouth to calculate the \$24.36 rate set forth in the testimony of Kathy Blake in this docket. If the answer is yes, provide the overhead-loading factor utilized to calculate the PTAS rate on that date. If the answer is no, on what date did those rates first become non-compliant?

RESPONSE: BellSouth directs FPTA to its response to Interrogatory Item 26.

000088

BellSouth Telecommunications, Inc.
Florida Public Service Commission
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REQUEST: Were the Florida PTAS rates charged by BellSouth "cost-based" on January 20, 2003? For purposes of this interrogatory request, use the same definition of "cost-based" and same methodology used by BellSouth to calculate the \$24.36 rate set forth in the testimony of Kathy Blake in this docket. If the answer is yes, provide the overhead-loading factor utilized to calculate the PTAS rate on that date. If the answer is no, on what date did those rates first become non-compliant?

RESPONSE: BellSouth directs FPTA to its response to Interrogatory Item 26.

REQUEST: Were the Florida PTAS rates charged by BellSouth "cost-based" on January 20, 2004? For purposes of this interrogatory request, use the same definition of "cost-based" and same methodology used by BellSouth to calculate the \$24.36 rate set forth in the testimony of Kathy Blake in this docket. If the answer is no, on what date did those rates first become non-compliant? If the answer is yes,

- (a) Provide the overhead-loading factor utilized to calculate the PTAS rate in effect on that date; and
- (b) Explain in detail the difference between the PTAS rates charged by BellSouth, by zone and billing group, and the \$24.36 rate included in Ms. Blake's testimony filed in this docket on pages 13 and 14 and include all components that make up that rate, including the intrastate rate, EUCL, and any other charges.

RESPONSE: (a) BellSouth directs FPTA to its response to Interrogatory Item 26.

(b) BellSouth directs FPTA to Exhibit KKB-3 to the rebuttal testimony of Kathy Blake.

RESPONSE PROVIDED BY: Kathy Blake
Bernard Shell

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Set of Interrogatories
April 13, 2004
Item No. [sic] 30 [second 30]
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REQUEST: Why did BellSouth voluntarily reduce its PTAS rates by the amount of the EUCL in its October, 2003 tariff filing, if, as Ms. Blake testified, "it had no obligation to do so."? Why was this specific effective date for the change selected by BellSouth?

RESPONSE: BellSouth directs FPTA to its response to Staff's 2nd Interrogatories, No. 28.

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BellSouth Telecommunications, Inc.
Florida Public Service Commission
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REQUEST: Has BellSouth filed any cost studies with the FCC or this Commission regarding UNEP rates since April 15, 1997? If the answer to the previous interrogatory is yes, did BellSouth's costs to provide UNEP services decline since 1997? If so, provide BellSouth's costs to provide UNEP and the dates on which those costs changed.

RESPONSE: BellSouth has objected to this request.

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BellSouth Telecommunications, Inc.
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REQUEST: In these proceedings, BellSouth has taken the position that it has no obligation to reduce its PTAS rates in the event its costs to provide PTAS service decrease. If that is the case, who is responsible to monitor BellSouth's costs such that once BellSouth's costs to provide PTAS services decline, BellSouth will reduce its PTAS rates in compliance with the new services test?

RESPONSE: The FPTA has inaccurately described BellSouth's position. BellSouth's position, as set forth in Ms. Blake's testimony, is that BellSouth is not automatically required to reduce or increase rates based upon changes to costs. BellSouth further directs FPTA to § 364.14, Florida Statutes.

RESPONSE PROVIDED BY: Kathy Blake

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BellSouth Telecommunications, Inc.
Florida Public Service Commission
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REQUEST: Describe BellSouth's ownership in Cingular Wireless by percentage. Provide BellSouth's investment in Cingular Wireless as of the date of your response. Provide that investment by the amount of money invested and the value of services or other in-kind investment made into Cingular Wireless by BellSouth. Has Cingular Wireless entered into an agreement to acquire, merge with or otherwise purchase AT&T Wireless, its stock, assets or business? If the answer to the previous interrogatory request is yes, will that acquisition by Cingular Wireless make Cingular Wireless the largest wireless provider in the United States?

RESPONSE: BellSouth has objected to this interrogatory.

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BellSouth Telecommunications, Inc.
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REQUEST: Provide the rates charged today by BellSouth to Cingular Wireless for interconnection, access and/or use of the BellSouth network in Florida? Please describe the terms, including the costs and payment terms, of any agreements between Cingular Wireless and BellSouth by which Cingular Wireless is authorized to access and/or interconnect with the BellSouth network.

RESPONSE: BellSouth has objected to this interrogatory.

000095

REQUEST: Assume for purposes of this question, that Order Nos. PSC-98-1088-FOF-TL, and PSC-99-0493-FOF-TL in Docket No. 970281-TL intending to implement new services test requirements was in contravention to the FCC's order in the identical issues. Does this Commission have an obligation to correct the error when known and give full effect to the revised order once that error is corrected?

RESPONSE: BellSouth disagrees with the assumption and premise contained in this request. Notwithstanding that disagreement, in cases relied upon by the FPTA in support of its contention that this Commission can modify its prior orders and require refunds as a result, neither the applicable regulatory policy nor the cases relied upon by the FPTA support its requested relief as explained below:

In *Sunshine Utilities v. FPSC*, 577 So.2d 663 (Fla. 1st DCA 1991), the Commission staff discovered an error in 1987, which apparently related to a 1984 order. In 1988, the Commission initiated an investigation into the possible error, and ultimately corrected prospectively the rate base computation error; the correction dated to the beginning of the 1988 investigation, not from the date of the 1984 order.

In *United Tel. Co. v. Mann*, 403 So.2d 962 (Fla. 1981) the Commission ordered United Telephone to refund excess revenue collected during the pendency of a ratemaking proceeding. Specifically, after rate making proceedings began, the Commission entered an interim order, followed by a subsequent order that concluded the proceeding. Refunds were deemed appropriate from the date of the interim order.

In *Reedy Creek Util. Co. v. FPSC*, 418 So.2d 249 (Fla. 1982), the Commission approved a stipulation, in which Reedy Creek voluntarily agreed to make a refund in a proscribed manner. Reedy Creek computed the refund amount, and the Commission approved the refund amount as calculated by Reedy Creek in an order dated July 21, 1980. Prior to Reedy Creek allocating the refund, and less than three months later, on October 3, 1980, the Commission issued a clarifying order, which corrected and increased the refund amount. The correcting order

occurred two and one half months after the initial order. In addressing the Commission's authority to modify its orders pursuant to the doctrine of administrative finality, the Florida Supreme Court, quoting *Peoples Gas Sys. v. Mason*, 187 So.2d 335 (Fla. 1966), explained that "orders of administrative agencies must eventually pass out of the agency's control and become final and no longer subject to modification. This rule assures that there will be a terminal point in every proceeding at which the parties and the public may rely on a decision of such an agency as being final and dispositive of the rights and issues involved therein."

Finally, in *People Gas Sys. v. Mason*, 187 So. 2d 335 (Fla. 1966), the FPSC sought to "correct" an earlier order. In that case, the Commission had approved a territorial service agreement between gas distributors by order dated November 9, 1960. On June 24, 1965, almost five years later, the Commission rescinded and withdrew the approval it had previously granted in 1960. In reversing the Commission's 1965 order, the Supreme Court of Florida criticized the Commission for "second-guessing" its original order. The Court further explained that the Commission's power to modify its orders is limited and can only occur "upon a specific finding based on adequate proof that such modification is necessary in the public interest because of changed conditions or other circumstances not present in the proceedings which led to the order being modified."

RESPONSE PROVIDED BY: Kathy Blake
Meredith Mays

BellSouth Telecommunications, Inc.
Florida Public Service Commission
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REQUEST: Does Section 276 of the Telecommunications Act of 1996 and the FCC's orders implementing Section 276 of the Telecommunications Act of 1996, including the FCC's *Wisconsin Orders* preempt any inconsistent state requirements?

RESPONSE: BellSouth has objected to this request.

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BellSouth Telecommunications, Inc.
Florida Public Service Commission
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Item No. [sic] 37
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REQUEST: If this Commission reviewed BellSouth's rates in Docket No. 970281-TL with the benefit of the FCC's orders issued since the issuance of Order Nos. PSC-98-1088-FOF-TL and PSC-99-0493-FOF-TL, including, without limitation, the *Wisconsin Orders*, would this Commission have found that the PTAS rates in effect at that time met the new services test requirements? Would this Commission have approved the EUCL charges charged payphone service providers? What other aspects of those orders would differ?

RESPONSE: BellSouth has objected to this request. Subject to, and without waiving its prior objections, this Interrogatory is nonsensical. The Commission has no basis for second guessing its original orders nor should it engage in such mental gymnastics. In issuing its *Wisconsin Order*, the FCC clearly recognized that state commissions had reviewed past PTAS rates with varying results, commended state commissions for doing so, and provided detailed guidance for prospective reviews. Nothing in the *Wisconsin Order* suggests that the FCC intended for states to *revisit* prior decisions approving PTAS rates; indeed, on appeal, the FCC claimed that the *Wisconsin Order* applied only to rates in Wisconsin. See *New England Public Communications Council v. FCC*, 334 F.3d 69, at 73, 75 (D.C. Cir. 2003), *cert. denied* 2004 U.S. LEXIS 3066 (Apr. 26, 2004).

With respect to EUCL charges, such line item charges are added to bills pursuant to federal, not state, tariffs. This Commission does not have authority to approve BellSouth's federal tariffs and the EUCL charges contained therein. BellSouth also incorporates by reference its response to FPTA's Interrogatory No. 2.

RESPONSE PROVIDED BY: Kathy Blake
Meredith Mays

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BellSouth Telecommunications, Inc.
Florida Public Service Commission
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REQUEST: Are BellSouth's 1FB business rates cost based as described in the FCC's Wisconsin Order? If so, what is the overhead allocation (provided as a percentage) included in the 1FB business line rates. Does BellSouth use the 1FB business line rates to subsidize any other services provided by BellSouth? If so, what services?

RESPONSE: BellSouth has objected to this request.

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REQUEST: In the FCC's *Wisconsin Orders*, the Common Carrier Bureau, and the FCC indicated that the FCC was confirming "long standing policy." *Wisconsin Order* at paragraphs 24 and 43. Common Carrier's *Wisconsin Order* at paragraph 10. Is it BellSouth's position that the definition of the new services test has changed? Is it BellSouth's position that the *Wisconsin Order* established new guidelines or additional details? If the answer to either of the immediately preceding requests is yes, please provide specific reference to the language of the applicable *Wisconsin Order* on which you base your response.

RESPONSE: The *Wisconsin Order* explicitly details additional information relating to the new services test. As a preliminary matter, the "longstanding policy" reference at paragraph 24 refers expressly to the requirement to use "consistent methodologies in computing direct costs for related services." BellSouth's methodology for computing its direct costs is consistent with that directive. At paragraph 43, the FCC refers to "longstanding precedent" rather than "longstanding policy". The reference to longstanding precedent refers to the use of "forward-looking cost methodologies" in applying the new services test. BellSouth has used forward-looking cost methodologies.

Details contained in the *Wisconsin Order*, include, but are not necessarily limited to:

The FCC vacated the portion of the Bureau's March 2, 2000 order (*Bureau Order*) applying the new services test to non-BOCs. (§ 43, n. 101).

The FCC disagreed with the finding in the *Bureau Order* that UNE overhead loadings served as a default ceiling to determinate the appropriate overhead allocation for payphone services. (§ 52). The FCC also detailed the overhead allocation methodology applicable to intrastate payphone rates.

The FCC disagreed with the finding in the *Bureau Order* that rates must be adjusted for *both* the SLC and the PICC; the FCC affirmed the SLC adjustment but rejected the PICC adjustment. (§ 59).

Florida Public Service Commission

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FPTA's 1st Set of Interrogatories

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RESPONSE PROVIDED BY:

Kathy Blake

Meredith Mays

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BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 1
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REQUEST: All documents that support your allegation on page 1 of your Answer filed in this docket that "FPTA is not entitled to any refunds because BellSouth at all times has and is charging PTAS rates in Florida that comply with binding, unchallenged orders of this Commission."

RESPONSE: BellSouth directs FPTA to Order Nos. PSC-98-1088-FOF-TL and PSC-99-0493-FOF-TL, and § 364.08, Florida Statutes, all of which are available to it as a matter of public record.

000103

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 2
Page 1 of 1

REQUEST: All documents that support your allegation in Paragraph 4 of your Answer filed in this docket that "in Order No. PSC-98-1088-FOF-TL this Commission specifically reviewed cost information for wholesale payphone offerings provided by BellSouth, finding that BellSouth's rates were "cost based and thus meet the new services test."

RESPONSE: BellSouth directs FPTA to Order No. PSC-98-1088-FOF-TL, page 5, which is available to it as a matter of public record. BellSouth has also attached the cost study submitted to this Commission in Docket No. 970281-TL, which is confidential and is provided pursuant to the terms of the protective agreement between the parties in this docket. BellSouth also incorporates by reference its response to Interrogatory No. 2.

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BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 3
Page 1 of 1

REQUEST: All documents that support your allegation in Paragraph 21 of your Answer filed in this docket that "the FCC has established 'a flexible approach to calculating BOC's overhead allocation.'"

RESPONSE: BellSouth directs FPTA to the *Wisconsin Order*, which is available to it as a matter of public record. BellSouth also incorporates by reference its response to Interrogatory No. 3.

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BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 4
Page 1 of 1

REQUEST: All documents that support your allegation in Paragraph 21 of your Answer filed in this docket that "the overhead allocation ceiling does not have to be related to UNEs and can instead be determined based on the FCC's Physical Collocation Tariff Order or the ONA Tariff Order."

RESPONSE: BellSouth directs FPTA to the *Wisconsin Order*, which is available to it as a matter of public record. BellSouth also incorporates by reference its responses to Interrogatories 3 and 4.

000106

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 5
Page 1 of 1

REQUEST: All documents that support your allegation in Paragraph 27 [sic] of your Answer filed in this docket that "BellSouth...agreed to provide a credit only to the extent that new PTAS tariff rates implemented after the Commission's review and approval were lower than existing rates."

RESPONSE: BellSouth directs FPTA to the April 10, 1997 letter of Michael Kellogg which has been previously filed in this proceeding by the FPTA. BellSouth also incorporates by reference its response to Interrogatory No. 5.

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BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 6
Page 1 of 1

REQUEST: All documents that support your allegation in Paragraph 27 [sic] of your Answer filed in this docket that "this Commission addressed BellSouth's PTAS rates finding same to be in compliance with the new services test, thus no further refund or credit is due."

RESPONSE: BellSouth incorporates by reference its responses to FPTA's Requests for Production Nos. 1 and 2.

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 7
Page 1 of 1

REQUEST: All documents that support your allegation in Paragraph 26 of your Answer filed in this docket that "TSLRIC (plus a reasonable allocation of overhead costs) studies for PTAS are appropriate and BellSouth has no obligation to conduct and/or justify deviations from UNE cost studies adopted by this Commission."

RESPONSE: BellSouth incorporates by reference its response to Interrogatory No. 7. The documents cited therein are available to FPTA as a matter of public record.

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BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 8
Page 1 of 1

REQUEST: All documents which relate, evidence or otherwise support BellSouth's First Affirmative Defense in your Answer filed in this docket.

RESPONSE: BellSouth directs FPTA to its response to Request for Production No. 12, which includes copies of the current and prior tariff pages detailing the PSP Reward plan. BellSouth is also providing the current letter of intent that relates to that plan. BellSouth also incorporates by reference its response to Interrogatory No. 8.

000110

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 9
Page 1 of 1

REQUEST: All documents which relate, evidence or otherwise support BellSouth's Second Affirmative Defense in your Answer filed in this docket.

RESPONSE: BellSouth has included copies of the documents relating to the parties' settlement discussions in 1998. Some of these documents are confidential and are being provided pursuant to the terms of the protective agreement between the parties in this docket. BellSouth also incorporates by reference its response to Interrogatory No. 9.

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BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 10
Page 1 of 1

REQUEST: All documents which relate, evidence or otherwise support BellSouth's Third Affirmative Defense in your Answer filed in this docket.

RESPONSE: BellSouth directs FPTA to Order No. PSC-95-0548-FOF-TL issued May 5, 1995 in Docket No. 940863-TL, which is available to it as a matter of public record. BellSouth also incorporates by reference its response to FPTA's Interrogatory No. 10 and the documents cited therein.

000112

REQUEST: All documents which support your contention on page 7 of your Motion to Dismiss filed in this docket that "BellSouth cannot simply be required to issue refunds for charging rates that comply with valid and effective Orders of the Commission. Any such refunds would clearly violate the prohibition against retroactive ratemaking."

RESPONSE: BellSouth incorporates by reference its response to Interrogatory No. 11. BellSouth also directs FPTA to the cases cited in its motion to dismiss and in cases which BellSouth has asked this Commission to officially recognize, all of which are available to FPTA as a matter of public record. In addition, BellSouth directs FPTA to 2003 Mo. PSC LEXIS 87 in which the Missouri Public Service Commission dismissed complaints of payphone service providers claiming certain tariff rates exceeded the FCC's new services test as collateral attacks on prior commission orders, which order is being provided.

BellSouth Telecommunications, Inc.
Florida Public Service Commission
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BST000139

LEXSEE 2003 MO. PSC LEXIS 37

Tari Christ, d/b/a ANJ Communications, et al., Complainants, v. Southwestern Bell Telephone Company, L.P., d/b/a Southwestern Bell Telephone Company; Sprint Missouri, Inc., d/b/a Sprint; and GTE Midwest Incorporated, d/b/a Verizon Midwest, Respondents.

Case No. TC-2003-0066

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

2003 Mo. PSC LEXIS 37

January 9, 2003

PANEL: [*1] Simmons, Ch., Lumpe, Gaw, and Forbis, CC., concur. Murray, C., absent.

OPINION: At a session of the Public Service Commission held at its office in Jefferson City on the 9th day of January, 2003.

ORDER REGARDING MOTIONS TO DISMISS

Procedural History and Summary of the Parties' Positions:

On August 22, 2002, some 25 payphone providers n1 filed their Complaint against Southwestern Bell Telephone Company, L.P., doing business as Southwestern Bell Telephone Company, Sprint Missouri, Inc., doing business as Sprint, and GTE Midwest Incorporated, doing business as Verizon Midwest, alleging that certain rates contained in those companies' Commission-approved tariffs are not just and reasonable in that the Respondents have unlawfully set their prices for network services provided to payphone providers higher than the level mandated by the Federal Communications Commission. n2 That mandated level, according to Complainants, is actual cost plus a reasonable amount to recover overhead, as measured by the F.C.C.'s New Services Test. The Payphone Providers argue that the F.C.C. has directed State Commissions to apply this price cap not only to Bell Operating Company local exchange carriers [*2] (BOC LECs), as specified by the Telecommunications Act of 1996, 47 U.S.C. Section 276, but also to non-BOC LECs. n3 Additionally, the Payphone Providers complain that the Commission has not investigated to determine whether Respondents have ceased subsidizing their own competitive payphone operations from their noncompetitive basic local services revenues. The Payphone Providers seek several remedies, including (1) a declaration that Respondents' rates have been unlawful since April 15, 1997; (2) an order that Respondents reduce their rates to lawful levels; (3) an order requiring Respondents to produce their total long run incremental costs for exchange and exchange access services so that the Complainants may assure themselves that Respondents have indeed removed all costs related to their payphone operations from these services; (4) an order requiring each Respondent to pass an Imputation Test, using rates established by the New Services Test, to ensure that their payphone operations are not being subsidized with revenue from noncompetitive services; (5) an order requiring each Respondent to calculate and refund to Complainants the difference [*3] between the rates actually charged Complainants since April 15, 1997, and the rates established in this proceeding; (6) an order requiring each Respondent to pay interest to Complainants on such refunds; and (7) "such further and additional relief as is equitable and just."

n1 The several Petitioners shall be collectively referred to as the Complainants or the Payphone Providers. The Petitioners are Tari Christ, d/b/a ANJ Communications; Bev Coleman, an Individual; Commercial Communications Services, L.L.C.; Community Payphones, Inc.; Coyote Call, Inc.; William J. Crews, d/b/a Bell-Tone Enterprises; Illinois Payphone Systems, Inc.; Jerry Myers, d/b/a Jerry Myers Phone Co.; John Ryan, an

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Individual; JOLTRAN Communications Corp.; Bob Lindeman, d/b/a Lindeman Communications; Monica T. Herman, d/b/a M L Phones; Midwest Communications Solutions, Inc.; Mark B. Langworthy, d/b/a Midwest Telephone; Missouri Public Pay Phone Corp.; Missouri Telephone & Telegraph, Inc.; Pay Phone Concepts, Inc.; Toni M. Tolley, d/b/a Payphones of America North; Jerry Perry, an Individual; PhoneTel Technologies, Inc.; Sunset Enterprises, Inc.; Teletrust, Inc.; Tel Pro, Inc.; Vision Communications, Incorporated; and Gale Wachsnicht, d/b/a Wavelength, LTD. [*4]

n2 *In the Matter of the Implementation of the Pay Telephone Reclassification Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *Report and Order*, FCC 96-388 (released September 20, 1996) ("Payphone Order"), at Para. 147; *Order on Reconsideration*, FCC 96-439 (released November 8, 1996) ("Order on Reconsideration"), at Para. 163. The Federal Communications Commission is generally referred to as the F.C.C. and will be so referenced here.

n3 *In the Matter of Wisconsin Public Service Commission Order Directing Filings*, FCC 02-25; Bureau/CPD No. 00-01. ("Wisconsin Order"), *Memorandum Opinion and Order* (January 31, 2002). A "LEC" is a Local Exchange Carrier; a "BOC" is a Bell Operating Company.

Each of the Respondents moved to dismiss the Complaint. All of the grounds stated were in the form of motions to dismiss for failure to state a claim. Verizon filed its Motion to Dismiss on October 1. Verizon asserts, first, that Verizon does not now operate as a telecommunications carrier in Missouri and is therefore no longer subject to this Commission's jurisdiction. [*5] Verizon asserts, second, that the rates it formerly charged were properly tariffed and approved by this Commission and that the Complaint therefore represents an impermissible collateral attack on the Commission's approval of those tariffs. n4 Verizon asserts, third, that Complainants have failed to perfect their complaint as required by Section 386.390.1, RSMo 2000, n5 in that, while signed by 25 purported customers or prospective customers, it is not signed by 25 customers or prospective customers of Verizon. n6 Verizon points out that one complainant is authorized to provide payphone services in Illinois, not Missouri. Verizon also points out a scrivener's error in the Complaint by which Complainants demand a remedy from Bell in a paragraph ostensibly dealing with Verizon. n7

n4 *St. ex rel. Licata, Inc. v. PSC*, 829 S.W.2d 515 (Mo. App. 1992). Verizon characterizes this defense as relying upon the Filed Rate Doctrine.

n5 All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision of 2000.

n6 The pleadings all reference, additionally, a parallel requirement in the Commission's rules at 4 CSR 240-2.070(3). Any discussion of the Complaint perfection requirement in this Order should be understood to encompass that rule as well as Section 386.390.1. [*6]

n7 Paragraph a of Complainants' *ad damnum* clause directed at Verizon, on page 18 of the Complaint.

Sprint filed its Motion to Dismiss on October 3. Sprint asserts, first, that the New Services Test applies only to BOC LECs and Sprint is not a BOC LEC. Sprint points out that the F.C.C. has admitted that it is without jurisdiction to impose the New Services Test on non-BOC LECs, contrary to the allegation of Paragraph 41 of the Complaint. n8 Sprint asserts, second, that its rates are properly tariffed and were approved by this Commission in Case No. TT-97-421 and that the Complaint therefore represents an impermissible collateral attack on the Commission's approval of those tariffs. n9 Sprint asserts, third, that the Complaint is fatally defective in that it does not allege that Sprint has violated any law, rule or order of this Commission as required by Sections 386.330 and 386.390. n10 Sprint asserts, fourth, that the Commission is without authority to order pecuniary relief n11 or to require compensation for past overcharges. n12 Sprint asserts, fifth, that Complainants have failed to perfect [*7] their complaint as required by Section 386.390.1 in

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that, while signed by 25 purported customers, it is not signed by 25 customers of Sprint. Sprint states that only two of the 25 Complainants are customers of Sprint. Finally, Sprint asserts that the Complaint fails to state a claim upon which relief can be granted in that it seeks to have the Commission retroactively apply the New Services Test to its rates in violation of the Missouri Constitution. n13

n8 *Wisconsin Order*, Paragraphs 31 and 42.

n9 Section 386.550.

n10 *St. ex rel. Ozark Border Electric v. PSC*, 924 S.W.2d 597, 600 (Mo. App., W.D. 1996).

n11 *B.G. DeMaranville v. Fee Fee Trunk Sewer*, 573 S.W.2d 674, 676 (Mo. App., E.D. 1978).

n12 *May Dept. Stores Co. v. Union Electric L.P. Co.*, 107 S.W.2d 41, 58 (Mo. 1937).

n13 Mo. Const., Art. I, Sec. 13; and see *Mo. Nat'l Educ. Ass'n v. Mo. St. Bd. of Ed.*, 34 S.W.3d 266 (Mo. App., W.D. 2000).

[*8]

Bell also filed its Motion to Dismiss on October 3. Bell asserts, first, that its rates are properly tariffed and were approved by this Commission and that the Complaint therefore represents an impermissible collateral attack on the Commission's approval of those tariffs. n14 Second, Bell asserts that the Complainants raised these same points as members of Midwest Independent Coin Payphone Association in Case No. TT-97-345 and that the Commission determined the issues against them in its order of April 11, 1997. n15 Bell claims that, having failed to properly appeal that order, Complainants may not now bring these arguments in a new case. Bell further contends that the Commission later refused to permit MICPA to again raise these issues in Case No. TW-98-207, because Staff had applied the New Services Test to Bell's rates and was satisfied that Bell met the test. n16 Third, Bell asserts that the Complainants have failed to perfect their complaint as required by Section 386.390.1 in that, while signed by 25 purported customers, it is not signed by 25 customers of Bell. Bell states that four of the Complainants lack standing in that they evidently are not certificated in Missouri. n17 [*9] Fourth, Bell asserts that it is subject to price cap regulation under Section 392.245 and that any of its rates that are equal or less than the rates in effect on December 31, 1996, are just and reasonable as a matter of law. As the rates in question are not in excess of the amounts Bell may charge under the Price Cap Statute, the Commission is without jurisdiction to order a reduction in those rates. Fifth, Bell asserts that the Complainants' demand for retroactive refunds is barred by the prohibition against retroactive ratemaking. n18

n14 *St. ex rel. Licata, Inc. v. PSC*, 829 S.W.2d 515 (Mo. App. 1992).

n15 *In the Matter of Southwestern Bell Telephone Company*, Case No. TT-97-345 (Order Approving Tariff Revisions, Denying Applications to Intervene, Motions to Suspend, and Motion for Protective Order, and Denying as Moot Discovery Requests, issued April 11, 1997). The Midwest Independent Coin Payphone Association is generally referred to as MICPA and will be so referenced here.

n16 *In the Matter of an Investigation of Payphone Issues Pursuant to the Telecommunications Act of 1996*, Case No. TW-98-207 (Order Denying Motion to Expand Issues Under Investigation and Amend Procedural Schedule and Granting Request to Submit Case on the Record Presented, issued June 16, 1998). [*10]

n17 See *MCI Telecommunications Corp. v. Southwestern Bell Telephone Co.*, Case No. TC-97-303 (Report and Order, issued Sept. 16, 1997) at 14, 15-16.

n18 *St. ex rel. Utility Consumers Council, Inc. v. PSC*, 585 S.W.2d 41, 58 (Mo. banc 1979).

Complainants filed their Suggestions in Opposition to the various motions to dismiss on October 18. First, Complainants point out that, when a motion to dismiss for failure to state a claim is filed, the subject complaint is to be evaluated in "academic fashion" to determine its sufficiency with respect to the elements of a known or proposed cause

of action. n19 All averments in the complaint are assumed to be true for this purpose and there is no weighing of facts to determine truth or falsity. Second, Complainants argue that the Filed Rate Doctrine does not bar their Complaint because it is not an impermissible collateral attack. Complainants note that Section 386.400.6 expressly authorizes telecommunications carriers to challenge by complaint the justness and reasonableness of any rate or charge for a service offered [*11] by a noncompetitive or transitionally competitive carrier. Complainants further claim that the Filed Rate Doctrine prohibits attack on Commission-approved tariffs in court; it does not apply to prevent a challenge before the Commission itself. n20 Complainants further assert that Bell's claim that the Commission has previously considered and rejected Complainants' claims is of no relevance because it does not meet any of the four prongs of the test for collateral estoppel: There was no prior adjudication; there was no decision on the merits; the parties are not identical or in privity; and there was no full and fair opportunity to litigate. n21 Complainants further contend that Respondents' assertion, based on Section 386.390.1, that the Complaint is not properly perfected, is irrelevant because Section 393.400.6 permits even a single telecommunications carrier to challenge the rates of a noncompetitive carrier and this Commission has entertained such cases in the past. n22 Complainants further contend that the Price Cap Statute, Section 393.245, does not immunize an unlawful rate from correction by the Commission and that, in any event, the rules of the F.C.C. preempt contradictory [*12] state law. n23 Complainants further contend that this Commission retains jurisdiction over Verizon with respect to conduct that occurred while Verizon was a regulated utility in Missouri and that some, at least, of the requested relief has not been mooted by Verizon's withdrawal from Missouri. As to the scrivener's error relied upon by Verizon, Complainants ask leave to amend the Complaint by interlineation and urge that such leave should be freely granted in the interests of justice, particularly as Verizon does not make any claim that it has been prejudiced by the error. Complainants further contend that the prohibition against retroactive ratemaking simply does not apply in this case and that Respondents, in any event, are estopped from asserting that defense due to a promise made by the BOCs to make refunds retroactive to April 15, 1997, in a request for a 45-day waiver made to the F.C.C. and granted in partial reliance on that promise. The F.C.C. later extended the waiver to all LECs, conditioned on similar retroactive refunds of overpayments. Complainants admit that they are presently unsure whether either Verizon or Sprint took advantage of this waiver offer, but assert that [*13] they are entitled to use discovery in this case to determine that point. Complainants further contend that the New Services Test does apply to non-BOC LECs, contrary to Sprint's assertion. Complainants note that in Case No. TT-97-421, Sprint acknowledged that it was subject to the New Services Test. Although the F.C.C. found that it lacked jurisdiction to impose the New Services Test on non-BOC LECs, it encouraged the State Commissions to do so. n24 Finally, in the event that the Commission finds that the perfection requirement at Section 386.390.1 does apply to this Complaint and that this Complaint is not properly perfected, Complainants seek a reasonable interval in which to add new Complainants.

n19 *Reynolds v. Diamond Foods & Poultry, Inc.*, 79 S.W.3d 907, 909 (Mo. banc 2002).

n20 *Bauer v. Southwestern Bell Telephone Co.*, 958 S.W.2d 568 (Mo. App., E.D. 1997).

n21 This discussion is primarily based on Complainants' contention that, in Case No. TT-97-345, MICPA had no opportunity to examine SWBT's cost study, to offer testimony, to cross examine witnesses, or to advance its arguments orally or in briefs. Complainants also contend that there is no evidence before the Commission establishing either their identity or privity with MICPA. [*14]

n22 E.g., *AT&T Communications of the Southwest v. GTE North, Inc.*, 29 Mo. P.S.C. (N.S.) 591. Interestingly, a case in which the Commission found a tariff approved by it two years previously to be unjust and unreasonable because miscalculated, with no suggestion that the Filed Rate Doctrine, collateral estoppel or *res judicata* prohibited it from reaching this determination. *But see contra*, *MCI Telecommunications Corp. v. Southwestern Bell Telephone Co.*, Case No. TC-97-303, limiting complaints under Section 393.400.6 to allegations of unlawful subsidies.

n23 47 U.S.C. Sec. 276(c): "... the Commission's regulations on such matters shall pre-empt such State requirements."

n24 *Wisconsin Order*, at Para. 42.

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Verizon replied on November 1. First, Verizon points out that the F.C.C. itself has acknowledged that it lacks jurisdiction to impose the New Services Test on non-BOC LECs. n25 Verizon's predecessor, GTE Midwest, was not a BOC, and did not become one when GTE Corporation merged with Bell Atlantic to form Verizon. [*15] The BOCs are defined by statute. n26 Verizon points out that this Commission recently read Paragraph 42 of the *Wisconsin Order* and understood that the F.C.C. itself has concluded that it cannot impose the New Services Test on non-BOC LECs. n27 Second, Verizon contends that the perfection requirement at Section 386.390.1 does indeed apply to this Complaint and, inasmuch as the Complaint is not properly perfected, as Complainants themselves admit, it must be dismissed in accordance with long-standing Commission precedent. n28 Verizon denies that Section 392.400.6, cited by Complainants as an alternative source of jurisdiction, authorizes the present Complaint, explaining that the Commission has consistently interpreted Section 392.400.6 as authorizing only complaints intended to prevent noncompetitive and transitionally competitive carriers from improperly subsidizing their competitive services. n29 Third, Verizon contends that the Commission is without authority to either award money damages or retroactively correct a rate. n30 Verizon again points to its present uncertificated status in Missouri and suggests, in view of the Commission's purely prospective powers, that the matters [*16] urged in the Complaint are moot as to it.

n25 *Wisconsin Order*, at Para. 42; *In the Matter of the North Carolina Payphone Assoc.*, 17 FCC Rcd 4275, Para. 5 (Mar. 4, 2002).

n26 47 U.S.C. Sec. 153(4).

n27 *In the Matter of the Joint Application of GTE Midwest Incorporated, doing business as Verizon Midwest, and CenturyTel of Missouri, LLC*, Case No. TM-2002-232 (*Order Denying Application to Intervene, Denying Motion to Suspend Tariffs, Approving Tariffs, Canceling Tariffs, and Directing Filing*, issued Aug. 29, 2002) at page 3, footnote 2.

n28 *See AT&T Communications of the Southwest, Inc., v. GTE North Incorporated*, Case No. TC-93-58 (*Order Granting Motion to Dismiss*, issued July 20, 1993); *MCI v. Southwestern Bell Telephone Co.*, Case No. TC-97-303 (*Report and Order*, issued Sept. 16, 1997).

n29 *Id.*

n30 *American Petroleum Exchange v. PSC*, 172 S.W.2d 952, 955 (Mo. 1943); *Utility Consumers Council*, *supra.* (see Footnote 11).

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Bell also replied on November 1. Bell contends, first, that Complainants are mistaken in their contention that the present Complaint is not barred by Section 386.550 as a collateral attack on a Commission Order, explaining away Complainants' characterization of this Complaint as a direct attack, rather than a collateral attack, as a "distinction without a difference." Bell criticizes Complainants' effort to distinguish *Licata*, relied on by Bell in its Motion to Dismiss. n31 Bell also cites a recent Commission order to purportedly show that this Commission recognizes that Section 386.550 bars attacks on Commission-approved tariffs:

No objection was ever raised to Atmos' tariff and it is not before the Commission in this case. Having been duly approved by the Commission, Atmos' tariff is immune to collateral attack, therefore, no order affecting that tariff can be made in this case. <9> "A tariff that has been approved by the Public Service Commission becomes Missouri law and has the same force and effect as a statute enacted by the legislature." <10>

FN 9: Section 386.550, RSMo Supp. 2001.

FN 10: *A.C. Jacobs & Co., Inc. v. Union Electric Company*, 17 S.W.3d 579, 581 [*18] (Mo. App., W.D. 2000); *Bauer v. Southwestern Bell Telephone Company*, 958 S.W.2d 568, 570 (Mo. App., W.D. 1997).

Second, Bell again asserts the Filed Rate Doctrine as a defense, arguing that rates collected pursuant to a filed and approved tariff become the property of the utility; the tariffed rates cannot be changed retroactively and the utility cannot be forced to disgorge its lawfully collected revenues. n32 Third, Bell asserts that Complainants are indeed collaterally estopped from challenging Bell's tariffs because Complainants' trade association, MICPA, participated in Case No. TT-97-345 in which the Commission approved those tariffs. Contrary to Complainants' assertions, Bell argues

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that all four prongs of the test for collateral estoppel are met here: the issues are identical; the parties are in privity, as MICPA has traditionally represented the interests of payphone providers, whether or not these Complainants are members of MICPA; the previous proceeding ended in a final determination on the merits in that the Commission rejected MICPA's arguments and approved the tariff; and Complainants cannot now argue that they did not have a full [*19] and fair opportunity to litigate in the prior proceeding because they never sought rehearing in that case on the grounds of improper procedure or denial of due process. Fourth, Bell insists that this Complaint must be dismissed because it is required to be perfected under Section 386.390.1 and it is not. Like Verizon, Bell cites prior Commission authority to show that Section 386.400.6 does not authorize the present Complaint. n33 Bell points out that Complainants have not identified any service allegedly offered by Respondents *below cost*; therefore, they have not made out a *prima facie* case of unlawful subsidization under Section 386.400.6. Fifth, Bell reasserts its position that the Price Cap Statute, Section 393.245, bars this proceeding because the Commission has no power to inquire into the justness and reasonableness of the rates of a price-capped carrier. n34 Sixth, Bell argues that the prohibition against retroactive ratemaking bars the retroactive relief and refund sought herein by Complainants. n35 Finally, Bell addresses Complainants' reliance on the BOCs' promise to make retroactive refunds in exchange for a 45-day waiver by the F.C.C.: Bell asserts that this promise [*20] does not apply to Missouri because the new tariffs eventually filed here by Bell did not result in lower rates. In any event, that promise included only overpayments, if any, collected during the 45-day waiver period.

n31 In *Licata*, Plaintiff attempted in Circuit Court to challenge the validity of a utility company rule; the court, relying on Section 386.550, barred the challenge as an impermissible collateral attack on the Commission's order approving the challenged rule. *St. ex rel. Licata, Inc. v. PSC*, 829 S.W.2d 515 (Mo. App. 1992); and see Footnote 3.

n32 *St. ex rel. Barvick v. PSC*, 606 S.W.2d 474, 476 (Mo. App., W.D. 1980).

n33 *MCI v. Southwestern Bell Telephone Co.*, Case No. TC-97-303 (Report and Order, issued Sept. 16, 1997) at pg. 11.

n34 *St. ex rel. Hogarty v. PSC*, Case Nos. CV197-1795CC and CV197-1810CC (Revised Findings of Fact and Conclusions of Law and Judgment, issued Aug. 6, 1998) (Circuit Court of Cole County, Mo., Brown, J.) at 4.

n35 *Utility Consumers' Council, supra*, at 58.

[*21]

Sprint replied on November 4. First, Sprint asserts that the Complaint is fatally defective because it does not allege that Sprint violated any law, rule or Commission order, which defect is jurisdictional in a complaint brought under Section 386.390. n36 As to Complainants' citation of Section 386.400.6 as an alternative basis of jurisdiction, Sprint, like Verizon and Bell, cites a Commission case limiting that cause of action to accusations of improper subsidization. n37 Second, Sprint reasserts its position that this Complaint is an unlawful collateral attack on a prior Commission decision. In Case No. TT-97-421, issued on April 11, 1997, the Commission approved Sprint's payphone tariffs over the objections of MICPA, effective April 15, 1997. n38 Neither MICPA nor these Complainants pursued a motion for rehearing of that order. By seeking a refund retroactive to April 15, 1997, Sprint explains, Complainants make plain that they are indeed collaterally attacking the Commission's order approving Sprint's tariffs, effective that very day. Third, Sprint restates its position that the Complainants' prayer that the Commission determine what a just and reasonable rate would have been [*22] and refund the difference, with interest, from April 15, 1997, is the very sort of retroactive ratemaking prohibited by the Supreme Court in *Utility Consumers' Council*. n39 Fourth, Sprint points out that the Commission has no authority to award a refund. n40 Fifth, Sprint points out that the New Services Test does not apply to it, a non-BOC LEC. Sprint notes that the F.C.C. has come around to this point of view, n41 and that this Commission also recently embraced it. n42 Finally, Sprint notes that this Commission approved Sprint's tariffs at a time when both Sprint and the Commission mistakenly believed that the New Services Test *did* apply to Sprint's tariffs, and that the Commission at that time determined that Sprint was in compliance under that test.

n36 *St. ex rel. Ozark Border Electric Cooperative v. PSC*, 924 S.W.2d 597, 599-600 (Mo. App., W.D. 1996).

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n37 *MCI v. Southwestern Bell Telephone Co.*, Case No. TC-97-303 (Report and Order, issued Sept. 16, 1997) at pp. 15-16, 23.

n38 *In the Matter of United Telephone of Missouri, doing business as Sprint*, Case No. TT-97-421 (Order Approving Tariff, Denying Motion to Suspend, and Denying Application for Intervention, issued April 11, 1997) at 4. [*23]

n39 *Utility Consumers' Council*, *supra*, at 58.

n40 *St. ex rel. Laundry, Inc. v. PSC*, 34 S.W.2d 37, 46 (Mo. 1931); *Barvick*, *supra*.

n41 See Footnote 17.

n42 See Footnote 19.

On November 8, Complainants filed further suggestions in opposition to the various motions to dismiss in order to address certain new issues that had arisen. First, the Complainants point to Section 386.270 and note that it expressly contemplates suits brought under Chapter 386 to challenge Commission-approved rates. The Missouri Supreme Court has also recognized that customers may bring an action to challenge utility rates. n43 Second, the Complainants contend that collateral estoppel is inappropriate in this case because MICPA was never a party to Bell's payphone tariff case; its application for intervention was denied by this Commission. Third, the Complainants note that, even if application of the New Services Test to Respondents is not mandatory, the Commission can decide to do so as a matter of policy. Fourth, the [*24] Complainants point out that the matter of the BOC waiver and the extent, if any, to which Sprint and Verizon relied upon the F.C.C.'s waiver offer to all LECs, are issues of fact that the Commission must determine after hearing and that it would be premature to determine them on a motion to dismiss, before the facts have been developed.

n43 *St. ex rel. Jackson County v. PSC*, 532 S.W.2d 20, 32-33 (Mo. banc 1975).

On December 9, Sprint sought leave to advise the Commission of an additional authority, a decision of the Public Utilities Commission of Ohio on November 26, 2002, that the New Services Test does not apply to non-BOC LECs and that retroactive refunds are prohibited as retroactive ratemaking. n44

n44 Sprint initially attempted to file this electronically on December 6, but that attempt failed for some unknown reason. The Ohio decision is *In the Matter of the Commission's Investigation into the Implementation of Section 276 of the Telecommunications Act of 1996 Regarding Pay Telephone Services*, Case No. 96-1310-TOPrS-COI (Entry, Public Utilities Commission of Ohio, Nov. 26, 2002).

[*25]

Discussion:

The Commission will take up only those issues, among the many raised by the parties, that are necessary to the resolution of the motions before it.

A. The Applicable Standard

As stated by Complainants, a motion to dismiss for failure to state a claim tests only the legal sufficiency of the complaint. n45 While the determination of such motions was, at one time, limited to consideration of matters contained within the four corners of the complaint, the modern trend is to extend consideration to matters outside the complaint, as well. n46 All well-pleaded factual allegations in the complaint must be accepted as true and the facts must be liberally construed to support the complaint. n47 Complainants enjoy the benefit of all reasonable inferences. n48 The complaint should not be dismissed unless it shows no set of facts entitling it to relief. n49 A complaint under the Public Service Commission Law is not to be tested by the technical rules of pleading; if it fairly presents for determination some matter which falls within the jurisdiction of the Commission, it is sufficient. n50

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n45 For this discussion, see J.R. Devine, *Missouri Civil Pleading and Practice*, Section 20-3 (1986). [*26]

n46 Devine, *supra*, pg. 264 and Section 24-2.

n47 *Nazeri v. Missouri Valley College*, 860 S.W.2d 303, 306 (Mo. banc 1993).

n48 *Id.*

n49 *Id.*

n50 *St. ex rel. Kansas City Terminal Railway Co. v. Public Service Commission*, 308 Mo. 359, 372, 272 S.W. 957, 960 (banc 1925).

B. The Complaint

The Complaint first addresses the identity of the Complainants. There are 25 Complainants. Twenty-one of them are authorized to provide public telecommunications service in Missouri. n51 Three others are authorized to do business in Missouri, but are not, evidently, authorized to provide public telecommunications service in this or any other state. n52 One other is described as authorized to provide public telecommunications service in Illinois. n53 The Complaint does not describe this Complainant's relationship, if any, to Missouri. Next, the Complaint alleges that the 25 Complainants are "customers, or prospective customers, of network services that are made available to companies that provide pay telephone [*27] services to end users[.]" There is no allegation that any of the Complainants is a customer or prospective customer of any of the three Respondents. n54

n51 *Complaint, Para's 1, 2, 4, 6-16, 19-25.*

n52 *Complaint, Para's 3, 5, 17.*

n53 *Complaint, Para. 18.*

n54 *Complaint, Para. 26.*

The Complaint also seeks a waiver from certain pleading requirements contained in Regulation 4 CSR 240-2.070(5)(A), regarding the signature of each Complainant and the address of each location where service was rendered. In connection with this latter requirement, the Complaint states: "one or more of the payphone access services, the rates for which are the subject matter of this complaint, are delivered to each payphone operated by the Complainants[.]" n55

n55 *Complaint, Para. 27.*

The Complaint [*28] next addresses the identities of the Respondents. It alleges that each Respondent provides local exchange and other network telecommunications services to payphone providers and also offers payphone service to end users in competition with Complainants. n56 It alleges that Complainants have "contacted" the Respondents concerning the circumstances giving rise to the Complaint. n57 In a long series of allegations, the Complaint charges that Section 392.200.1 requires telecommunications carriers to charge no more "than allowed by law"; that Section 276 of the Telecommunications Act imposes certain obligations and restrictions relating to payphones on BOC LECs; and that the F.C.C. has extended these obligations and restrictions to all LECs. n58 Among these is an allegation that the Respondents were required to file tariffs with this Commission, no later than April 15, 1997, implementing the obligations and restrictions imposed by the F.C.C. on LECs under Section 276 of the Telecommunications Act. n59 Another allegation in this series is that the F.C.C. specifically has required that state commissions apply the New Services Test to the tariffs of all LECs. n60 The Complaint asserts, "In [*29] order to be just and reasonable under Missouri law, the payphone line rates charged by SWBT, Sprint and Verizon must comply with the New Services Test." n61 The Complaint then alleges that "an imputation test for the LEC's payphone operations, that compares the revenue

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derived from the LECs' payphone operations to the costs (including imputed costs) of providing those services, will test whether the LEC's are subsidizing their payphone operations in violation of Section 276 of the Federal Communications Act." n62

n56 *Complaint, Para's 28, 29, 30.*

n57 *Complaint, Para. 31.*

n58 *Complaint, Para's 32-43.*

n59 *Complaint, Para. 38.*

n60 *Complaint, Para. 41.*

n61 *Complaint, Para. 41.*

n62 *Complaint, Para. 44.*

The Complaint then makes certain parallel allegations against the three Respondents. First, each Respondent's rates for network services made available to payphone providers are specified. n63 Second, it is alleged that [*30] these rates "are not cost-based and recover more than a reasonable amount of the company's common expenses. As a result, the rates . . . do not comply with the New Services Test and are therefore unjust, unreasonable and unlawful." n64 The Complaint then makes these allegations:

The Commission has not engaged in any examination or investigation, under contested case procedures, to determine whether all expenses associated with [Respondent]'s payphone operations have been removed from the total long run service incremental costs associated with exchange and exchange access services. n65

The Commission has not engaged in any examination or investigation, under contested case procedures, to determine whether [Respondent]'s payphone operations, taking into account the long run service incremental costs of its services and the imputed tariffed rates (as calculated under the New Services Test) used by its own payphone operations, would pass an imputation test consistent with the requirements of federal and state law. n66

In a final pair of allegations, the Complaint charges that each Respondent "has not complied with the nonstructural safeguards" purportedly required of all LECs by [*31] the F.C.C., n67 and that each Respondent has, since April 15, 1997, "charged the Complainants rates greater than a price consistent with the New Services Test and the Complainants are entitled to a refund of the difference between rates approved by the Commission under the New Services Test" and the rates actually charged since April 15, 1997. n68

n63 *Complaint, Para's 46, 53, 60.*

n64 *Complaint, Para's 47, 54, 61.*

n65 *Complaint, Para's 48, 55, 62.*

n66 *Complaint, Para's 49, 56, 63.*

n67 *Complaint, Para's 50, 57, 64.*

n68 *Complaint, Para's 51, 58, 65.*

C. The Governing Statutes

The Public Service Commission "is purely a creature of statute" and its "powers are limited to those conferred by the [Missouri] statutes, either expressly, or by clear implication as necessary to carry out the powers specifically granted." [*32] n69 While the Commission properly exercises "quasi judicial powers" that are "incidental and necessary to the proper discharge" of its administrative functions, its adjudicative authority is not plenary. n70 "Agency

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adjudicative power extends only to the ascertainment of facts and the application of existing law thereto in order to resolve issues within the given area of agency expertise." n71 Therefore, in determining the sufficiency of a complaint, the Commission must consider whether the pleading contains adequate allegations on each element of the authorizing statute or statutes. Likewise, the complaint must meet any special requirements or restrictions imposed by the authorizing statute or statutes.

n69 *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 47 (Mo. banc 1979); *State ex rel. City of West Plains v. Public Service Commission*, 310 S.W.2d 925, 928 (Mo. banc 1958).

n70 *State Tax Commission v. Administrative Hearing Commission*, 641 S.W.2d 69, 75 (Mo. 1982), quoting *Liechty v. Kansas City Bridge Co.*, 162 S.W.2d 275, 279 (Mo. 1942). [*33]

n71 *State Tax Commission*, *supra*.

Complainants recite that they bring their Complaint under Sections 386.330.3; 386.390.1; 386.400; 392.200.1; 392.400.6; Regulation 4 CSR 240-2.070; and the Telecommunications Act of 1996, 47 U.S.C. Section 276. Of these provisions, only two actually authorize this Commission to hear and determine complaints. n72 Section 386.390.1 is the Commission's general complaint power. Section 392.400.6 is an additional, special complaint authority limited to telecommunications matters. It has been cited by Complainants as an independent basis for their Complaint.

n72 Section 386.330.3 requires the Commission to make a final order within 60 days of its completion of an investigation into a complaint against a telecommunications carrier. It does not independently authorize the Commission to entertain complaints. Section 386.400 authorizes utilities to file complaints on the same basis as other parties. It does not create an independent complaint authority. Section 392.200.1 imposes certain requirements upon telecommunications carriers, but does not independently authorize anyone to bring a complaint. Regulation 4 CSR 240-2.070 is the Commission's rule establishing procedures for complaint cases. It is not independent authority under which a complaint may be brought. Finally, Section 276 of the Telecommunications Act includes various matters relating to the deregulation of pay telephones, but it does not independently authorize anyone to bring a complaint before this Commission.

[*34]

I. Section 386.390.1:

Section 386.390.1 authorizes the Missouri Public Service Commission to hear and determine complaints. The section effectively contains two distinct complaint powers.

a. The Commission's General Complaint Authority

In a broad grant of authority, Section 386.390.1 authorizes the Commission to determine complaints as to "any act or thing done or omitted to be done by any corporation, person or public utility . . . in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission[.]" Such a complaint may be brought by anyone, n73 and such a complaint may even be brought to challenge a "rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility[.]" n74 As asserted by Sprint, a complaint brought under this authority necessarily must include an allegation of a violation of a law or of a Commission rule, order or decision. n75

n73 Specifically, "complaint may be made by the commission on its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation[.]" Section 386.390.1. [*35]

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n74 *Id.* But not, however, to challenge a rule, regulation or charge previously approved by the Commission. See *St. ex rel. Licata v. PSC*, 829 S.W.2d 515 (Mo. App., W.D. 1992).

n75 *St. ex rel. Ozark Border Electric Cooperative v. PSC*, 924 S.W.2d 597, 599-600 (Mo. App., W.D. 1996).

Missouri Courts have read Section 386.390.1 together with Section 386.550, which provides that "in all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive." In *State ex rel. Licata v. Public Service Commission of the State of Missouri*, n76 the Western District held that Section 386.550 barred a complaint challenging as unlawful a utility company rule that had been approved by the Commission. In its transfer application, the Relator complained that the Court had deprived it of the right of complaint granted in Section 386.390.1. The *Licata* Court explained that this contention was erroneous: Section 386.390.1 authorizes complaints alleging violations of Commission orders, while [*36] Section 386.550 bars complaints attacking Commission orders. The Court explained, "Section 386.390 and Section 386.550 are not in conflict but address separate problems." n77 In a second case, *State ex rel. Ozark Border Electric Cooperative v. Public Service Commission of Missouri*, n78 the Western District held that a complaint brought under Section 394.312.6, which authorizes complaints attacking territorial agreements previously approved by the Commission, must include an allegation of a substantial change in circumstances in order to avoid the bar imposed by Section 386.550, despite the fact that Section 394.312 does not expressly require such an allegation. n79 Reading *Licata* and *Ozark Border* together, it is clear that a complaint seeking to re-examine any matter already determined by the Commission must include an allegation of a substantial change of circumstances; otherwise, Section 386.550 bars the complaint.

n76 829 S.W.2d 515 (Mo. App., W.D. 1992).

n77 *Licata*, *supra*, 829 S.W.2d at 519.

n78 924 S.W.2d 597 (Mo. App., W.D. 1996). [*37]

n79 924 S.W.2d at 6001-601.

Turning to the Complaint, the Commission finds allegations of two violations of law: First, that Respondents' rates do not comply with the New Services Test and are therefore unlawful. n80 Second, that Respondents have not complied with the nonstructural safeguards purportedly imposed by the F.C.C. on all LECs. n81 Nonetheless, the Commission must dismiss the Complaint insofar as it is brought under the general complaint authority contained in Section 386.390.1.

n80 *Complaint*, Para's 47, 54, 61.

n81 *Complaint*, Para's 50, 57, 64.

As the Complaint alleges, the Respondents filed tariffs with this Commission prior to April 15, 1997, which tariffs were intended to comply in all respects with the obligations and restrictions purportedly imposed on all LECs by the F.C.C. under authority of Section 276 of the Telecommunications [*38] Act. Each of the Respondents points to a prior Order in which this Commission approved that Respondent's present payphone service tariffs, specifically finding that they were in compliance with the federal statute and regulatory orders relied on by Complainants and refusing to suspend the tariffs on grounds similar in part to those raised in the present Complaint. n82 In the Bell Order, the Commission stated:

The Commission has thoroughly reviewed the many filings in this case, including the motions to suspend filed by MCI and MICPA, and finds that SWBT's n83 proposed tariff revisions are in compliance with the FCC's orders, and should therefore be approved as amended. Since there is adequate information for the Commission to find that the tariff revisions comply with the directives of the FCC, the Commission finds that the suspension of the tariff revisions is unnecessary. Therefore, the applications to intervene and motions to suspend filed by MCI and MICPA should be denied. Since the tariff revisions will not be suspended, MCI's motion for protective order is unnecessary, and will be denied. In addition, MCI's discovery requests are denied as moot. The Commission further finds [*39] that no intrastate rate reductions are necessary in conjunction with SWBT's subsidy calculation, and finds that the rates proposed by SWBT for its payphone services are just and reasonable.

Similar language appeared in the Verizon Order and the Sprint Order.

n82 *In the Matter of Southwestern Bell Telephone Company*, Case No. TT-97-345 (*Order Approving Tariff Revisions, Denying Applications to Intervene, Motions to Suspend, and Motion for Protective Order, and Denying as Moot Discovery Requests*, issued April 11, 1997); *In the Matter of GTE Midwest, Incorporated*, Case No. TT-97-399 (*Order Approving Tariff, Denying Motion to Suspend and Denying Application to Intervene Intervene*, issued April 11, 1997); *In the Matter of United Telephone of Missouri, doing business as Sprint*, Case No. TT-97-421 (*Order Approving Tariff, Denying Motion to Suspend and Denying Application to Intervene Intervene*, issued April 11, 1997).

n83 At that time, Bell was regularly referenced as "SWBT" in Commission orders.

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As the quoted language shows, the Commission's prior orders were determinations on the merits. In them, the Commission found that the Respondents' tariffs complied with the F.C.C. directives relied on herein by Complainants. Those orders are long-since final and this is a collateral proceeding. The Complaint does not include any allegation of substantially changed circumstances. Therefore, pursuant to the rule of *Licata*, the Commission concludes that Section 386.550 bars this proceeding and that the Complaint must be dismissed. Unlike such court-made doctrines as collateral estoppel and *res judicata*, Section 386.550 applies to any petitioner, whether or not it was a party in the prior proceeding or has any relationship with any party in the prior proceeding.

Complainants attempt to avoid this result by characterizing the present proceeding as a *direct* attack rather than a collateral attack and asserting that such an action is expressly authorized by statute. But, as noted earlier, Missouri courts have held that Section 386.550 bars actions brought before this Commission and, specifically, actions brought under Section 386.390.1. n84

n84 *Ozark Border, supra; Licata, supra*.

[*41]

Complainants also argue that Section 386.550 operates only to bar collateral attacks on Commission decisions in court and not before the Commission itself. The *Licata* decision also disposes of this argument. In *Licata*, the court held that Section 386.550 barred a proceeding before the Commission that challenged a Commission-approved tariff provision as unconstitutional. n85 The situation in *Licata* was directly comparable to the present one, in which Commission-approved tariff provisions are challenged as contrary to statute. The Complainants cite *Bauer v. Southwestern Bell Telephone Company* in support of their position. n86 However, *Bauer* is a case that deals not with Section 386.550, but with the Filed Rate Doctrine. *Bauer* has nothing at all to say about Section 386.550 and whether it applies to actions before the Commission.

n85 *Licata, supra*, 829 S.W.2d at 519.

n86 958 S.W.2d 568 (Mo. App., E.D. 1998).

For these reasons, the Commission [*42] determines that the Complaint cannot go forward to the extent that it is brought under the Commission's general complaint authority in Section 386.390.1.

b. The Commission's Complaint Authority as to Rates

The second grant of authority to hear and determine complaints contained in Section 386.390.1 is much more restricted. First, such a complaint may only address "the reasonableness of any rates or charges of any gas, electrical, water, sewer or telephone corporation[.]" n87 Second, only certain specified entities may bring such a complaint. n88 Where the complainants are consumers or customers of the respondent utility, actual or prospective, at least 25 must join in the complaint. n89 This last requirement is sometimes referred to as the "perfection" of the complaint. Complainants have stated that it is this second authority in Section 386.390.1 that authorizes their Complaint and the Complaint includes allegations that Respondents' rates are not just and reasonable. n90

n87 Section 386.390.1.

n88 These are "the commission . . . upon its own motion, . . . the public counsel or the mayor or the president or the chairman of the board of aldermen or a majority of the council, commission or other legislative body of any city, town, village or county, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of such gas, electricity, water, sewer or telephone service." Section 386.390.1. [*43]

n89 *Id.*

n90 *Complaint, Para's 47, 54, 61.*

The Respondents contend, and the Commission agrees, that the Complaint is not perfected as required by Section 386.390.1. Although there are 25 Complainants, there is no allegation that any of them are customers of any of the Respondents. It is not sufficient to allege, as Paragraph 26 appears to do, that the Complainants are customers of services like those offered by the Respondents. Section 386.390.1 requires that the relationship of each complainant to each respondent be plainly stated. Thus, Paragraphs 1 through 25 should each contain an allegation that the subject Complainant is a customer of a particular Respondent in that complainant purchases certain specified services from that Respondent.

Giving the Complainants the benefit of the inferences fairly derived from the Complaint, it is possible that Paragraph 27 supplies the missing allegation in that it states that "one or more of the payphone access services, the rates for which are the subject matter of this complaint, are delivered to each payphone operated [*44] by the Complainants[.]" But the Commission is still left to guess which Complainant is a customer of which Respondent. Nor would this construction fully cure the Complaint's deficiencies. The plain intention of Section 386.390.1 is that it is 25 customers of the respondent utility that must join in the Complaint.

Of course, the statute also allows prospective customers to join in a complaint. What is a prospective customer? The statute gives no guidance on this point, but its language would be rendered meaningless unless some reasonable way can be found to separate proper prospective customers from improper prospective customers. As noted, three of the putative Complainants are not certified to provide public telephone services in Missouri and one other has no relationship with Missouri at all. None of these four are either customers or prospective customers of the Respondents within the meaning of Section 386.390.1. This defect of perfection alone is sufficient to require dismissal of the Complaint insofar as it is brought under the Commission's special complaint authority in Section 386.390.1. However, this is not the only fatal defect in the Complaint.

As discussed above, Section [*45] 386.550 applies to actions brought under Section 386.390.1, whether they are brought under the general complaint authority or the special complaint authority as to rates. The rates herein complained of are contained in tariffs that have been approved by this Commission. The Complaint, as noted above, contains no allegation of substantially changed circumstances. Therefore, the Commission concludes that Section 386.550 bars this Complaint.

For these reasons, the Commission determines that the Complaint cannot go forward to the extent that it is brought under the Commission's special complaint authority as to rates in Section 386.390.1.

2. Section 386.400.6:

Complainants rely on Section 392.400.6 as an independent statutory basis for their Complaint. Section 392.400.6 provides that "[a] telecommunications company may file a complaint as to the reasonableness or lawfulness of any rate or charge for service offered or provided by a noncompetitive or transitionally competitive telecommunications company." This provision is one of several provisions of Section 392.400, all of which are intended to prevent noncompetitive or transitionally competitive carriers from subsidizing their [*46] competitive services or transitionally competitive services with revenue realized from their noncompetitive services. The Commission, consequently, has always understood Section 392.400.6 as only authorizing complaints as to violations of Section 392.400. For example, the Commission stated in another case:

The complainants in this case have made no allegation that SWBT's intrastate switched access services are subsidizing SWBT's transitionally competitive or competitive services. Section 392.400.6 only permits complaints that a company's noncompetitive services are subsidizing its competitive or transitionally competitive services and the complainants have failed to state such a claim. Complainants have made no allegation of subsidization. The complaint simply fails to state a claim upon which relief may be granted. n91

This understanding of Section 392.400.6 is supported by the restriction plainly stated in that section: an action may only be brought by a telecommunications company against a "noncompetitive or transitionally competitive telecommunications company." This is not a broad, independent complaint power granted to telecommunications carriers, as argued by Complainants; [*47] rather, it is a restricted and specialized complaint power created for a limited purpose. That purpose is the enforcement of Section 392.400.

n91 *MCI Telecommunications Corp., et al., v. Southwestern Bell Telephone Company*, Case No. TC-97-303 (*Report and Order*, issued Sept. 16, 1997).

Turning to the Complaint, the Commission finds neither an allegation that the Respondents have violated Section 392.400 nor an allegation that Respondents are subsidizing their competitive or transitionally competitive services with revenue from their noncompetitive services. Therefore, the Commission concludes that the Complaint fails to state a claim under Section 392.400.6.

D. Conclusion

The Commission has tested the Complaint herein against each of the authorizing statutes cited by the Complainants and has determined that, as urged by the Respondents, the Complaint fails to state a claim upon which relief may be granted. Therefore, the Commission will grant the Motions to Dismiss.

IT IS THEREFORE ORDERED:

1. That [*48] the Motion to Dismiss filed by GTE Midwest Incorporated, doing business as Verizon Midwest, on October 1, 2002, is granted.
2. That the Motion to Dismiss filed by Sprint Missouri, Inc., doing business as Sprint, on October 3, 2002, is granted.
3. That the Motion to Dismiss filed by Southwestern Bell Telephone Company, L.P., doing business as Southwestern Bell Telephone Company, on October 3, 2002, is granted.
4. That this order shall become effective on January 19, 2003.
5. That this case may be closed on January 20, 2003.

BY THE COMMISSION

Simmons, Ch., Lumpe, Gaw, and Forbis, CC., concur.

000125

Murray, C., absent.

Thompson, Deputy Chief Regulatory Law Judge

000129

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 12

000100



BellSouth Interconnection Services

**BellSouth PSP Reward® Plan
Letter Of Intent**

In the State(s) of _____, the undersigned Subscriber requests BellSouth® to provide its BellSouth PSP Reward Plan according to the rates, terms, and conditions of BellSouth's tariff described in the General Subscriber Services Tariff (GSST), Section A.7.

The undersigned subscriber further agrees that the signature of its authorized agent below constitutes its intent to participate in the BellSouth PSP Reward Plan® according to its terms and conditions as set forth in the GSST.

The service period for this agreement shall be **24 months** beginning when an authorized BellSouth agent executes this Letter Of Intent for the BellSouth PSP Reward Plan.

The Subscriber understands that the rewards as set forth in Attachment A will be applied, based upon term and line-size, to the current rate for active PSP access lines as described in the GSST. The rewards will be applied monthly, one month in arrears, for all eligible PSP access lines and will appear as a credit in the OC&C section of the customer's bill. Eligibility will be as described in the GSST.

If the Subscriber terminates or becomes ineligible for the BellSouth PSP Reward plan prior to the expiration of the term commitment, the Subscriber will be assessed a termination penalty, as described in the GSST.

SUBSCRIBER NAME:

BY:

Signature of Authorized Agent

Name Printed or Typed

Title

Date

0001.31

Attachment A



BellSouth PSP Reward Plan Structure

State	Lines	12 Months	24 Months
Alabama Louisiana Mississippi Tennessee	15 - 50	3.50%	5.00%
	51 - 200	4.00%	6.00%
	201 - 400	5.00%	7.50%
	401 - 800	6.00%	9.00%
	801 +	7.00%	10.00%
Florida	15 - 50	1.00%	2.75%
	51 - 200	1.25%	3.25%
	201 - 400	1.60%	3.75%
	401 - 800	2.00%	4.50%
	801 +	2.50%	6.00%
Kentucky	15 - 50	1.00%	2.75%
	51 - 200	1.25%	4.00%
	201 - 400	1.60%	5.00%
	401 - 800	2.00%	6.00%
	801 - 1000	2.50%	7.50%
	1001+	4.00%	8.50%
Georgia	15 - 50	3.50%	6.50%
	51 - 200	4.00%	8.00%
	201 - 400	5.00%	10.00%
	401 - 800	6.00%	13.00%
	801 - 1000	7.00%	15.00%
	1001+	8.00%	17.00%

SUBSCRIBER NAME:

BY:

Signature of Authorized Agent

Name Printed or Typed

Title

Date

Note: The BellSouth PSP Reward Plan is NOT available in North Carolina and South Carolina

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

First Revised Page 4
Cancels Original Page 4

ISSUED: September 23, 1997

EFFECTIVE: October 7, 1997

BY: Joseph P. Lacher, President -FL
Miami, Florida

A7. COIN TELEPHONE SERVICE

(T)

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE)

A7.4.1 General

- A. Public Telephone Access Service for CPE is an exchange line service provided at the request of the subscriber for telecommunications use.
- B. Public Telephone Access Service for CPE is provided for use with customer provided telephones.
- C. The carriage and completion of all local dialed calls including operator service functions, are provided by the Company. Dialed calls are defined by those digits entered by the end user which control the routing of the call. Modification or translation of these digits on any local call is not allowed.
- D. Public Telephone Access Service for CPE is provided subject to the condition that telephone messages (local and long distance) placed from stations which are accessible to the public are completed over Public Telephone Access Service for CPE lines (or other Public or Semipublic lines). Where Public Telephone Access Service for CPE is furnished, any type or grade of residence or business service offered regularly at that location may be furnished in addition, provided such residence or business service is confined to locations solely for use by the particular establishment.
- E. Customer-provided public telephones may not be attached to other types of access lines. A subscriber must order a separate Public Telephone Access line for each CPE public telephone installed and will be billed the Tariffed rate for each line.
- F. Public Telephone Access Service For CPE will only be provided as Two-Way service, except lines placed in correctional institutions, schools, hospitals and other locations for which a specific exemption has been granted by the Public Service Commission. There will be no charge imposed for incoming calls.
- G. Participation of subscribers to Public Telephone Access Service for CPE in optional EAS plans is not allowed.
- H. For customers subscribing to Caller ID - Deluxe, as specified in A13.19.2.H of this Tariff, if the incoming call originates from a customer provided public telephone, the name information transmitted will always be "Pay Phone".

A7.4.2 Responsibility of the Subscriber

- A. The subscriber shall be responsible for the installation, operation and maintenance of any customer-provided telephones used in connection with this service.
- B. The customer shall be responsible for payment of a nonrecurring charge as specified in Section A15. of this Tariff for each visit by the Company to the customer's premises solely to determine that the service difficulty or trouble report results from the use of equipment or facilities provided by the customer.
- C. Customer-provided telephones must be connected to the Company network in compliance with Part 68 of the FCC Rules and Regulations as well as regulatory requirements of the Florida Public Service Commission and certification requirements of the State of Florida. The telephones must have the following operational characteristics:
 - 1. Must be able to access the "Operator", where 911 is not available at no charge to the calling party.
 - 2. Must be able to access 911 Emergency Service, where available, at no charge to the calling party.
 - 3. (DELETED)
 - 4. The appropriate emergency number (Operator, 911) must be clearly posted at each location of a customer-provided telephone.

(D)

000133

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 4

ISSUED: July 1, 1996

EFFECTIVE: July 15, 1996

BY: Joseph P. Lacher, President - FL
Miami, Florida

A7. COIN TELEPHONE SERVICE¹

(09)

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE)

A7.4.1 General

- A. Public Telephone Access Service for CPE is an exchange line service provided at the request of the subscriber for telecommunications use.
- B. Public Telephone Access Service for CPE is provided for use with customer provided telephones.
- C. The carriage and completion of all local dialed calls including operator service functions, are provided by the Company. Dialed calls are defined by those digits entered by the end user which control the routing of the call. Modification or translation of these digits on any local call is not allowed.
- D. Public Telephone Access Service for CPE is provided subject to the condition that telephone messages (local and long distance) placed from stations which are accessible to the public are completed over Public Telephone Access Service for CPE lines (or other Public or Semipublic lines). Where Public Telephone Access Service for CPE is furnished, any type or grade of residence or business service offered regularly at that location may be furnished in addition, provided such residence or business service is confined to locations solely for use by the particular establishment.
- E. Customer-provided public telephones may not be attached to other types of access lines. A subscriber must order a separate Public Telephone Access line for each CPE public telephone installed and will be billed the Tariffed rate for each line.
- F. Public Telephone Access Service For CPE will only be provided as Two-Way service, except lines placed in correctional institutions, schools, hospitals and other locations for which a specific exemption has been granted by the Public Service Commission. There will be no charge imposed for incoming calls.
- G. Participation of subscribers to Public Telephone Access Service for CPE in optional EAS plans is not allowed.
- H. For customers subscribing to Caller ID - Deluxe, as specified in A13.19.2.H of this Tariff, if the incoming call originates from a customer provided public telephone, the name information transmitted will always be "Pay Phone".

A7.4.2 Responsibility of the Subscriber

- A. The subscriber shall be responsible for the installation, operation and maintenance of any customer-provided telephones used in connection with this service.
- B. The customer shall be responsible for payment of a nonrecurring charge as specified in Section A15. of this Tariff for each visit by the Company to the customer's premises solely to determine that the service difficulty or trouble report results from the use of equipment or facilities provided by the customer.
- C. Customer-provided telephones must be connected to the Company network in compliance with Part 68 of the FCC Rules and Regulations as well as regulatory requirements of the Florida Public Service Commission and certification requirements of the State of Florida. The telephones must have the following operational characteristics:
 - 1. Must be able to access the "Operator", where 911 is not available at no charge to the calling party.
 - 2. Must be able to access 911 Emergency Service, where available, at no charge to the calling party.
 - 3. Must be able to access 411 Directory Assistance at no charge to the calling party.
 - 4. The appropriate emergency number (Operator, 911) must be clearly posted at each location of a customer-provided telephone.

Note 1: Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this filing.

000234

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

First Revised Page 5
Cancels Original Page 5

ISSUED: September 16, 1996
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: October 16, 1996

A7. COIN TELEPHONE SERVICE

(7)

**A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE)
(Cont'd)****A7.4.2 Responsibility of the Subscriber (Cont'd)****C. (Cont'd)**

5. Must clearly indicate procedures for obtaining a refund from the subscriber and that the customer-provided telephone is not being provided by the Company. *(With the exception of Coin Refund and Repair Referral Service (CRS) provided in A7.10 of this Tariff, the Company is not responsible for refunds of coins deposited in customer-provided coin-operated public telephones.)*
 6. Must be equipped to return the coins to the caller in the case of an incomplete call.
 7. The telephone number of the line must be displayed on each CPE telephone.
 8. Where provision for interexchange calling is provided, must be capable of providing access to all interexchange carriers certified to do business in Florida.
 9. May have a maximum of one non-dialable extension per station access line. This extension must be within the same premises as the main station and may be a maximum of 35 feet from the main station or have a privacy feature to disable the extension when the main station is in use.
- D. Proof of certification must be furnished to the Company by the subscriber prior to Public Telephone Access Service for CPE being furnished.
- E. The subscriber is responsible for meeting all federal, state and local statutes with respect to provision of customer-provided telephones in accordance with all hearing impaired and handicapped person requirements.

(C)

A7.4.3 Violations of Regulations

- A. Where any customer-provided telephone is used and/or connected in violation of this Tariff, the Company will promptly notify the customer of the violation.
- B. Violations of the Tariff, Commission rules pertaining to public telephone service, or certification requirements will subject subscribers of Public Telephone Access Service for CPE to disconnection of service if the deficiency is not corrected within 10 days from date of notification to the subscriber.

000135

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 5

ISSUED: July 1, 1996
BY: Joseph P. Lacher, President - FL
Miami, Florida

EFFECTIVE: July 15, 1996

A7. COIN TELEPHONE SERVICE¹

(0)

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE)
(Cont'd)

A7.4.2 Responsibility of the Subscriber (Cont'd)

C. (Cont'd)

5. Must clearly indicate procedures for obtaining a refund from the subscriber and that the customer-provided telephone is not being provided by the Company. (The Company is not responsible for refunds of coins deposited in customer-provided coin-operated public telephones.)
 6. Must be equipped to return the coins to the caller in the case of an incomplete call.
 7. The telephone number of the line must be displayed on each CPE telephone.
 8. Where provision for interexchange calling is provided, must be capable of providing access to all interexchange carriers certified to do business in Florida.
 9. May have a maximum of one non-dialable extension per station access line. This extension must be within the same premises as the main station and may be a maximum of 35 feet from the main station or have a privacy feature to disable the extension when the main station is in use.
- D. Proof of certification must be furnished to the Company by the subscriber prior to Public Telephone Access Service for CPE being furnished.
- E. The subscriber is responsible for meeting all federal, state and local statutes with respect to provision of customer-provided telephones in accordance with all hearing impaired and handicapped person requirements.

A7.4.3 Violations of Regulations

- A. Where any customer-provided telephone is used and/or connected in violation of this Tariff, the Company will promptly notify the customer of the violation.
- B. Violations of the Tariff, Commission rules pertaining to public telephone service, or certification requirements will subject subscribers of Public Telephone Access Service for CPE to disconnection of service if the deficiency is not corrected within 10 days from date of notification to the subscriber.

Note 1: Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this filing.

000000

OFFICIAL APPROVED VERSION, RELEASED BY BSTHQ

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: May 31, 1996

BY: Joseph P. Lacher, President - FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Fifth Revised Page 6
Cancels Fourth Revised Page 6

EFFECTIVE: June 15, 1996

A7. COIN TELEPHONE SERVICE

A7.2 Semipublic Telephone Service (Obsoleted, See Section A107.) (Cont'd)

(C)

A7.3 Reserved For Future Use

(T)

000137

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: February 15, 1996
BY: Joseph P. Lacher, President - FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Fourth Revised Page 6
Cancels Third Revised Page 6

EFFECTIVE: March 1, 1996

A7. COIN TELEPHONE SERVICE

A7.2 Semipublic Telephone Service (Cont'd)

A7.2.6 Extended Network Interface (Cont'd)

C. Rates and Charges

1. Extended Network Interface

- (a) Per installation¹²
(b) Per installation¹³

Nonrecurring Charge	USOC
\$95.00	ECD
50.00	ECD

A7.3 (DELETED)

(D)

- Note 1: In addition, a Service Ordering Charge as specified in Section A4. of this Tariff is applicable.
Note 2: Except as specified in A7.2.6.C.1.(b).
Note 3: If a grandfathered hardwired installation of an extension station (Reference A107 of this Tariff) is determined to be unrepairable during a repair visit and no inventory of spare extension sets is available, the customer will be offered the Extended Network Interface arrangement. If accepted, this nonrecurring charge is applicable.

000138

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: March 14, 1991

BY: Joseph P. Lacher, President - FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Third Revised Page 6
Cancels Second Revised Page 6

EFFECTIVE: May 28, 1991

A7. COIN TELEPHONE SERVICE

A7.2 Semipublic Telephone Service (Cont'd)

A7.2.6 Extended Network Interface (Cont'd)

C. Rates and Charges

1. Extended Network Interface

- (a) Per installation¹²
(b) Per installation¹³

Nonrecurring Charge	USOC
\$95.00	ECD
50.00	ECD

A7.3 Coin/Coinless Credit Card Service

A7.3.1 Definitions and Requirements

- A. Coin/Coinless Credit Card Service is a public telephone service that allows speed dialing to toll resellers, carriers, or to local subscribers. (N)
- B. The subscriber to the service may request the following options: (N)
1. Speed dialing only (N)
 2. Speed dialing and commercial credit card rating and recording (N)
 3. Speed dialing, commercial credit card rating and recording, and carrier credit card reading and dialing (N)
 4. Carrier credit card reading and dialing only (N)
- C. The various placement sites will be determined by the Company and are subject to the availability of suitable facilities. (N)
- D. The Service provides an option for alternative billing for local and/or intraLATA toll calls placed by an end user to an approved commercial credit card. (N)
- E. The positioning and availability of speed dialing will be offered to the subscribers on a first come, first serve basis or as buttons become available. Subscription will apply to all telephones so equipped in a physical location. (N)
- F. Application for Coin/Coinless Credit Card Service must include an executed service agreement between the customer and the Company. (N)

A7.3.2 Rates and Charges

- A. Long Distance charges apply based on the applicable tariff of the carrier. Charges applicable for Intrastate Intra-LATA long distance MTS messages are the Basic Rate Schedule and additional charges as specified in A18.3.1. (N)

Note 1: In addition, a Service Ordering Charge as specified in Section A4. of this Tariff is applicable. (M)

Note 2: Except as specified in A7.2.6.C.1.(b).

Note 3: If a grandfathered hardwired installation of an extension station (Reference A107 of this Tariff) is determined to be unrepairable during a repair visit and no inventory of spare extension sets is available, the customer will be offered the Extended Network Interface arrangement. If accepted, this nonrecurring charge is applicable.

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Material previously appearing on this page now appears on page(s) 6.1 of this section.

* d/b/s SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

First Revised Page 6
Cancels Original Page 6

ISSUED: June 21, 1999

EFFECTIVE: July 6, 1999

BY: Joseph P. Lacher, President -FL
Miami, Florida

A7. COIN TELEPHONE SERVICE

A7.4 Access Line Service For Payphone Service Provider Telephones (Cont'd)

(C)

A7.4.4 Service Features

A. Central Office Blocking with Operator Screening for Usage Rate Service.

Subscribers to this service are required to take one of the following options where facilities are available to provide such service.

Option	Description	USOC
C	Two-Way Service. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. Provides central office blocking of 011+ calls. ^{1,2,3}	25M
D	Outward Only Service. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. Provides central office blocking of 011+ calls. ^{1,2,4}	12P
E	Two-Way Service. Provides central office blocking of 7 digit local, 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ³	17E
F	Outward Only Service. Provides central office blocking of 7 digit local, 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ^{1,2,4}	17F

Note 1: 011+ blocking provides central office blocking of calls to numbers outside the North American Numbering Plan.

(T)

Note 2: 976 blocking is mandatory on all options as provided in A113.18 of this Tariff.

(T)

Note 3: For the Access Line Feature options which do not offer central office blocking of 900 calls, this feature is available at the request of the subscriber as provided under Customized Code Restriction (CCR) Option #4 defined in A113.20 of this Tariff.

(T)

Note 4: Options D and F may only be provided for placement in correctional institutions, schools, hospitals and other locations for which the Public Service Commission may grant a specific exemption.

(T)

000046

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 6

ISSUED: July 1, 1996

EFFECTIVE: July 15, 1996

BY: Joseph P. Lacher, President - FL
Miami, Florida

A7. COIN TELEPHONE SERVICE¹

(N)

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE)
(Cont'd)

A7.4.4 Service Features

A. Central Office Blocking with Operator Screening for Usage Rate Service.

Subscribers to this service are required to take one of the following options where facilities are available to provide such service.

Option	Description	USOC
C	Two-Way Service. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. Provides central office blocking of 011+ calls. ^{2,3,4}	2SM
D	Outward Only Service. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. Provides central office blocking of 011+ calls. ^{2,3,4}	12P
E	Two-Way Service. Provides central office blocking of 7 digit local, 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ^{2,3}	17E
F	Outward Only Service. Provides central office blocking of 7 digit local, 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ^{2,3,4}	17F

Note 1: Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this filing.

Note 2: 011+ blocking provides central office blocking of calls to numbers outside the North American Numbering Plan.

Note 3: 976 blocking is mandatory on all options as provided in A13.18 of this Tariff.

Note 4: For the Access Line Feature options which do not offer central office blocking of 900 calls, this feature is available at the request of the subscriber as provided under Customized Code Restriction (CCR) Option #5 defined in A13.20 of this Tariff.

Note 5: Options D, F and H may only be provided for placement in correctional institutions, schools, hospitals and other locations for which the Public Service Commission may grant a specific exemption.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Fifth Revised Page 6.1
Cancels Fourth Revised Page 6.1

ISSUED: May 31, 1996
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: June 15, 1996

A7. COIN TELEPHONE SERVICE

A7.3 Reserved for Future Use (Cont'd)

(1)

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE)

A7.4.1 General

- A. Public Telephone Access Service for CPE is an exchange line service provided at the request of the subscriber for telecommunications use.
- B. Public Telephone Access Service for CPE is provided for use with customer provided telephones.
- C. The carriage and completion of all local dialed calls including operator service functions, are provided by the Company. Dialed calls are defined by those digits entered by the end user which control the routing of the call. Modification or translation of these digits on any local call is not allowed.
- D. Public Telephone Access Service for CPE is provided subject to the condition that telephone messages (local and long distance) placed from stations which are accessible to the public are completed over Public Telephone Access Service for CPE lines (or other Public or Semipublic lines). Where Public Telephone Access Service for CPE is furnished, any type or grade of residence or business service offered regularly at that location may be furnished in addition, provided such residence or business service is confined to locations solely for use by the particular establishment.
- E. Customer-provided public telephones may not be attached to other types of access lines. A subscriber must order a separate Public Telephone Access line for each CPE public telephone installed and will be billed the Tariffed rate for each line.
- F. Public Telephone Access Service For CPE will only be provided as Two-Way service, except lines placed in correctional institutions, schools, hospitals and other locations for which a specific exemption has been granted by the Public Service Commission. There will be no charge imposed for incoming calls.
- G. Participation of subscribers to Public Telephone Access Service for CPE in optional EAS plans is not allowed.
- H. For customers subscribing to Caller ID - Deluxe, as specified in A13.19.2.H of this Tariff, if the incoming call originates from a customer provided public telephone, the name information transmitted will always be "Pay Phone".

A7.4.2 Responsibility of the Subscriber

- A. The subscriber shall be responsible for the installation, operation and maintenance of any customer-provided telephones used in connection with this service.
- B. The customer shall be responsible for payment of a nonrecurring charge as specified in Section A15. of this Tariff for each visit by the Company to the customer's premises solely to determine that the service difficulty or trouble report results from the use of equipment or facilities provided by the customer.

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BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Fourth Revised Page 6.1
Cancels Third Revised Page 6.1

ISSUED: July 1, 1995
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: May 1, 1996

A7. COIN TELEPHONE SERVICE

A7.3 (DELETED) (Cont'd)

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE)

A7.4.1 General

- A. Public Telephone Access Service for CPE is an exchange line service provided at the request of the subscriber for telecommunications use.
- B. Public Telephone Access Service for CPE is provided for use with customer provided telephones.
- C. The carriage and completion of all local dialed calls including operator service functions, are provided by the Company. Dialed calls are defined by those digits entered by the end user which control the routing of the call. Modification or translation of these digits on any local call is not allowed. (C)
- D. Public Telephone Access Service for CPE is provided subject to the condition that telephone messages (local and long distance) placed from stations which are accessible to the public are completed over Public Telephone Access Service for CPE lines (or other Public or Semipublic lines). Where Public Telephone Access Service for CPE is furnished, any type or grade of residence or business service offered regularly at that location may be furnished in addition, provided such residence or business service is confined to locations solely for use by the particular establishment.
- E. Customer-provided public telephones may not be attached to other types of access lines. A subscriber must order a separate Public Telephone Access line for each CPE public telephone installed and will be billed the Tariffed rate for each line.
- F. Public Telephone Access Service For CPE will only be provided as Two-Way service, except lines placed in correctional institutions, schools, hospitals and other locations for which a specific exemption has been granted by the Public Service Commission. There will be no charge imposed for incoming calls.
- G. Participation of subscribers to Public Telephone Access Service for CPE in optional EAS plans is not allowed.
- H. For customers subscribing to Caller ID - Deluxe, as specified in A13.19.2.H of this Tariff, if the incoming call originates from a customer provided public telephone, the name information transmitted will always be "Pay Phone".

A7.4.2 Responsibility of the Subscriber

- A. The subscriber shall be responsible for the installation, operation and maintenance of any customer-provided telephones used in connection with this service.
- B. The customer shall be responsible for payment of a nonrecurring charge as specified in Section A15. of this Tariff for each visit by the Company to the customer's premises solely to determine that the service difficulty or trouble report results from the use of equipment or facilities provided by the customer.

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BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: February 15, 1996
BY: Joseph P. Lacher, President - FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Third Revised Page 6.1
Cancels Second Revised Page 6.1

EFFECTIVE: March 1, 1996

A7. COIN TELEPHONE SERVICE

A7.3 (DELETED) (Cont'd)

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE)

A7.4.1 General

- A. Public Telephone Access Service for CPE is an exchange line service provided at the request of the subscriber for telecommunications use.
- B. Public Telephone Access Service for CPE is provided for use with customer provided telephones.
- C. The carriage and completion of all local and intraLATA dialed calls including operator service functions, are provided by the Company. Dialed calls are defined by those digits entered by the end user which control the routing of the call. Modification or translation of these digits on any local and/or intraLATA call is not allowed.
- D. Public Telephone Access Service for CPE is provided subject to the condition that telephone messages (local and long distance) placed from stations which are accessible to the public are completed over Public Telephone Access Service for CPE lines (or other Public or Semipublic lines). Where Public Telephone Access Service for CPE is furnished, any type or grade of residence or business service offered regularly at that location may be furnished in addition, provided such residence or business service is confined to locations solely for use by the particular establishment.
- E. Customer-provided public telephones may not be attached to other types of access lines. A subscriber must order a separate Public Telephone Access line for each CPE public telephone installed and will be billed the Tariffed rate for each line.
- F. Public Telephone Access Service For CPE will only be provided as Two-Way service, except lines placed in correctional institutions, schools, hospitals and other locations for which a specific exemption has been granted by the Public Service Commission. There will be no charge imposed for incoming calls.
- G. Participation of subscribers to Public Telephone Access Service for CPE in optional EAS plans is not allowed.
- H. For customers subscribing to Caller ID - Deluxe, as specified in A13.19.2.H of this Tariff, if the incoming call originates from a customer provided public telephone, the name information transmitted will always be "Pay Phone".

A7.4.2 Responsibility of the Subscriber

- A. The subscriber shall be responsible for the installation, operation and maintenance of any customer-provided telephones used in connection with this service.
- B. The customer shall be responsible for payment of a nonrecurring charge as specified in Section A15. of this Tariff for each visit by the Company to the customer's premises solely to determine that the service difficulty or trouble report results from the use of equipment or facilities provided by the customer.

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BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Second Revised Page 6.1
Cancels First Revised Page 6.1

ISSUED: May 3, 1993
BY: Joseph P. Lacher, President - FL
Miami, Florida

EFFECTIVE: August 23, 1993

A7. COIN TELEPHONE SERVICE

A7.3 Coin/Coinless Credit Card Service (Cont'd)

A7.3.2 Rates and Charges (Cont'd)

- B. Local charges apply on a per message basis based on the applicable local coin message rate as provided in A7.1.4 plus any applicable operator assisted charges as specified in A3.10.1.
- C. Rates and charges for speed dialing presence, commercial credit card rating and recording, and carrier credit card reading and dialing on the Coin/Coinless Credit Card telephone set are provided following:
1. Per speed dialing button

	Monthly Rate	USOC
(a) Per station	\$5.50	NA
2. Commercial credit card rating and recording		
(a) Per message	.12	NA
3. Carrier credit card reading and dialing		
(a) Per message	.05	NA

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE)

A7.4.1 General

- A. Public Telephone Access Service for CPE is an exchange line service provided at the request of the subscriber for telecommunications use.
- B. Public Telephone Access Service for CPE is provided for use with customer provided telephones.
- C. The carriage and completion of all local and intraLATA dialed calls including operator service functions, are provided by the Company. Dialed calls are defined by those digits entered by the end user which control the routing of the call. Modification or translation of these digits on any local and/or intraLATA call is not allowed.
- D. Public Telephone Access Service for CPE is provided subject to the condition that telephone messages (local and long distance) placed from stations which are accessible to the public are completed over Public Telephone Access Service for CPE lines (or other Public or Semipublic lines). Where Public Telephone Access Service for CPE is furnished, any type or grade of residence or business service offered regularly at that location may be furnished in addition, provided such residence or business service is confined to locations solely for use by the particular establishment.
- E. Customer-provided public telephones may not be attached to other types of access lines. A subscriber must order a separate Public Telephone Access line for each CPE public telephone installed and will be billed the Tariffed rate for each line.
- F. Public Telephone Access Service For CPE will only be provided as Two-Way service, except lines placed in correctional institutions, schools, hospitals and other locations for which a specific exemption has been granted by the Public Service Commission. There will be no charge imposed for incoming calls.
- G. Participation of subscribers to Public Telephone Access Service for CPE in optional EAS plans is not allowed.
- H. For customers subscribing to Caller ID - Deluxe, as specified in A13.19.2.H of this Tariff, if the incoming call originates from a customer provided public telephone, the name information transmitted will always be "Pay Phone". (N)

A7.4.2 Responsibility of the Subscriber

- A. The subscriber shall be responsible for the installation, operation and maintenance of any customer-provided telephones used in connection with this service.
- B. The customer shall be responsible for payment of a nonrecurring charge as specified in Section A15. of this Tariff for each visit by the Company to the customer's premises solely to determine that the service difficulty or trouble report results from the use of equipment or facilities provided by the customer.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: February 7, 1992

BY: Joseph P. Lacher, President - FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Second Revised Page 7
Cancels First Revised Page 7

EFFECTIVE: February 10, 1992

A7. COIN TELEPHONE SERVICE

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE) (Cont'd)

A7.4.2 Responsibility of the Subscriber (Cont'd)

- C. Customer-provided telephones must be connected to the Company network in compliance with Part 68 of the FCC Rules and Regulations as well as regulatory requirements of the Florida Public Service Commission and certification requirements of the State of Florida. The telephones must have the following operational characteristics:
 1. Must be able to access the "Operator", where 911 is not available at no charge to the calling party.
 2. Must be able to access 911 Emergency Service, where available, at no charge to the calling party.
 3. Must be able to access 411 Directory Assistance at no charge to the calling party.
 4. The appropriate emergency number (Operator, 911) must be clearly posted at each location of a customer-provided telephone.
 5. Must clearly indicate procedures for obtaining a refund from the subscriber and that the customer-provided telephone is not being provided by the Company. (The Company is not responsible for refunds of coins deposited in customer-provided coin-operated public telephones.)
 6. Must be equipped to return the coins to the caller in the case of an incomplete call.
 7. The telephone number of the line must be displayed on each CPE telephone.
 8. Where provision for interexchange calling is provided, must be capable of providing access to all interexchange carriers certified to do business in Florida.
 9. May have a maximum of one non-dialable extension per station access line. This extension must be within the same premises as the main station and may be a maximum of 35 feet from the main station or have a privacy feature to disable the extension when the main station is in use.
- D. Proof of certification must be furnished to the Company by the subscriber prior to Public Telephone Access Service for CPE being furnished.
- E. The subscriber is responsible for meeting all federal, state and local statutes with respect to provision of customer-provided telephones in accordance with all hearing impaired and handicapped person requirements.

A7.4.3 Violations of Regulations

- A. Where any customer-provided telephone is used and/or connected in violation of this Tariff, the Company will promptly notify the customer of the violation.
- B. Violations of the Tariff, Commission rules pertaining to public telephone service, or certification requirements will subject subscribers of Public Telephone Access Service for CPE to disconnection of service if the deficiency is not corrected within 10 days from date of notification to the subscriber.

(M)

Material previously appearing on this page now appears on page(s) 8 of this section.

* d/b/a SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: June 21, 1999

BY: Joseph P. Lacher, President -FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

First Revised Page 7
Cancels Original Page 7

EFFECTIVE: July 6, 1999

A7. COIN TELEPHONE SERVICE

(T)

A7.4 Access Line Service For Payphone Provider Service Telephones (Cont'd)

(C)

A7.4.4 Service Features (Cont'd)

A. Central Office Blocking with Operator Screening for Usage Rate Service. (Cont'd)

Option	Description	USOC
G	Two-Way Service. Provides central office blocking of 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ^{1,2}	17G
H	Outward Only Service. Provides central office blocking of 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ^{1,2}	17H

B. Central Office Blocking with Operator Screening for Flat Rate Service.

Subscribers to this service are required to take one of the following options where facilities are available to provide such service.

Option	Description	USOC
C	Two-Way Service. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. Provides central office blocking of 011+ calls. ^{1,2,4}	FSN
D	Outward Only Service. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. Provides central office blocking of 011+ calls. ^{1,2,4}	FZP

Note 1: 011+ blocking provides central office blocking of calls to numbers outside the North American Numbering Plan. (T)

Note 2: 976 blocking is mandatory on all options as provided in A7.13.18 of this Tariff. (T)

Note 3: Options D and H may only be provided for placement in correctional institutions, schools, hospitals and other locations for which the Public Service Commission may grant a specific exemption. (T)

Note 4: For the Access Line Feature options which do not offer central office blocking of 900 calls, this feature is available at the request of the subscriber as provided under Customized Code Restriction (CCR) Option #4 defined in A13.20 of this Tariff. (T)

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: July 1, 1996
BY: Joseph P. Lacher, President - FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 7

EFFECTIVE: July 15, 1996

A7. COIN TELEPHONE SERVICE¹

(00)

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE)
(Cont'd)

A7.4.4 Service Features (Cont'd)

A. Central Office Blocking with Operator Screening for Usage Rate Service. (Cont'd)

Option	Description	USOC
G	Two-Way Service. Provides central office blocking of 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ^{2,3}	17G
H	Outward Only Service. Provides central office blocking of 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ^{3,4}	17H

B. Central Office Blocking with Operator Screening for Flat Rate Service.

Subscribers to this service are required to take one of the following options where facilities are available to provide such service.

Option	Description	USOC
C	Two-Way Service. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. Provides central office blocking of 011+ calls. ^{3,5}	FSN
D	Outward Only Service. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. Provides central office blocking of 011+ calls. ^{3,5,6}	FZP

Note 1: Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this filing.

Note 2: 011+ blocking provides central office blocking of calls to numbers outside the North American Numbering Plan.

Note 3: 976 blocking is mandatory on all options as provided in A13.18 of this Tariff.

Note 4: Options D, F and H may only be provided for placement in correctional institutions, schools, hospitals and other locations for which the Public Service Commission may grant a specific exemption.

Note 5: For the Access Line Feature options which do not offer central office blocking of 900 calls, this feature is available at the request of the subscriber as provided under Customized Code Restriction (CCR) Option #4 defined in A13.20 of this Tariff.

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BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: November 21, 1995

BY: Joseph P. Lacher, President - FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Eleventh Revised Page 8
Cancels Tenth Revised Page 8

EFFECTIVE: July 1, 1995

A7. COIN TELEPHONE SERVICE

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE) (Cont'd)

A7.4.4 Service Features

A. Central Office Blocking with Operator Screening for Usage Rate Service.

Subscribers to this service are required to take one of the following options where facilities are available to provide such service.

Option	Description	USOC
C	Two-Way Service. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. Provides central office blocking of 011+ calls. ^{1,2,3}	2SM
D	Outward Only Service. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. Provides central office blocking of 011+ calls. ^{1,2,4}	12P
E	Two-Way Service. Provides central office blocking of 7 digit local, 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ^{1,2}	17E
F	Outward Only Service. Provides central office blocking of 7 digit local, 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ^{1,2,4}	17F
G	Two-Way Service. Provides central office blocking of 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ^{1,2}	17G
H	Outward Only Service. Provides central office blocking of 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ^{1,2,4}	17H

Note 1: 011+ blocking provides central office blocking of calls to numbers outside the North American Numbering Plan.

Note 2: 976 blocking is mandatory on all options as provided in A13.18 of this Tariff.

Note 3: For the Access Line Feature options which do not offer central office blocking of 900 calls, this feature is available at the request of the subscriber as provided under Customized Code Restriction (CCR) Option #5 defined in A13.20 of this Tariff.

Note 4: Options D, F and H may only be provided for placement in correctional institutions, schools, hospitals and other locations for which the Public Service Commission may grant a specific exemption.

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BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Tenth Revised Page 8
Cancels Ninth Revised Page 8

ISSUED: May 2, 1994

EFFECTIVE: July 1, 1994

BY: Joseph P. Lacher, President - FL
Miami, Florida

A7. COIN TELEPHONE SERVICE

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE) (Cont'd)

A7.4.4 Service Features

A. Central Office Blocking with Operator Screening

Subscribers to this service are required to take one of the following options where facilities are available to provide such service.

Option	Description	USOC	(T)
C	Two-Way Service. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. Provides central office blocking of 011+ calls. ^{1,2,3}	2SM	(T)
D	Outward Only Service. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. Provides central office blocking of 011+ calls. ^{1,2,4}	12P	(T)
E	Two-Way Service. Provides central office blocking of 7 digit local, 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ^{1,2}	17E	(T)
F	Outward Only Service. Provides central office blocking of 7 digit local, 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ^{1,2,4}	17F	(T)
G	Two-Way Service. Provides central office blocking of 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ^{1,2}	17G	(T)
H	Outward Only Service. Provides central office blocking of 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ^{1,2,4}	17H	(T)

(M)

Note 1: 011+ blocking provides central office blocking of calls to numbers outside the North American Numbering Plan.

Note 2: 976 blocking is mandatory on all options as provided in A13.18 of this Tariff.

Note 3: For the Access Line Feature options which do not offer central office blocking of 900 calls, this feature is available at the request of the subscriber as provided under Customized Code Restriction (CCR) Option #4 defined in A13.20 of this Tariff.

Note 4: Options D, F and H may only be provided for placement in correctional institutions, schools, hospitals and other locations for which the Public Service Commission may grant a specific exemption.

Material previously appearing on this page now appears on page(s) 9 of this section.

* d/b/a SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

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BST000175

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: June 21, 1999

BY: Joseph P. Lacher, President -FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

First Revised Page 8
Cancels Original Page 8

EFFECTIVE: July 6, 1999

A7. COIN TELEPHONE SERVICE

(T)

A7.4 Access Line Service For Payphone Service Provider Telephones (Cont'd)

(C)

A7.4.4 Service Features (Cont'd)

B. Central Office Blocking with Operator Screening for Flat Rate Service. (Cont'd)

Option	Description	USOC
E	Two-Way Service. Provides central office blocking of 7 digit local, 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ¹²	F7E
F	Outward Only Service. Provides central office blocking of 7 digit local, 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ¹²	F7F
G	Two-Way Service. Provides central office blocking of 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ¹²	F7G
H	Outward Only Service. Provides central office blocking of 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ¹²	F7H

C. Billed Number Screening

Billed Number Screening as provided in A13.21 of this Tariff is a mandatory service feature for customer provided pay telephone service.

(DELETED)

- Note 1: 011+ blocking provides central office blocking of calls to numbers outside the North American Numbering Plan. (D)
- Note 2: 976 blocking is mandatory on all options as provided in A713.18 of this Tariff. (T)
- Note 3: Options F and H may only be provided for placement in correctional institutions, schools, hospitals and other locations for which the Public Service Commission may grant a specific exemption. (T)

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BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 8

ISSUED: July 1, 1996

EFFECTIVE: July 15, 1996

BY: Joseph P. Lacher, President - FL
Miami, Florida

A7. COIN TELEPHONE SERVICE¹

(N)

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE) (Cont'd)

A7.4.4 Service Features (Cont'd)

B. Central Office Blocking with Operator Screening for Flat Rate Service. (Cont'd)

Option	Description	USOC
E	Two-Way Service. Provides central office blocking of 7 digit local, 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ^{2,3}	F7E
F	Outward Only Service. Provides central office blocking of 7 digit local, 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ^{2,4}	F7F
G	Two-Way Service. Provides central office blocking of 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ^{2,3}	F7G
H	Outward Only Service. Provides central office blocking of 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ^{2,4}	F7H

C. Billed Number Screening

Billed Number Screening as provided in A13.21 of this Tariff is a mandatory service feature for customer provided pay telephone service.

D. Answer Supervision

- Note 1: Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this filing.
- Note 2: 011+ blocking provides central office blocking of calls to numbers outside the North American Numbering Plan.
- Note 3: 976 blocking is mandatory on all options as provided in A13.18 of this Tariff.
- Note 4: Options D, F and H may only be provided for placement in correctional institutions, schools, hospitals and other locations for which the Public Service Commission may grant a specific exemption.

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BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: November 21, 1995
BY: Joseph P. Lacher, President - FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 8.1

EFFECTIVE: July 1, 1995

A7. COIN TELEPHONE SERVICE

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE)
(Cont'd)

A7.4.4 Service Features (Cont'd)

B. Central Office Blocking with Operator Screening for Flat Rate Service.

(N)

Subscribers to this service are required to take one of the following options where facilities are available to provide such service.

Option	Description	USOC	(N)
C	Two-Way Service. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. Provides central office blocking of 011+ calls. ^{1,2,3}	FSN	(N)
D	Outward Only Service. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. Provides central office blocking of 011+ calls. ^{1,2,4}	FZF	(N)
E	Two-Way Service. Provides central office blocking of 7 digit local, 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ^{1,2}	F7E	(N)
F	Outward Only Service. Provides central office blocking of 7 digit local, 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ^{1,2,4}	F7F	(N)
G	Two-Way Service. Provides central office blocking of 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ^{1,2}	F7G	(N)
H	Outward Only Service. Provides central office blocking of 1+DDD, 1+900 and 011+ calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. ^{1,2,4}	F7H	(N)
Note 1:	011+ blocking provides central office blocking of calls to numbers outside the North American Numbering Plan.		(N)
Note 2:	976 blocking is mandatory on all options as provided in A13.18 of this Tariff.		(N)
Note 3:	For the Access Line Feature options which do not offer central office blocking of 900 calls, this feature is available at the request of the subscriber as provided under Customized Code Restriction (CCR) Option #5 defined in A13.20 of this Tariff.		(N)
Note 4:	Options D, F and H may only be provided for placement in correctional institutions, schools, hospitals and other locations for which the Public Service Commission may grant a specific exemption.		(N)

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: November 21, 1995

BY: Joseph P. Lacher, President - FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Fourteenth Revised Page 9
Cancels Thirteenth Revised Page 9

EFFECTIVE: July 1, 1995

A7. COIN TELEPHONE SERVICE

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE)
(Cont'd)

A7.4.4 Service Features (Cont'd)

C. Billed Number Screening

Billed Number Screening as provided in A13.21 of this Tariff is a mandatory service feature for customer provided pay telephone service. (T)

D. Answer Supervision

At the request of the subscriber, Answer Supervision may be provided at the rates, terms and conditions set forth in A13.61 of this Tariff. (T)

A7.4.5 Rates and Charges

A. Public Telephone Access Service for CPE - Rates and Charges Applied by The Company

Public Telephones Access Service for CPE *may be* provided on a Usage Rate basis or Flat Rate basis where facilities permit. (C)

1. Usage Rate Service

a. The monthly rate per line for Public Telephone Access Service for CPE is 80 percent of the business individual line flat rate as specified in Section A3. of this Tariff.

b. No monthly usage allowance applies for Public Telephone Access Service for CPE.

c. The following usage charges apply for calls within the local calling area and to calls in the Local Calling Plus exchanges specified in A3.8.50 and to calls in the Extended Calling Service exchanges specified in A3.3 other than those specified in d. following. (C)

(1) Usage Charges

Initial Minute or Fraction Thereof	Additional Minute, Each or Fraction Thereof
\$0.0275	\$0.0125

Note 1: Calls within the local calling area are each charged for at least one (1) minute of use. For local calls that exceed one (1) minute, usage charges are based on conversation time rounded up to the nearest one tenth (1/10) minute.

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BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Thirteenth Revised Page 9
Cancels Twelfth Revised Page 9

ISSUED: May 2, 1994
BY: Joseph P. Lacher, President - FL
Miami, Florida

EFFECTIVE: July 1, 1994

A7. COIN TELEPHONE SERVICE

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE)
(Cont'd)

A7.4.4 Service Features (Cont'd)

B. Billed Number Screening

Billed Number Screening as provided in A13.21 of this Tariff is a mandatory service feature for customer provided pay telephone service.

C. Answer Supervision

At the request of the subscriber, Answer Supervision may be provided at the rates, terms and conditions set forth in A13.61 of this Tariff.

A7.4.5 Rates and Charges

A. Public Telephone Access Service for CPE - Rates and Charges Applied by The Company

Public Telephones Access Service for CPE is provided on a Usage Rate basis where facilities permit; otherwise the service will be provided on a Flat Rate basis.

1. Usage Rate Service

- a. The monthly rate *per line* for Public Telephone Access Service for CPE is 80 percent of the business individual line flat rate as specified in Section A3. of this Tariff.

(1) (DELETED)

(2) (DELETED)

(3) (DELETED)

(4) (DELETED)

(5) (DELETED)

(6) (DELETED)

- b. No monthly usage allowance applies for Public Telephone Access Service for CPE.

- c. The following usage charges apply for calls within the local calling area and to calls in the Local Calling Plus exchanges specified in A3.8.50 and to calls in the Extended Calling Service exchanges specified in A3.8.49 other than those specified in d. following.¹

(1) Usage Charges

Initial Minute or Fraction Thereof	Additional Minute, Each or Fraction Thereof
\$0.0275	\$0.0125

Note 1: Calls within the local calling area are each charged for at least one (1) minute of use. For local calls that exceed one (1) minute, usage charges are based on conversation time rounded up to the nearest one tenth (1/10) minute.

Material appearing on this page previously appeared on page(s) 8 of this section.

* d/b/a SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

0000195

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Second Revised Page 9
Cancels First Revised Page 9

ISSUED: June 21, 1999

EFFECTIVE: July 6, 1999

BY: Joseph P. Lacher, President -FL
Miami, Florida

A7. COIN TELEPHONE SERVICE

A7.4 Access Line Service For Payphone Service Provider Telephones (Cont'd)

A7.4.4 Service Features (Cont'd)

D. Answer Supervision

At the request of the subscriber, Answer Supervision may be provided at the rates, terms and conditions set forth in A13.61 of this Tariff.

A7.4.5 Rates and Charges

A. Access Line Service for PSP - Rates and Charges Applied by The Company

Access Line Service for PSP may be provided on a Usage Rate basis or Flat Rate basis where facilities permit.

1. Usage Rate Service

- a. The monthly rate per line for Access Line Service for PSP is 80 percent of the business individual line flat rate as specified in Section A3. of this Tariff.
- b. No monthly usage allowance applies for Access Line Service for PSP
- c. The following usage charges apply for calls within the local calling area and to calls in the Local Calling Plus exchanges specified in A3.8.50 and to calls in the Extended Calling Service exchanges specified in A3.3 other than those specified in d. following.

(1) Usage Charges

Initial Minute or Fraction Thereof	Additional Minute, Each or Fraction Thereof
\$.025	\$.01

- d. The following usage charges apply for calls within the local calling area and to calls in the Local Calling Plus exchanges specified in A3.8.50 placed between 12:00 P.M. and 2:00 P.M., 9:00 P.M. and 9:00 A.M., and Saturday and Sunday all day.

(1) Usage Charges

Initial Minute or Fraction Thereof	Additional Minute, Each or Fraction Thereof
\$.015	\$.005

- e. The monthly Access Line Service for PSP rate (80 percent of the business individual line flat rate) plus local usage rate charges billed per month is subject to a minimum billing of \$30.00 per line per month.

Note 1: Calls within the local calling area are each charged for at least one (1) minute of use. For local calls that exceed one (1) minute, usage charges are based on conversation time rounded up to the nearest one-tenth (1/10) minute.

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BST000181

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

First Revised Page 9
Cancels Original Page 9

ISSUED: August 1, 1996
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: October 1, 1996

A7. COIN TELEPHONE SERVICE

(T)

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE)
(Cont'd)

A7.4.4 Service Features (Cont'd)

D. Answer Supervision (Cont'd)

At the request of the subscriber, Answer Supervision may be provided at the rates, terms and conditions set forth in A13.61 of this Tariff.

A7.4.5 Rates and Charges

A. Public Telephone Access Service for CPE - Rates and Charges Applied by The Company

Public Telephones Access Service for CPE may be provided on a Usage Rate basis or Flat Rate basis where facilities permit.

1. Usage Rate Service

- a. The monthly rate per line for Public Telephone Access Service for CPE is 80 percent of the business individual line flat rate as specified in Section A3. of this Tariff.
- b. No monthly usage allowance applies for Public Telephone Access Service for CPE.
- c. The following usage charges apply for calls within the local calling area and to calls in the Local Calling Plus exchanges specified in A3.8.50 and to calls in the Extended Calling Service exchanges specified in A3.3 other than those specified in d. following.

(T)

(1) Usage Charges

Initial Minute or Fraction Thereof	Additional Minute, Each or Fraction Thereof
\$0.25	\$0.01

(R)

- d. The following usage charges apply for calls within the local calling area and to calls in the Local Calling Plus exchanges specified in A3.8.50 placed between 12:00 P.M. and 2:00 P.M., 9:00 P.M. and 9:00 A.M., and Saturday and Sunday all day.

(T)

(1) Usage Charges

Initial Minute or Fraction Thereof	Additional Minute, Each or Fraction Thereof
\$0.15	\$0.05

(R)

- e. The monthly Public Telephone Access Service rate (80 percent of the business individual line flat rate) plus local usage rate charges billed per month is subject to a minimum billing of \$30.00 per line per month.

(M)

Note 1: Calls within the local calling area are each charged for at least one (1) minute of use. For local calls that exceed one (1) minute, usage charges are based on conversation time rounded up to the nearest one tenth (1/10) minute.

(T)

Material previously appearing on this page now appears on page(s) 10 of this section.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 9

ISSUED: July 1, 1996

BY: Joseph P. Lacher, President - FL
Miami, Florida

EFFECTIVE: July 15, 1996

A7. COIN TELEPHONE SERVICE¹

(N)

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE)
(Cont'd)

A7.4.4 Service Features (Cont'd)

D. Answer Supervision (Cont'd)

At the request of the subscriber, Answer Supervision may be provided at the rates, terms and conditions set forth in A13.61 of this Tariff.

A7.4.5 Rates and Charges

A. Public Telephone Access Service for CPE - Rates and Charges Applied by The Company

Public Telephones Access Service for CPE may be provided on a Usage Rate basis or Flat Rate basis where facilities permit.

1. Usage Rate Service

- a. The monthly rate per line for Public Telephone Access Service for CPE is 80 percent of the business individual line flat rate as specified in Section A3. of this Tariff.
- b. No monthly usage allowance applies for Public Telephone Access Service for CPE.
- c. The following usage charges apply for calls within the local calling area and to calls in the Local Calling Plus exchanges specified in A3.8.50 and to calls in the Extended Calling Service exchanges specified in A3.3 other than those specified in d. following.²

(1) Usage Charges

Initial Minute or Fraction Thereof	Additional Minute, Each or Fraction Thereof
\$.0275	\$.0125

- d. The following usage charges apply for calls within the local calling area and to calls in the Local Calling Plus exchanges specified in A3.8.50 placed between 12:00 P.M. and 2:00 P.M., 9:00 P.M. and 9:00 A.M., and Saturday and Sunday all day.²

(1) Usage Charges

Initial Minute or Fraction Thereof	Additional Minute, Each or Fraction Thereof
\$.0175	\$.0075

- e. The monthly Public Telephone Access Service rate (80 percent of the business individual line flat rate) plus local usage rate charges billed per month is subject to a minimum billing of \$30.00 per line per month.

2. Flat Rate Service

Note 1: Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this filing.

Note 2: Calls within the local calling area are each charged for at least one (1) minute of use. For local calls that exceed one (1) minute, usage charges are based on conversation time rounded up to the nearest one tenth (1/10) minute.

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BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: November 21, 1995
BY: Joseph P. Lacher, President - FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Fifth Revised Page 9.1
Cancels Fourth Revised Page 9.1

EFFECTIVE: July 1, 1995

A7. COIN TELEPHONE SERVICE

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE) (Cont'd)

A7.4.5 Rates and Charges (Cont'd)

A. Public Telephone Access Service for CPE - Rates and Charges Applied by The Company (Cont'd)

1. Usage Rate Service (Cont'd)

- d. The following usage charges apply for calls within the local calling area and to calls in the Local Calling Plus exchanges specified in A3.8.50 placed between 12:00 P.M. and 2:00 P.M., 9:00 P.M. and 9:00 A.M., and Saturday and Sunday all day.¹

(1) Usage Charges

Initial Minute or Fraction Thereof	Additional Minute, Each or Fraction Thereof
\$0.0175	\$0.0075

- e. The monthly Public Telephone Access Service rate (80 percent of the business individual line flat rate) plus local usage rate charges billed per month is subject to a minimum billing of \$30.00 per line per month.

2. Flat Rate Service

- a. The monthly rate per line for Public Telephone Access Service for CPE is the business individual line flat rate as specified in Section A3. of this Tariff.

- b. The following usage charges apply for calls in the Local Calling Plus exchanges specified in A3.8.50 and to calls in the Extended Calling Service exchanges specified in A3.3 other than those specified in c. following.

(1) Usage Charges

Initial Minute or Fraction Thereof	Additional Minute, Each or Fraction Thereof
\$0.0275	\$0.0125

- c. The following usage charges apply for calls in the Local Calling Plus exchanges specified in A3.8.50 placed between 12:00 P.M. and 2:00 P.M., 9:00 P.M. and 9:00 A.M., and Saturday and Sunday all day.

(1) Usage Charges

Initial Minute or Fraction Thereof	Additional Minute, Each or Fraction Thereof
\$0.0175	\$0.0075

Note 1: Calls within the local calling area are each charged for at least one (1) minute of use. For local calls that exceed one (1) minute, usage charges are based on conversation time rounded up to the nearest one tenth (1/10) minute.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: February 1, 1994
BY: Joseph P. Lacher, President - FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Fourth Revised Page 9.1
Cancels Third Revised Page 9.1

EFFECTIVE: February 17, 1994

A7. COIN TELEPHONE SERVICE

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE) (Cont'd)

A7.4.5 Rates and Charges (Cont'd)

A. Public Telephone Access Service for CPE - Rates and Charges Applied by The Company (Cont'd)

1. Usage Rate Service (Cont'd)

- d. The following usage charges apply for calls within the local calling area and to calls in the Local Calling Plus exchanges specified in A3.8.50 placed between 12:00 P.M. and 2:00 P.M., 9:00 P.M. and 9:00 A.M., and Saturday and Sunday all day.¹

(1) Usage Charges

Initial Minute or Fraction Thereof	Additional Minute, Each or Fraction Thereof	(R)
\$0.0175	\$0.0075	

- e. The monthly Public Telephone Access Service rate (80 percent of the business individual line flat rate) plus local usage rate charges billed per month is subject to a minimum billing of \$30.00 per line per month.

Note 1: Calls within the local calling area are each charged for at least one (1) minute of use. For local calls that exceed one (1) minute, usage charges are based on conversation time rounded up to the nearest one tenth (1/10) minute.

000100

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BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: November 21, 1995

BY: Joseph P. Lacher, President - FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Eighth Revised Page 10
Cancels Seventh Revised Page 10

EFFECTIVE: July 1, 1995

A7. COIN TELEPHONE SERVICE

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE) (Cont'd)

A7.4.5 Rates and Charges (Cont'd)

A. Public Telephone Access Service for CPE - Rates and Charges Applied by The Company (Cont'd)

3. Switched Access Charges for usage as provided in Sections E3. and E6. of the Access Service Tariff apply. Charges are billable to the interexchange carrier. (T)
4. *Sent paid* long distance charges apply on a per message basis based on toll rates (*set forth* in A18.3.1.H. of this Tariff). (C)
Operator handled non-sent paid local calls will be rated to the end user at the rate (set forth in A7.1.4 of this Tariff) plus the appropriate additive operator services charges (set forth in A3.10.1 of this Tariff), plus the set use fee as provided in A7.6 of this Tariff. (C)
 The rates charged the caller for *non-sent paid* calls to the *Extended Calling Service* exchanges outlined in A3.3 and to the *Local Calling Plus* exchanges outlined in A3.8.50 will be rated at the *Local Call* rate specified in A7.1.4 plus appropriate operator services charges (as provided in A3.10.1 of this Tariff), *plus the set use fee as provided in A7.6 of this Tariff.* (C)
5. The Public Telephone Access Service subscriber who subscribes to Usage Rate Service as described in A7.4.5.A.1 will be charged on a per message basis for sent paid calls at the rates set forth in A7.4.5.A.1.c.(1) of this Tariff. (N)
6. The Public Telephone Access Service subscriber who subscribes to Flat Rate Service as described in A7.4.5.A.2 will be charged for sent paid calls to the *Extended Calling Service* exchanges outlined in A3.3 at the rates set forth in A7.4.5.A.2 of this Tariff. (N)
7. The Public Telephone Access Service subscriber who subscribes to Flat Rate Service as described in A7.4.5.A.2 will be charged for sent paid calls to the *Local Calling Plus* exchanges outlined in A3.8.50 at the rates set forth in A7.4.5.A.2 of this Tariff. (N)
8. Non-sent paid *IntraLATA* calls will be rated to the end user at the rate set forth in A18.3.1.H plus the appropriate additive operator services charges as provided in A18.3.1.H of this Tariff, plus the set fee as provided in A7.6 of this Tariff. (N)

000102

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: January 18, 1994
BY: Joseph P. Lacher, President - FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Seventh Revised Page 10
Cancels Sixth Revised Page 10

EFFECTIVE: February 5, 1994

A7. COIN TELEPHONE SERVICE

**A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE)
(Cont'd)**

A7.4.5 Rates and Charges (Cont'd)

- A. Public Telephone Access Service for CPE - Rates and Charges Applied by The Company (Cont'd)
2. Switched Access Charges for usage as provided in Sections E3. and E6. of the Access Service Tariff apply. Charges are billable to the interexchange carrier.
 3. Long distance charges apply on a per message basis based on toll rates (as provided in A18.3.1.H. of this Tariff) plus the appropriate additive operator services charges (as provided in A18.3.1.H. of this Tariff).
Local charges apply on a per message basis based on the applicable local usage charges (as provided in A7.4.5.A.1.c.(1) of this Tariff) plus the appropriate additive operator services charges (as provided in A3.10.1 of this Tariff).
The rates charged the caller for calls to the Local Calling Plus exchanges outlined in A3.8.50 will be rated at the Local Call rate specified in A7.1.4 plus appropriate operator services charges (as provided in A3.10.1 of this Tariff).
 4. (DELETED)

(D)

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A7. COIN TELEPHONE SERVICE

A7.4 Access Line Service For Payphone Service Provider Telephones (Cont'd)

A7.4.5 Rates and Charges (Cont'd)

A. Access Line Service for PSP - Rates and Charges Applied by The Company (Cont'd)

2. Flat Rate Service for PSP Monthly Charges

a. PSP Access Line Service

(1) Rate Groups 1-6

	Group						USOC	
	1	2	3	4	5	6	NA	(R)
(a) Per Access Line	\$12.67	\$13.67	\$14.77	\$15.77	\$16.72	\$17.77		
(2) Rate Groups 7 - 12								

	Group						USOC	
	7	8	9	10	11	12	NA	(R)
(a) Per Access Line	\$18.62	\$19.47	\$20.27	\$20.87	\$21.47	\$21.97		

b. No monthly usage allowance applies for Access Line Service for PSP.

c. The following usage charges apply for calls in the Local Calling Plus exchanges specified in A3.8.50 and to calls in the Extended Calling Service exchanges specified in A3.3 other than those specified in c. following.

(1) Usage Charges

Initial Minutes or Fraction
Thereof
\$.025

Additional Minute, Each or
Fraction Thereof
\$.01

d. The following usage charges apply for calls in the Local Calling Plus exchanges specified in A3.8.50 placed between 12:00 P.M. and 2:00 P.M., 9:00 P.M. and 9:00 A.M., and Saturday and Sunday all day.

(1) Usage Charges

Initial Minutes or Fraction
Thereof
\$.015

Additional Minute, Each or
Fraction Thereof
\$.005

3. BellSouth SWA charges for usage as provided in Sections E3. and E6. of the Access Service Tariff apply. Charges are billable to the interexchange carrier.
4. Sent paid long distance charges apply on a per message basis based on toll rates (set forth in A18.3.1.H. of this Tariff). Operator handled non-sent paid local calls will be rated to the end user at the rate (set forth in A3.10.1 of this Tariff) plus the appropriate additive operator services charges (set forth in A3.10.1 of this Tariff), plus the set use fee as provided in A7.6 of this Tariff.
The rates charged the caller for non-sent paid calls to the Extended Calling Service exchanges outlined in A3.3 and to the Local Calling Plus exchanges outlined in A3.8.50 will be rated at the Local Call rate specified in A3.10.1 plus appropriate operator services charges (as provided in A3.10.1 of this Tariff), plus the set use fee as provided in A7.6 of this Tariff.
5. The Access Line Service PSP subscriber who subscribes to Usage Rate Service as described in A7.4.5.A.1 will be charged on a per message basis for sent paid calls at the rates set forth in A7.4.5.A.1.c.(1) of this Tariff.
6. The Access Line Service PSP subscriber who subscribes to Flat Rate Service as described in A7.4.5.A.2 will be charged for sent paid calls to the Extended Calling Service exchanges outlined in A3.3 at the rates set forth in A7.4.5.A.2 of this Tariff.

Note 1: The exchanges for each rate group are identified in A3.4 of this tariff.

(T)

BELLSOUTH
TELECOMMUNICATIONS, INC.

GENERAL SUBSCRIBER SERVICE TARIFF

Fifth Revised Page 10
Cancels Fourth Revised Page 10

FLORIDA

ISSUED: December 15, 2000

EFFECTIVE: January 19, 2001

BY: Joseph P. Lacher, President -FL
Miami, Florida

A7. COIN TELEPHONE SERVICE

A7.4 Access Line Service For Payphone Service Provider Telephones (Cont'd)

A7.4.5 Rates and Charges (Cont'd)

A. Access Line Service for PSP - Rates and Charges Applied by The Company (Cont'd)

2. Flat Rate Service for PSP Monthly Charges

a. PSP Access Line Service

(1) Rate Groups 1-6

	Group						USOC	
	1	2	3	4	5	6	NA	(T)
(a) Per Access Line	\$19.80	\$20.80	\$21.90	\$22.90	\$23.85	\$24.90	NA	(N)
(2) Rate Groups 7 - 12								(N)

	Group						USOC	
	7	8	9	10	11	12	NA	(T)
(a) Per Access Line	\$25.75	\$26.60	\$27.40	\$28.00	\$28.60	\$29.10	NA	(N)

b. No monthly usage allowance applies for Access Line Service for PSP.

c. The following usage charges apply for calls in the Local Calling Plus exchanges specified in A3.8.50 and to calls in the Extended Calling Service exchanges specified in A3.3 other than those specified in c. following.

(1) Usage Charges

Initial Minutes or Fraction
Thereof
\$.025

Additional Minute, Each or
Fraction Thereof
\$.01

d. The following usage charges apply for calls in the Local Calling Plus exchanges specified in A3.8.50 placed between 12:00 P.M. and 2:00 P.M., 9:00 P.M. and 9:00 A.M., and Saturday and Sunday all day.

(1) Usage Charges

Initial Minutes or Fraction
Thereof
\$.015

Additional Minute, Each or
Fraction Thereof
\$.005

3. BellSouth SWA charges for usage as provided in Sections E3. and E6. of the Access Service Tariff apply. Charges are billable to the interexchange carrier.

4. Sent paid long distance charges apply on a per message basis based on toll rates (set forth in A18.3.1.H. of this Tariff).

Operator handled non-sent paid local calls will be rated to the end user at the rate (set forth in A3.10.1 of this Tariff) plus the appropriate additive operator services charges (set forth in A3.10.1 of this Tariff), plus the set use fee as provided in A7.6 of this Tariff.

The rates charged the caller for non-sent paid calls to the Extended Calling Service exchanges outlined in A3.3 and to the Local Calling Plus exchanges outlined in A3.8.50 will be rated at the Local Call rate specified in A3.10.1 plus appropriate operator services charges (as provided in A3.10.1 of this Tariff), plus the set use fee as provided in A7.6 of this Tariff.

5. The Access Line Service PSP subscriber who subscribes to Usage Rate Service as described in A7.4.5.A.1 will be charged on a per message basis for sent paid calls at the rates set forth in A7.4.5.A.1.c.(1) of this Tariff.

6. The Access Line Service PSP subscriber who subscribes to Flat Rate Service as described in A7.4.5.A.2 will be charged for sent paid calls to the Extended Calling Service exchanges outlined in A3.3 at the rates set forth in A7.4.5.A.2 of this Tariff.

Note 1: The exchanges for each rate group are identified in Section A3.4 of this tariff.

600165

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Fourth Revised Page 10
Cancels Third Revised Page 10

ISSUED: June 21, 1999
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: July 6, 1999

A7. COIN TELEPHONE SERVICE

A7.4 Access Line Service For Payphone Service Provider Telephones (Cont'd)

(C)

A7.4.5 Rates and Charges (Cont'd)

A. Access Line Service for PSP - Rates and Charges Applied by The Company (Cont'd)

(C)

2. Flat Rate Service

a. The monthly rate per line for Access Line Service for PSP is the business individual line flat rate as specified in Section A3. of this Tariff.

(C)

b. The following usage charges apply for calls in the Local Calling Plus exchanges specified in A3.8.50 and to calls in the Extended Calling Service exchanges specified in A3.3 other than those specified in c. following.

(1) Usage Charges

Initial Minutes or Fraction
Thereof
\$.025

Additional Minute, Each or
Fraction Thereof
\$.01

c. The following usage charges apply for calls in the Local Calling Plus exchanges specified in A3.8.50 placed between 12:00 P.M. and 2:00 P.M., 9:00 P.M. and 9:00 A.M., and Saturday and Sunday all day.

(1) Usage Charges

Initial Minutes or Fraction
Thereof
\$.015

Additional Minute, Each or
Fraction Thereof
\$.005

3. BellSouth SWA charges for usage as provided in Sections E3. and E6. of the Access Service Tariff apply. Charges are billable to the interexchange carrier.

(7)

4. Sent paid long distance charges apply on a per message basis based on toll rates (set forth in A18.3.1.H. of this Tariff).

Operator handled non-sent paid local calls will be rated to the end user at the rate (set forth in A3.10.1 of this Tariff) plus the appropriate additive operator services charges (set forth in A3.10.1 of this Tariff), plus the set use fee as provided in A7.6 of this Tariff.

The rates charged the caller for non-sent paid calls to the Extended Calling Service exchanges outlined in A3.3 and to the Local Calling Plus exchanges outlined in A3.8.50 will be rated at the Local Call rate specified in A3.10.1 plus appropriate operator services charges (as provided in A3.10.1 of this Tariff), plus the set use fee as provided in A7.6 of this Tariff.

5. The Access Line Service PSP subscriber who subscribes to Usage Rate Service as described in A7.4.5.A.1 will be charged on a per message basis for sent paid calls at the rates set forth in A7.4.5.A.1.c.(1) of this Tariff.

(C)

6. The Access Line Service PSP subscriber who subscribes to Flat Rate Service as described in A7.4.5.A.2 will be charged for sent paid calls to the Extended Calling Service exchanges outlined in A3.3 at the rates set forth in A7.4.5.A.2 of this Tariff.

(C)

000266

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: September 23, 1997

BY: Joseph P. Lacher, President -FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Third Revised Page 10
Cancels Second Revised Page 10

EFFECTIVE: October 7, 1997

A7. COIN TELEPHONE SERVICE

**A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE)
(Cont'd)**

A7.4.5 Rates and Charges (Cont'd)

A. Public Telephone Access Service for CPE - Rates and Charges Applied by The Company (Cont'd)

2. Flat Rate Service

- a. The monthly rate per line for Public Telephone Access Service for CPE is the business individual line flat rate as specified in Section A3. of this Tariff.
- b. The following usage charges apply for calls in the Local Calling Plus exchanges specified in A3.8.50 and to calls in the Extended Calling Service exchanges specified in A3.3 other than those specified in c. following.

(1) Usage Charges

**Initial Minutes or Fraction
Thereof
\$.025**

**Additional Minute, Each or
Fraction Thereof
\$.01**

- c. The following usage charges apply for calls in the Local Calling Plus exchanges specified in A3.8.50 placed between 12:00 P.M. and 2:00 P.M., 9:00 P.M. and 9:00 A.M., and Saturday and Sunday all day.

(1) Usage Charges

**Initial Minutes or Fraction
Thereof
\$.015**

**Additional Minute, Each or
Fraction Thereof
\$.005**

3. Switched Access Charges for usage as provided in Sections E3. and E6. of the Access Service Tariff apply. Charges are billable to the interexchange carrier.
4. Sent paid long distance charges apply on a per message basis based on toll rates (set forth in A18.3.1.H. of this Tariff).
Operator handled non-sent paid local calls will be rated to the end user at the rate (set forth in A3.10.1 of this Tariff) plus the appropriate additive operator services charges (set forth in A3.10.1 of this Tariff), plus the set use fee as provided in A7.6 of this Tariff. (C)
The rates charged the caller for non-sent paid calls to the Extended Calling Service exchanges outlined in A3.3 and to the Local Calling Plus exchanges outlined in A3.8.50 will be rated at the Local Call rate specified in A3.10.1 plus appropriate operator services charges (as provided in A3.10.1 of this Tariff), plus the set use fee as provided in A7.6 of this Tariff. (C)
5. The Public Telephone Access Service subscriber who subscribes to Usage Rate Service as described in A7.4.5.A.1 will be charged on a per message basis for sent paid calls at the rates set forth in A7.4.5.A.1.c.(1) of this Tariff.
6. The Public Telephone Access Service subscriber who subscribes to Flat Rate Service as described in A7.4.5.A.2 will be charged for sent paid calls to the Extended Calling Service exchanges outlined in A3.3 at the rates set forth in A7.4.5.A.2 of this Tariff.

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BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: March 3, 1997

BY: Joseph P. Lacher, President -FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Second Revised Page 10
Cancels First Revised Page 10

EFFECTIVE: April 1, 1997

A7. COIN TELEPHONE SERVICE

**A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE)
(Cont'd)**

A7.4.5 Rates and Charges (Cont'd)

A. Public Telephone Access Service for CPE - Rates and Charges Applied by The Company (Cont'd)

2. Flat Rate Service

- a. The monthly rate per line for Public Telephone Access Service for CPE is the business individual line flat rate as specified in Section A3. of this Tariff.
- b. The following usage charges apply for calls in the Local Calling Plus exchanges specified in A3.8.50 and to calls in the Extended Calling Service exchanges specified in A3.3 other than those specified in c. following.
 - (1) Usage Charges

Initial Minute or Fraction Thereof	Additional Minute, Each or Fraction Thereof
\$0.025	\$0.01

- c. The following usage charges apply for calls in the Local Calling Plus exchanges specified in A3.8.50 placed between 12:00 P.M. and 2:00 P.M., 9:00 P.M. and 9:00 A.M., and Saturday and Sunday all day.
 - (1) Usage Charges

Initial Minute or Fraction Thereof	Additional Minute, Each or Fraction Thereof
\$0.015	\$0.005

3. Switched Access Charges for usage as provided in Sections E3. and E6. of the Access Service Tariff apply. Charges are billable to the interexchange carrier.
4. Sent paid long distance charges apply on a per message basis based on toll rates (set forth in A18.3.1.H. of this Tariff). Operator handled non-sent paid local calls will be rated to the end user at the rate (set forth in A7.4.5.B.4. of this Tariff) plus the appropriate additive operator services charges (set forth in A3.10.1 of this Tariff), plus the set use fee as provided in A7.6 of this Tariff.

The rates charged the caller for non-sent paid calls to the Extended Calling Service exchanges outlined in A3.3 and to the Local Calling Plus exchanges outlined in A3.8.50 will be rated at the Local Call rate specified in A7.4.5.B.4. plus appropriate operator services charges (as provided in A3.10.1 of this Tariff), plus the set use fee as provided in A7.6 of this Tariff.
5. The Public Telephone Access Service subscriber who subscribes to Usage Rate Service as described in A7.4.5.A.1 will be charged on a per message basis for sent paid calls at the rates set forth in A7.4.5.A.1.c.(1) of this Tariff.
6. The Public Telephone Access Service subscriber who subscribes to Flat Rate Service as described in A7.4.5.A.2 will be charged for sent paid calls to the Extended Calling Service exchanges outlined in A3.3 at the rates set forth in A7.4.5.A.2 of this Tariff.

(T)

(T)

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: August 1, 1996

BY: Joseph P. Lacher, President -FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

First Revised Page 10
Cancels Original Page 10

EFFECTIVE: October 1, 1996

A7. COIN TELEPHONE SERVICE

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE)
(Cont'd)

A7.4.5 Rates and Charges (Cont'd)

A. Public Telephone Access Service for CPE - Rates and Charges Applied by The Company (Cont'd)

2. Flat Rate Service

- a. The monthly rate per line for Public Telephone Access Service for CPE is the business individual line flat rate as specified in Section A3. of this Tariff.
- b. The following usage charges apply for calls in the Local Calling Plus exchanges specified in A3.8.50 and to calls in the Extended Calling Service exchanges specified in A3.3 other than those specified in c. following.

(1) Usage Charges

Initial Minute or Fraction Thereof	Additional Minute, Each or Fraction Thereof
\$0.025	\$0.01

- c. The following usage charges apply for calls in the Local Calling Plus exchanges specified in A3.8.50 placed between 12:00 P.M. and 2:00 P.M., 9:00 P.M. and 9:00 A.M., and Saturday and Sunday all day.

(1) Usage Charges

Initial Minute or Fraction Thereof	Additional Minute, Each or Fraction Thereof
\$0.015	\$0.005

3. Switched Access Charges for usage as provided in Sections E3. and E6. of the Access Service Tariff apply. Charges are billable to the interexchange carrier.
4. Sent paid long distance charges apply on a per message basis based on toll rates (set forth in A18.3.1.H. of this Tariff). Operator handled non-sent paid local calls will be rated to the end user at the rate (set forth in A7.1.4 of this Tariff) plus the appropriate additive operator services charges (set forth in A3.10.1 of this Tariff), plus the set use fee as provided in A7.6 of this Tariff.
The rates charged the caller for non-sent paid calls to the Extended Calling Service exchanges outlined in A3.3 and to the Local Calling Plus exchanges outlined in A3.8.50 will be rated at the Local Call rate specified in A7.1.4 plus appropriate operator services charges (as provided in A3.10.1 of this Tariff), plus the set use fee as provided in A7.6 of this Tariff.
5. The Public Telephone Access Service subscriber who subscribes to Usage Rate Service as described in A7.4.5.A.1 will be charged on a per message basis for sent paid calls at the rates set forth in A7.4.5.A.1.c.(1) of this Tariff.
6. The Public Telephone Access Service subscriber who subscribes to Flat Rate Service as described in A7.4.5.A.2 will be charged for sent paid calls to the Extended Calling Service exchanges outlined in A3.3 at the rates set forth in A7.4.5.A.2 of this Tariff.

Material appearing on this page previously appeared on page(s) 9 of this section.

000169

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 10

ISSUED: July 1, 1996

EFFECTIVE: July 15, 1996

BY: Joseph P. Lacher, President - FL
Miami, Florida

A7. COIN TELEPHONE SERVICE¹

(N)

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE)
(Cont'd)

A7.4.5 Rates and Charges (Cont'd)

A. Public Telephone Access Service for CPE - Rates and Charges Applied by The Company (Cont'd)

2. Flat Rate Service (Cont'd)

- a. The monthly rate per line for Public Telephone Access Service for CPE is the business individual line flat rate as specified in Section A3. of this Tariff.
- b. The following usage charges apply for calls in the Local Calling Plus exchanges specified in A3.8.50 and to calls in the Extended Calling Service exchanges specified in A3.3 other than those specified in c. following.

(1) Usage Charges

Initial Minute or Fraction Thereof	Additional Minute, Each or Fraction Thereof
\$0.0275	\$0.0125

- c. The following usage charges apply for calls in the Local Calling Plus exchanges specified in A3.8.50 placed between 12:00 P.M. and 2:00 P.M., 9:00 P.M. and 9:00 A.M., and Saturday and Sunday all day.

(1) Usage Charges

Initial Minute or Fraction Thereof	Additional Minute, Each or Fraction Thereof
\$0.0175	\$0.0075

3. Switched Access Charges for usage as provided in Sections E3. and E6. of the Access Service Tariff apply. Charges are billable to the interexchange carrier.
4. Sent paid long distance charges apply on a per message basis based on toll rates (set forth in A18.3.1.H. of this Tariff). Operator handled non-sent paid local calls will be rated to the end user at the rate (set forth in A7.1.4 of this Tariff) plus the appropriate additive operator services charges (set forth in A3.10.1 of this Tariff), plus the set use fee as provided in A7.6 of this Tariff.
The rates charged the caller for non-sent paid calls to the Extended Calling Service exchanges outlined in A3.3 and to the Local Calling Plus exchanges outlined in A3.8.50 will be rated at the Local Call rate specified in A7.1.4 plus appropriate operator services charges (as provided in A3.10.1 of this Tariff), plus the set use fee as provided in A7.6 of this Tariff.
5. The Public Telephone Access Service subscriber who subscribes to Usage Rate Service as described in A7.4.5.A.1 will be charged on a per message basis for sent paid calls at the rates set forth in A7.4.5.A.1.c.(1) of this Tariff.
6. The Public Telephone Access Service subscriber who subscribes to Flat Rate Service as described in A7.4.5.A.2 will be charged for sent paid calls to the Extended Calling Service exchanges outlined in A3.3 at the rates set forth in A7.4.5.A.2 of this Tariff.

Note 1: Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this filing.

0000170

OFFICIAL APPROVED VERSION, RELEASED BY BSTHQ

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: February 7, 1992
BY: Joseph P. Lacher, President - FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Second Revised Page 10.1
Cancels First Revised Page 10.1

EFFECTIVE: February 10, 1992

A7. COIN TELEPHONE SERVICE

**A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE)
(Cont'd)**

(7)

EFFECTIVE: November 10, 2003

A7. COIN TELEPHONE SERVICE

A7.4 Access Line Service For Payphone Service Provider Telephones (Cont'd)

A7.4.5 Rates and Charges (Cont'd)

A. Access Line Service for PSP - Rates and Charges Applied by The Company (Cont'd)

7. The Access Line Service PSP subscriber who subscribes to Flat Rate Service as described in A7.4.5.A.2 will be charged for sent paid calls to the Local Calling Plus exchanges outlined in A3.8.50 at the rates set forth in A7.4.5.A.2 of this Tariff.
8. Non-sent paid IntraLATA calls will be rated to the end user at the rate set forth in A18.3.1.H plus the appropriate additive operator services charges as provided in A18.3.1.H of this Tariff, plus the set fee as provided in A7.6 of this Tariff.
9. Rates as described in A3.9.2 and A18.7.2 are applicable to all Directory Assistance calls.
10. Service Charges as covered in Section A4 of this Tariff for business individual line service are applicable.
11. Listings in connection with Access Line Service for PSP are furnished under the same rates and regulations as other business service.
12. Suspension of service, as covered in A2.3, is not available to Access Line Service for PSP unless the instrument is totally inaccessible to the general public on a temporary basis. In all cases, the decision to permit temporary suspension of service for Access Line Service for PSP rests with the Company.
13. When service is temporarily suspended at the subscriber's request, a Secondary Service Ordering Charge and a restoration charge, as covered in A4.3, per telephone number restored, is applied.

B. Access Line Service for PSP - Rates and Charges Applied by The Subscriber

1. Rates charged any end user by a PSP, providing operator service within the pay telephone premises' equipment, shall not exceed the following:
 - a. Local coin calls - the rate posted at the pay telephone station.
 - b. Extended area service (EAS) coin calls - a rate equivalent to the local coin call rate.
 - c. Extended calling scope (ECS) calls the rate equivalent to the local coin rate.
 - d. 0+ toll non-person-to-person - a maximum rate of \$0.30 per minute, plus a \$1.25 charge.
 - e. 0+ toll person-to-person - a maximum rate of \$0.30 per minute, plus a \$3.25 charge.
 - f. 0+ non-person-to-person local - a rate equivalent to the local coin rate, plus a \$1.75 charge.
 - g. 0+ per-to-person local - a rate equivalent to the local coin rate, plus a \$3.25 charge.
2. A PSP shall not obtain services from an interexchange carrier or an operator service provider unless such carrier or provider has obtained a certificate of public convenience and necessity from the Commission.

C. BellSouth PSP Reward® Plan

1. Definition and Requirements
 - a. The BellSouth PSP Reward® Plan provides the PSP a reward, ranging from 0 to 6.0 percent of the full price of the service, exclusive of taxes and fees, for a term commitment of 12 or 24 months to be applied monthly, one month in arrears. (C)
 - b. Applicable taxes and fees will be based on the full price of all services, and no taxes or fees will be added to the amount of any reward under this program. The reward for each month will be reflected as a credit in the Other Charges and Credits section of the subscriber's BellSouth bill in the month following the month to which the reward relates.
 - c. The BellSouth PSP Reward® Plan term structure will become effective when an authorized agent of the Company executes a Letter of Intent for the BellSouth PSP Reward® Plan but not prior to the approval of this Tariff.
 - d. The BellSouth PSP Reward® Plan offers a reward on the access line rates in A.2.a. preceding. The reward applied will be based on the number of PSP access lines subscribed to the BellSouth PSP Reward® Plan and the term commitment agreed upon.
 - e. The PSP must subscribe all its payphone lines to the Company's Public Telephone Access Service.
 - (1) The BellSouth PSP Reward® Plan does not apply to the BellSouth® SMARTLine® service.
 - (2) BellSouth® SMARTLine® service access lines do not apply toward the line count used to determine the reward level.
 - (3) This plan does not apply to Innate lines.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: March 10, 2003

BY: Joseph P. Lacher, President -FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Seventh Revised Page 11
Cancels Sixth Revised Page 11

EFFECTIVE: March 25, 2003

A7. COIN TELEPHONE SERVICE

A7.4 Access Line Service For Payphone Service Provider Telephones (Cont'd)

A7.4.5 Rates and Charges (Cont'd)

A. Access Line Service for PSP - Rates and Charges Applied by The Company (Cont'd)

7. The Access Line Service PSP subscriber who subscribes to Flat Rate Service as described in A7.4.5.A.2 will be charged for sent paid calls to the Local Calling Plus exchanges outlined in A3.8.50 at the rates set forth in A7.4.5.A.2 of this Tariff.
8. Non-sent paid IntraLATA calls will be rated to the end user at the rate set forth in A18.3.1.H plus the appropriate additive operator services charges as provided in A18.3.1.H of this Tariff, plus the set fee as provided in A7.6 of this Tariff.
9. Rates as described in A3.9.2 and A18.7.2 are applicable to all Directory Assistance calls.
10. Service Charges as covered in Section A4 of this Tariff for business individual line service are applicable.
11. Listings in connection with Access Line Service for PSP are furnished under the same rates and regulations as other business service.
12. Suspension of service, as covered in A2.3, is not available to Access Line Service for PSP unless the instrument is totally inaccessible to the general public on a temporary basis. In all cases, the decision to permit temporary suspension of service for Access Line Service for PSP rests with the Company.
13. When service is temporarily suspended at the subscriber's request, a Secondary Service Ordering Charge and a restoration charge, as covered in A4.3, per telephone number restored, is applied.

B. Access Line Service for PSP - Rates and Charges Applied by The Subscriber

1. Rates charged any end user by a PSP, providing operator service within the pay telephone premises' equipment, shall not exceed the following:
 - a. Local coin calls - the rate posted at the pay telephone station.
 - b. Extended area service (EAS) coin calls - a rate equivalent to the local coin call rate.
 - c. Extended calling scope (ECS) calls the rate equivalent to the local coin rate
 - d. 0+ toll non-person-to-person - a maximum rate of \$0.30 per minute, plus a \$1.75 charge.
 - e. 0+ toll person-to-person - a maximum rate of \$0.30 per minute, plus a \$3.25 charge.
 - f. 0+ non-person-to-person local - a rate equivalent to the local coin rate, plus a \$1.75 charge.
 - g. 0+ per-to-person local - a rate equivalent to the local coin rate, plus a \$3.25 charge.
2. A PSP shall not obtain services from an interexchange carrier or an operator service provider unless such carrier or provider has obtained a certificate of public convenience and necessity from the Commission.

C. BellSouth PSP Reward® Plan

1. Definition and Requirements

- a. The BellSouth PSP Reward® Plan provides the PSP a reward, ranging from 0 to 8.50 percent of the full price of the service, exclusive of taxes and fees, for a term commitment of 12 or 24 months to be applied monthly, one month in arrears. (C)
- b. Applicable taxes and fees will be based on the full price of all services, and no taxes or fees will be added to the amount of any reward under this program. The reward for each month will be reflected as a credit in the Other Charges and Credits section of the subscriber's BellSouth bill in the month following the month to which the reward relates. (N)
- c. The BellSouth PSP Reward® Plan term structure will become effective when an authorized agent of the Company executes a Letter of Intent for the BellSouth PSP Reward® Plan but not prior to the approval of this Tariff. (T)
- d. The BellSouth PSP Reward® Plan offers a reward on the access line rates in A.2.a. preceding. The reward applied will be based on the number of PSP access lines subscribed to the BellSouth PSP Reward® Plan and the term commitment agreed upon. (T)
- e. The PSP must subscribe all its payphone lines to the Company's Public Telephone Access Service.
 - (1) The BellSouth PSP Reward® Plan does not apply to the BellSouth® SMARTLine® service. (T)
 - (2) BellSouth® SMARTLine® service access lines do not apply toward the line count used to determine the reward level. (T)
 - (3) This plan does not apply to Inmate lines.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: August 27, 2001
BY: Joseph P. Lacher, President -FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Sixth Revised Page 11
Cancels Fifth Revised Page 11

EFFECTIVE: September 11, 2001

A7. COIN TELEPHONE SERVICE

A7.4 Access Line Service For Payphone Service Provider Telephones (Cont'd)

A7.4.5 Rates and Charges (Cont'd)

A. Access Line Service for PSP - Rates and Charges Applied by The Company (Cont'd)

7. The Access Line Service PSP subscriber who subscribes to Flat Rate Service as described in A7.4.5.A.2 will be charged for sent paid calls to the Local Calling Plus exchanges outlined in A3.8.50 at the rates set forth in A7.4.5.A.2 of this Tariff.
8. Non-sent paid IntraLATA calls will be rated to the end user at the rate set forth in A18.3.1.H plus the appropriate additive operator services charges as provided in A18.3.1.H of this Tariff, plus the set fee as provided in A7.6 of this Tariff.
9. Rates as described in A3.9.2 and A18.7.2 are applicable to all Directory Assistance calls.
10. Service Charges as covered in Section A4 of this Tariff for business individual line service are applicable.
11. Listings in connection with Access Line Service for PSP are furnished under the same rates and regulations as other business service.
12. Suspension of service, as covered in A2.3, is not available to Access Line Service for PSP unless the instrument is totally inaccessible to the general public on a temporary basis. In all cases, the decision to permit temporary suspension of service for Access Line Service for PSP rests with the Company.
13. When service is temporarily suspended at the subscriber's request, a Secondary Service Ordering Charge and a restoration charge, as covered in A4.3, per telephone number restored, is applied.

B. Access Line Service for PSP - Rates and Charges Applied by The Subscriber

1. Rates charged any end user by a PSP, providing operator service within the pay telephone premises' equipment, shall not exceed the following:
 - a. Local coin calls - the rate posted at the pay telephone station.
 - b. Extended area service (EAS) coin calls - a rate equivalent to the local coin call rate.
 - c. Extended calling scope (ECS) calls the rate equivalent to the local coin rate
 - d. 0+ toll non-person-to-person - a maximum rate of \$0.30 per minute, plus a \$1.75 charge.
 - e. 0+ toll person-to-person - a maximum rate of \$0.30 per minute, plus a \$3.25 charge.
 - f. 0+ non-person-to-person local - a rate equivalent to the local coin rate, plus a \$1.75 charge.
 - g. 0+ per-to-person local - a rate equivalent to the local coin rate, plus a \$3.25 charge.
2. A PSP shall not obtain services from an interexchange carrier or an operator service provider unless such carrier or provider has obtained a certificate of public convenience and necessity from the Commission.

C. BellSouth® PSP Reward® Plan

1. Definition and Requirements

- a. The BellSouth® PSP Reward® Plan provides the PSP a discount, ranging from 0 to 2.50 percent, for a term commitment of 12 or 24 months to be applied monthly, one month in arrears, to the subscribing PSPs recurring monthly access line charge. (C)
- b. The BellSouth® PSP Reward® Plan term discount will become effective when an authorized agent of the Company executes a Letter of Intent for the BellSouth® PSP Reward® Plan but not prior to the approval of this Tariff.
- c. The BellSouth® PSP Reward® Plan offers a discount on the access line rates in A.2.a. preceding. The discount applied will be based on the number of PSP access lines subscribed to the BellSouth® PSP Reward® Plan and the term commitment agreed upon.
- d. The PSP must subscribe all its payphone lines to the Company's Public Telephone Access Service.
 - (1) The BellSouth® PSP Reward® Plan does not apply to the BellSouth SmartLine® service.
 - (2) BellSouth SmartLine® service access lines do not apply toward the line count used to determine the discount level.
 - (3) This plan does not apply to Inmate lines.

* BellSouth is a registered trademark of BellSouth Intellectual Property Corporation.
* Registered Service Mark of BellSouth Intellectual Property Corporation.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Fifth Revised Page 11
Cancels Fourth Revised Page 11

ISSUED: June 21, 1999

EFFECTIVE: July 6, 1999

BY: Joseph P. Lacher, President -FL
Miami, Florida

A7. COIN TELEPHONE SERVICE

A7.4 Access Line Service For Payphone Service Provider Telephones (Cont'd)

A7.4.5 Rates and Charges (Cont'd)

A. Access Line Service for PSP - Rates and Charges Applied by The Company (Cont'd)

7. The Access Line Service PSP subscriber who subscribes to Flat Rate Service as described in A7.4.5.A.2 will be charged for sent paid calls to the Local Calling Plus exchanges outlined in A3.8.50 at the rates set forth in A7.4.5.A.2 of this Tariff. (C)
8. Non-sent paid IntraLATA calls will be rated to the end user at the rate set forth in A18.3.1.H plus the appropriate additive operator services charges as provided in A18.3.1.H of this Tariff, plus the set fee as provided in A7.6 of this Tariff. (C)
9. Rates as described in A3.9.2 and A18.7.2 are applicable to all Directory Assistance calls.
10. Service Charges as covered in Section A4 of this Tariff for business individual line service are applicable.
11. Listings in connection with Access Line Service for PSP are furnished under the same rates and regulations as other business service. (C)
12. Suspension of service, as covered in A2.3, is not available to Access Line Service for PSP unless the instrument is totally inaccessible to the general public on a temporary basis. In all cases, the decision to permit temporary suspension of service for Access Line Service for PSP rests with the Company. (C)
13. When service is temporarily suspended at the subscriber's request, a Secondary Service Ordering Charge and a restoration charge, as covered in A4.3, per telephone number restored, is applied.

B. Access Line Service for PSP - Rates and Charges Applied by The Subscriber

1. Rates charged any end user by a PSP, providing operator service within the pay telephone premises' equipment, shall not exceed the following: (C)
 - a. Local coin calls - the rate posted at the pay telephone station. (N)
 - b. Extended area service (EAS) coin calls - a rate equivalent to the local coin call rate. (N)
 - c. Extended calling scope (ECS) calls the rate equivalent to the local coin rate (N)
 - d. 0+ toll non-person-to-person - a maximum rate of \$0.30 per minute, plus a \$1.75 charge. (N)
 - e. 0+ toll person-to-person - a maximum rate of \$0.30 per minute, plus a \$3.25 charge. (N)
 - f. 0+ non-person-to-person local - a rate equivalent to the local coin rate, plus a \$1.75 charge. (N)
 - g. 0+ per-to-person local - a rate equivalent to the local coin rate, plus a \$3.25 charge. (N)
2. A PSP shall not obtain services from an interexchange carrier or an operator service provider unless such carrier or provider has obtained a certificate of public convenience and necessity from the Commission. (C)

C. BellSouth* PSP Reward* Plan

1. Definition and Requirements

- a. The BellSouth* PSP Reward* Plan provides the PSP a discount, ranging from 0 to 6.75 percent, for a term commitment of 12 or 24 months to be applied monthly, one month in arrears, to the subscribing PSPs recurring monthly access line charge.
- b. The BellSouth* PSP Reward* Plan term discount will become effective when an authorized agent of the Company executes a Letter of Intent for the BellSouth* PSP Reward* Plan but not prior to the approval of this Tariff.
- c. The BellSouth* PSP Reward* Plan offers a discount on the access line rates in A.2.a. preceding. The discount applied will be based on the number of PSP access lines subscribed to the BellSouth* PSP Reward* Plan and the term commitment agreed upon.
- d. The PSP must subscribe all its payphone lines to the Company's Public Telephone Access Service.
 - (1) The BellSouth* PSP Reward* Plan does not apply to the BellSouth SmartLine* service.
 - (2) BellSouth SmartLine* service access lines do not apply toward the line count used to determine the discount level.
 - (3) This plan does not apply to Innate lines.

(M)

Material previously appearing on this page now appears on page(s) 11.1 of this section.

*BellSouth is a registered trademark of BellSouth Intellectual Property Corporation.
*Registered Service Mark of BellSouth Intellectual Property Corporation.

RST000199

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: March 16, 1998
BY: Joseph P. Lacher, President -FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Fourth Revised Page 11
Cancels Third Revised Page 11

EFFECTIVE: March 31, 1998

A7. COIN TELEPHONE SERVICE

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE)
(Cont'd)

A7.4.5 Rates and Charges (Cont'd)

A. Public Telephone Access Service for CPE - Rates and Charges Applied by The Company (Cont'd)

7. The Public Telephone Access Service subscriber who subscribes to Flat Rate Service as described in A7.4.5.A.2 will be charged for sent paid calls to the Local Calling Plus exchanges outlined in A3.8.50 at the rates set forth in A7.4.5.A.2 of this Tariff.
8. Non-sent paid IntraLATA calls will be rated to the end user at the rate set forth in A18.3.1.H plus the appropriate additive operator services charges as provided in A18.3.1.H of this Tariff, plus the set fee as provided in A7.6 of this Tariff.
9. Rates as described in A3.9.2 and A18.7.2 are applicable to all Directory Assistance calls.
10. Service Charges as covered in Section A4 of this Tariff for business individual line service are applicable.
11. Listings in connection with Public Telephone Access Service for CPE are furnished under the same rates and regulations as other business service.
12. Suspension of service, as covered in A2.3, is not available to Public Telephone Access Service for CPE unless the instrument is totally inaccessible to the general public on a temporary basis. In all cases, the decision to permit temporary suspension of service for Public Telephone Access Service for CPE rests with the Company.
13. When service is temporarily suspended at the subscriber's request, a Secondary Service Ordering Charge and a restoration charge, as covered in A4.3, per telephone number restored, is applied.

B. Public Telephone Access Service for CPE - Rates and Charges Applied by The Subscriber

1. The rates charged the caller for sent paid interLATA long distance service shall be no higher than the rates charged by AT&T Communications for an equivalent time of day, direct-distance-dialed call plus \$1.00.
2. Additionally, operator service charges may be charged to the calling party by the subscriber, not to exceed charges to the subscriber for such services.

C. BellSouth® PSP Reward® Plan

1. Definition and Requirements

- a. The BellSouth® PSP Reward® Plan provides the PSP a discount, ranging from 0 to 6.75 percent, for a term commitment of 12 or 24 months to be applied monthly, one month in arrears, to the subscribing PSPs recurring monthly access line charge. (N)
- b. The BellSouth® PSP Reward® Plan term discount will become effective when an authorized agent of the Company executes a Letter of Intent for the BellSouth® PSP Reward® Plan but not prior to the approval of this Tariff. (N)
- c. The BellSouth® PSP Reward® Plan offers a discount on the access line rates in A.2.a. preceding. The discount applied will be based on the number of PSP access lines subscribed to the BellSouth® PSP Reward® Plan and the term commitment agreed upon. (N)
- d. The PSP must subscribe all its payphone lines to the Company's Public Telephone Access Service. (N)
 - (1) The BellSouth® PSP Reward® Plan does not apply to the BellSouth SmartLine® service. (N)
 - (2) BellSouth SmartLine® service access lines do not apply toward the line count used to determine the discount level. (N)
 - (3) This plan does not apply to Innate lines. (N)
- e. The PSP agrees to send all 0+ local and intraLATA calls (not previously incurred as of the effective date of this tariff) to the Company. These calls must: (N)
 - (1) originate from a telephone line associated with the subscribing PSP's account, (N)
 - (2) originate and terminate in the same LATA, (N)
 - (3) be carried and completed by the Company via Company facilities and (N)
 - (4) be billed by the Company. (N)
- f. Discounts will be applied only to Public Telephone Access Service lines that are subscribed to a Flat rate service. (N)

Material previously appearing on this page now appears on page(s) 11.1 of this section.
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BST000200

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Third Revised Page 11
Cancels Second Revised Page 11

ISSUED: February 18, 1998
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: March 5, 1998

A7. COIN TELEPHONE SERVICE

**A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE)
(Cont'd)**

A7.4.5 Rates and Charges (Cont'd)

A. Public Telephone Access Service for CPE - Rates and Charges Applied by The Company (Cont'd)

7. The Public Telephone Access Service subscriber who subscribes to Flat Rate Service as described in A7.4.5.A.2 will be charged for sent paid calls to the Local Calling Plus exchanges outlined in A3.8.50 at the rates set forth in A7.4.5.A.2 of this Tariff.
8. Non-sent paid IntraLATA calls will be rated to the end user at the rate set forth in A18.3.1.H plus the appropriate additive operator services charges as provided in A18.3.1.H of this Tariff, plus the set fee as provided in A7.6 of this Tariff.
9. *Rates as described in A3.9.2 and A18.7.2 are applicable to all Directory Assistance calls.* (C)
10. Service Charges as covered in Section A4 of this Tariff for business individual line service are applicable.
11. Listings in connection with Public Telephone Access Service for CPE are furnished under the same rates and regulations as other business service.
12. Suspension of service, as covered in A2.3, is not available to Public Telephone Access Service for CPE unless the instrument is totally inaccessible to the general public on a temporary basis. In all cases, the decision to permit temporary suspension of service for Public Telephone Access Service for CPE rests with the Company.
13. When service is temporarily suspended at the subscriber's request, a Secondary Service Ordering Charge and a restoration charge, as covered in A4.3, per telephone number restored, is applied.

B. Public Telephone Access Service for CPE - Rates and Charges Applied by The Subscriber

1. The rates charged the caller for sent paid interLATA long distance service shall be no higher than the rates charged by AT&T Communications for an equivalent time of day, direct-distance-dialed call plus \$1.00. (T)
2. Additionally, operator service charges may be charged to the calling party by the subscriber, not to exceed charges to the subscriber for such services. (T)

A7.5 Reserved For Future Use

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BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: September 23, 1997

BY: Joseph P. Lacher, President -FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Second Revised Page 11
Cancels First Revised Page 11

EFFECTIVE: October 7, 1997

A7. COIN TELEPHONE SERVICE

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE) (Cont'd)

A7.4.5 Rates and Charges (Cont'd)

A. Public Telephone Access Service for CPE - Rates and Charges Applied by The Company (Cont'd)

7. The Public Telephone Access Service subscriber who subscribes to Flat Rate Service as described in A7.4.5.A.2 will be charged for sent paid calls to the Local Calling Plus exchanges outlined in A3.8.50 at the rates set forth in A7.4.5.A.2 of this Tariff.
8. Non-sent paid IntraLATA calls will be rated to the end user at the rate set forth in A18.3.1.H plus the appropriate additive operator services charges as provided in A18.3.1.H of this Tariff, plus the set fee as provided in A7.6 of this Tariff.
9. A charge equivalent to that charged on business individual line service is applicable for long distance Directory Assistance Services (Reference A18.7 of this Tariff.)
10. Service Charges as covered in Section A4 of this Tariff for business individual line service are applicable.
11. Listings in connection with Public Telephone Access Service for CPE are furnished under the same rates and regulations as other business service.
12. Suspension of service, as covered in A2.3, is not available to Public Telephone Access Service for CPE unless the instrument is totally inaccessible to the general public on a temporary basis. In all cases, the decision to permit temporary suspension of service for Public Telephone Access Service for CPE rests with the Company.
13. When service is temporarily suspended at the subscriber's request, a Secondary Service Ordering Charge and a restoration charge, as covered in A4.3, per telephone number restored, is applied.

B. Public Telephone Access Service for CPE - Rates and Charges Applied by The Subscriber

1. (DELETED) (D)
2. The rates charged the caller for sent paid interLATA long distance service shall be no higher than the rates charged by AT&T Communications for an equivalent time of day, direct-distance-dialed call plus \$1.00. (C)
3. Additionally, operator service charges may be charged to the calling party by the subscriber, not to exceed charges to the subscriber for such services.
4. (DELETED) (D)

A7.5 Reserved For Future Use

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BST000202

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

First Revised Page 11
Cancels Original Page 11

ISSUED: March 3, 1997

EFFECTIVE: April 1, 1997

BY: Joseph P. Lacher, President -FL
Miami, Florida

A7. COIN TELEPHONE SERVICE

(T)

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE) (Cont'd)

A7.4.5 Rates and Charges (Cont'd)

A. Public Telephone Access Service for CPE - Rates and Charges Applied by The Company (Cont'd)

7. The Public Telephone Access Service subscriber who subscribes to Flat Rate Service as described in A7.4.5.A.2 will be charged for sent paid calls to the Local Calling Plus exchanges outlined in A3.8.50 at the rates set forth in A7.4.5.A.2 of this Tariff.
8. Non-sent paid IntraLATA calls will be rated to the end user at the rate set forth in A18.3.1.H plus the appropriate additive operator services charges as provided in A18.3.1.H of this Tariff, plus the set fee as provided in A7.6 of this Tariff.
9. A charge equivalent to that charged on business individual line service is applicable for long distance Directory Assistance Services (Reference A18.7 of this Tariff.)
10. Service Charges as covered in Section A4 of this Tariff for business individual line service are applicable.
11. Listings in connection with Public Telephone Access Service for CPE are furnished under the same rates and regulations as other business service.
12. Suspension of service, as covered in A2.3, is not available to Public Telephone Access Service for CPE unless the instrument is totally inaccessible to the general public on a temporary basis. In all cases, the decision to permit temporary suspension of service for Public Telephone Access Service for CPE rests with the Company.
13. When service is temporarily suspended at the subscriber's request, a Secondary Service Ordering Charge and a restoration charge, as covered in A4.3, per telephone number restored, is applied.

B. Public Telephone Access Service for CPE - Rates and Charges Applied by The Subscriber

1. The charge for a local sent paid call may not exceed the charge authorized by the Public Service Commission for pay ~~telephones~~ as provided in 4. following. (C)
2. The rates charged the caller for sent paid interLATA long distance service shall be no higher than the rates charged by AT&T Communications for an equivalent time of day, direct-distance-dialed call plus \$1.00. (T)
The rates charged the caller for sent paid calls to the Extended Calling Service exchanges outlined in A3.3 and to the Local Calling Plus exchanges outlined in A3.8.50 shall be rated at the Local Call rate specified in 4. following.
3. Additionally, operator service charges may be charged to the calling party by the subscriber, not to exceed charges to the subscriber for such services.
4. Local messages, including those placed to Local Calling Plus exchanges and Extended Calling Service exchanges outlined in A3.3.1 from pay telephones may not exceed the following per message charge. (N)

	Rate	USOC	
1. Sent-paid message			(N)
(a) Per Message, each fifteen (15) minutes or fraction thereof	\$25	NA	(N)
2. Non sent-paid message			(N)
(a) Per Message	.25	NA	(N)

A7.5 Reserved For Future Use

Note 1: Local messages initiated from Debet Card Public Telephones located in confinement facilities may be charged at no more than \$1.00 per message. (N)

Note 2: If a time limit is imposed on local messages, an announcement to the end user is required to clearly state that an amount (of no more than \$.25) must be deposited by the end user for each additional fifteen (15) minutes and to further state that, if the rate is not accepted by the end user, the call will be disconnected. This announcement must be made at least thirty (30) seconds prior to disconnection. Appropriate signage on the telephone indicating the time limit is also required. (N)

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 11

ISSUED: July 1, 1996

EFFECTIVE: July 15, 1996

BY: Joseph P. Lacher, President - FL
Miami, Florida

A7. COIN TELEPHONE SERVICE¹

(0)

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE) (Cont'd)

A7.4.5 Rates and Charges (Cont'd)

A. Public Telephone Access Service for CPE - Rates and Charges Applied by The Company (Cont'd)

7. The Public Telephone Access Service subscriber who subscribes to Flat Rate Service as described in A7.4.5.A.2 will be charged for sent paid calls to the Local Calling Plus exchanges outlined in A3.8.50 at the rates set forth in A7.4.5.A.2 of this Tariff.
8. Non-sent paid IntraLATA calls will be rated to the end user at the rate set forth in A18.3.1.H plus the appropriate additive operator services charges as provided in A18.3.1.H of this Tariff, plus the set fee as provided in A7.6 of this Tariff.
9. A charge equivalent to that charged on business individual line service is applicable for long distance Directory Assistance Services (Reference A18.7 of this Tariff.)
10. Service Charges as covered in Section A4 of this Tariff for business individual line service are applicable.
11. Listings in connection with Public Telephone Access Service for CPE are furnished under the same rates and regulations as other business service.
12. Suspension of service, as covered in A2.3, is not available to Public Telephone Access Service for CPE unless the instrument is totally inaccessible to the general public on a temporary basis. In all cases, the decision to permit temporary suspension of service for Public Telephone Access Service for CPE rests with the Company.
13. When service is temporarily suspended at the subscriber's request, a Secondary Service Ordering Charge and a restoration charge, as covered in A4.3, per telephone number restored, is applied.

B. Public Telephone Access Service for CPE - Rates and Charges Applied by The Subscriber

1. The charge for a local sent paid call may not exceed the charge authorized by the Public Service Commission for Company provided local coin service as provided in A7.1.4.
2. The rates charged the caller for sent paid interLATA long distance service shall be no higher than the rates charged by AT&T Communications for an equivalent time of day, direct-distance-dialed call plus \$1.00.
The rates charged the caller for sent paid calls to the Extended Calling Service exchanges outlined in A3.3 and to the Local Calling Plus exchanges outlined in A3.8.50 shall be rated at the Local Call rate specified in A7.1.4.
3. Additionally, operator service charges may be charged to the calling party by the subscriber, not to exceed charges to the subscriber for such services.

A7.5 Reserved For Future Use

A7.6 Public Set Use Fee

A7.6.1 Definition and Requirements

Note 1: Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this filing.

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BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: November 21, 1995

BY: Joseph P. Lacher, President - FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Tenth Revised Page 11
Cancels Ninth Revised Page 11

EFFECTIVE: July 1, 1995

A7. COIN TELEPHONE SERVICE

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE) (Cont'd)

A7.4.5 Rates and Charges (Cont'd)

A. Public Telephone Access Service for CPE - Rates and Charges Applied by The Company (Cont'd)

9. A charge equivalent to that charged on business individual line service is applicable for long distance Directory Assistance Services (Reference A18.7 of this Tariff.) (T)
10. Service Charges as covered in Section A4 of this Tariff for business individual line service are applicable. (T)
11. Listings in connection with Public Telephone Access Service for CPE are furnished under the same rates and regulations as other business service. (T)
12. Suspension of service, as covered in A2.3, is not available to Public Telephone Access Service for CPE unless the instrument is totally inaccessible to the general public on a temporary basis. In all cases, the decision to permit temporary suspension of service for Public Telephone Access Service for CPE rests with the Company. (T)
13. When service is temporarily suspended at the subscriber's request, a Secondary Service Ordering Charge and a restoration charge, as covered in A4.3, per telephone number restored, is applied. (T)

B. Public Telephone Access Service for CPE - Rates and Charges Applied by The Subscriber

1. The charge for a local sent paid call may not exceed the charge authorized by the Public Service Commission for Company provided local coin service as provided in A7.1.4.
2. The rates charged the caller for sent paid interLATA long distance service shall be no higher than the rates charged by AT&T Communications for an equivalent time of day, direct-distance-dialed call plus \$1.00.
The rates charged the caller for *sent paid* calls to the *Extended Calling Service exchanges outlined in A3.3 and to the Local Calling Plus exchanges outlined in A3.8.50* shall be rated at the Local Call rate specified in A7.1.4. (C)
3. Additionally, operator service charges may be charged to the calling party by the subscriber, not to exceed charges to the subscriber for such services. (T)

A7.5 Reserved For Future Use

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BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: May 21, 1993

BY: Joseph P. Lacher, President - FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Ninth Revised Page 11
Cancels Eighth Revised Page 11

EFFECTIVE: July 20, 1993

A7. COIN TELEPHONE SERVICE

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE) (Cont'd)

A7.4.5 Rates and Charges (Cont'd)

A. Public Telephone Access Service for CPE - Rates and Charges Applied by The Company (Cont'd)

5. A charge equivalent to that charged on business individual line service is applicable for long distance Directory Assistance Services (Reference A18.7 of this Tariff.)
6. Service Charges as covered in Section A4 of this Tariff for business individual line service are applicable.
7. Listings in connection with Public Telephone Access Service for CPE are furnished under the same rates and regulations as other business service.
8. Suspension of service, as covered in A2.3, is not available to Public Telephone Access Service for CPE unless the instrument is totally inaccessible to the general public on a temporary basis. In all cases, the decision to permit temporary suspension of service for Public Telephone Access Service for CPE rests with the Company.
9. When service is temporarily suspended at the subscriber's request, a Secondary Service Ordering Charge and a restoration charge, as covered in A4.3, per telephone number restored, is applied.

B. Public Telephone Access Service for CPE - Rates and Charges Applied by The Subscriber

1. The charge for a local sent paid call may not exceed the charge authorized by the Public Service Commission for Company provided local coin service as provided in A7.1.4. (C)
2. The rates charged the caller for sent paid interLATA long distance service shall be no higher than the rates charged by AT&T Communications for an equivalent time of day, direct-distance-dialed call plus \$1.00. (C)
The rates charged the caller for calls to the Local Calling Plus exchanges outlined in A3.8.50 shall be rated at the Local Call rate specified in A7.1.4.
3. Additionally, operator service charges may be charged to the calling party by the subscriber, not to exceed charges to the subscriber for such services. (D)

A7.5 (DELETED)

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: June 21, 1999

BY: Joseph P. Lacher, President -FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

First Revised Page 11.1
Cancels Original Page 11.1

EFFECTIVE: July 6, 1999

A7. COIN TELEPHONE SERVICE

A7.4 Access Line Service For Payphone Service Provider Telephones (Cont'd)

(C)

A7.4.5 Rates and Charges (Cont'd)

C. BellSouth® PSP Reward® Plan(Cont'd)

1. Definition and Requirements (Cont'd)

- e. The PSP agrees to send all 0+ local and intraLATA calls (not previously encumbered as of the effective date of this tariff) to the Company. These calls must:
 - (1) originate from a telephone line associated with the subscribing PSP's account, (M)
 - (2) originate and terminate in the same LATA, (M)
 - (3) be carried and completed by the Company via Company facilities and (M)
 - (4) be billed by the Company. (M)
- f. Discounts will be applied only to Public Telephone Access Service lines that are subscribed to a Flat rate service. (M)
- g. A termination penalty may be assessed, at the discretion of the Company, to PSP subscribers who terminate or violate the requirements outlined in this section prior to the expiration of the term commitment. The amount to be assessed will be as follows:
 - (1) If the termination or violation occurs within the first 12 months of a new agreement or contract extension, 50 percent of the monthly access line rate multiplied by the number of months remaining in the term agreement, then multiplied by the number of lines subscribed to the BellSouth® PSP Reward® Plan on the termination date of the agreement;
 - (2) If the termination or violation occurs within the second 12 months of a 24 month agreement, or contract extension, 25 percent of the monthly access line rate multiplied by the number of months remaining in the term agreement, then multiplied by the number of lines subscribed to the BellSouth® PSP Reward® Plan on the termination date of the agreement.
- h. The rates listed in A.2.a. for access line service are stabilized under the BellSouth® PSP Reward® Plan for the term of the agreement and these lines will be exempt from Company initiated increases. Decreases in the access line charges that are initiated by the Company will be passed along to the subscriber, however.
 - (1) The Company reserves the right to restructure the BellSouth® PSP Reward® Plan discounts upon mandated rate reductions from the FCC, the Public Service Commissions and/or the Public Utility Commissions, to include rate rebalancing efforts.

Any revisions to the BellSouth® PSP Reward® Plan will be made such that the subscribers will be charged a rate not to exceed the mandated rate and not to exceed the previous Reward Plan contracted rate.
- 2. The Company will offer a promotion for the BellSouth® PSP Reward® Plan for a period of 30 days from the effective date of this tariff. The PSP will receive a one time credit per line. To be eligible for this one time credit customers must have 6,000 payphone lines or more in the BellSouth region and sign a 24 month BellSouth® PSP Reward® Plan agreement.

A7.5 Reserved For Future Use

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BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: March 16, 1998
BY: Joseph P. Lacher, President -FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 11.1

EFFECTIVE: March 31, 1998

A7. COIN TELEPHONE SERVICE

A7.4 Public Telephone Access Service For Customer Provided Equipment (CPE)
(Cont'd)

A7.4.5 Rates and Charges (Cont'd)

C. BellSouth® PSP Reward® Plan(Cont'd)

1. Definition and Requirements (Cont'd)

g. A termination penalty may be assessed, at the discretion of the Company, to PSP subscribers who terminate or violate the requirements outlined in this section prior to the expiration of the term commitment. The amount to be assessed will be as follows:

(1) If the termination or violation occurs within the first 12 months of a new agreement or contract extension, 50 percent of the monthly access line rate multiplied by the number of months remaining in the term agreement, then multiplied by the number of lines subscribed to the BellSouth® PSP Reward® Plan on the termination date of the agreement;

(2) If the termination or violation occurs within the second 12 months of a 24 month agreement or contract extension, 25 percent of the monthly access line rate multiplied by the number of months remaining in the term agreement, then multiplied by the number of lines subscribed to the BellSouth® PSP Reward Plan on the termination date of the agreement.

h. The rates listed in A.2.a. for access line service are stabilized under the BellSouth® PSP Reward® Plan for the term of the agreement and these lines will be exempt from Company initiated increases. Decreases in the access line charges that are initiated by the Company will be passed along to the subscriber, however:

(1) The Company reserves the right to restructure the BellSouth® PSP Reward® Plan discounts upon mandated rate reductions from the FCC, the Public Service Commissions and/or the Public Utility Commissions, to include rate rebalancing efforts.

Any revisions to the BellSouth® PSP Reward® Plan will be made such that the subscribers will be charged a rate not to exceed the mandated rate and not to exceed the previous Reward Plan contracted rate.

2. The Company will offer a promotion for the BellSouth® PSP Reward® Plan for a period of 30 days from the effective date of this tariff. The PSP will receive a one time credit per line. To be eligible for this one time credit customers must have 6,000 payphone lines or more in the BellSouth region and sign a 24 month BellSouth® PSP Reward® Plan agreement.

A7.5 Reserved For Future Use

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EST000208

A107. OBSOLETE SERVICE OFFERINGS - COIN TELEPHONE SERVICE

A107.8 SmartLine® Service for Public Telephone Access (Cont'd)

A107.8.1 General (Cont'd)

D. Features of the SmartLine® service are as follows: (Cont'd)

10. International Call Blocking (011+) is available through the BellSouth Telecommunications, Inc., Tariff P.C.C. No. 1.
11. All 0+ interLATA and intraLATA calls will be routed to the SmartLine® service subscriber presubscribed carrier.
12. The Company shall not be liable for shortages of coins collected and deposited at the subscriber's equipment. The limit of the Company's liability for end user fraud of whatever nature occurring at or in association with the subscriber's equipment shall be governed by provisions of this Tariff and rule or regulation of the Florida Public Service Commission (PSC). In the case of a conflict between the Company's Tariff and a rule or regulation of the Florida PSC, the rule or regulation shall prevail.

A107.8.2 Rates and Charges

A. SmartLine® Service will be provided on a usage rate basis where facilities are available.

1. Usage Rate Service - The following monthly rate is applicable to SmartLine® service on a per line basis.

	Monthly Rate	USOC	
(a) Two way, per line	\$27.87	SLU	(R)
(b) Outward only, per line	27.87	SLN	(R)

- B. The following measured rate charges apply to calls within the local calling area and to the calls in the Local Calling Plus exchanges specified in A3.8.50 and to calls in the Extended Calling Service exchanges specified in A3.8.49 other than those specified in C. following.¹**

Initial Minutes or Fraction Thereof	Additional Minute, Each or Fraction Thereof
5.0275	5.0125

- C. The following charges apply to calls within the local calling area and to calls in the Local Calling Plus exchanges specified in A3.8.50 of this Tariff placed between 12:00 P.M. and 2:00 P.M., 9:00 P.M. and 9:00 A.M., and Saturday and Sunday all day.¹**

Initial Minutes or Fraction Thereof	Additional Minute, Each or Fraction Thereof
5.0175	5.0075

- D. Where usage rate service is not available on SmartLine® service, the line will be provided on a Fixed Usage Equivalent rate basis until usage rate service is available. Fixed Usage Equivalent Service will be converted to usage rate service as it becomes available at no cost to the subscriber.**

1. Fixed Usage Equivalent - Charges per line

	Monthly Rate	USOC	
(a) Two Way, per line	\$37.87	SLF	(R)
(b) One way, per line	37.87	SLA	(R)

- E. The rate for sent paid local calls will be established by the SmartLine® service subscriber's set. The network will determine if the local rate has been satisfied.**

- F. Operator handled sent paid local calls, calls to the Extended Calling Service exchanges outlined in A3.3 and calls to the Local Calling Plus exchanges outlined in A3.8.50 will be rated to the SmartLine® service subscriber at the usage rates in A7.8 preceding.**

- G. Non-sent paid local calls will be rated to the end user at the rate set forth in A3.10 plus the appropriate operator surcharge in Section A3.10 plus the set use fee as provided in A7.6 of this Tariff.**

- H. Sent paid intraLATA long distance calls carried by the Company will be rated to the end user at the long distance rate and the appropriate operator surcharge set forth in Section A18. of this Tariff. The SmartLine® service subscriber will be charged the long distance rate set forth in Section A18. of this Tariff.**

Note 1: Calls within the local calling area and calls in the Local Calling Plus exchanges specified in A3.8.50 are each charged for at least one (1) minute of use. For calls that exceed one (1) minute, usage charges are based on conversation time rounded up to the nearest one tenth (1/10) minute.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Second Revised Page 7
Cancels First Revised Page 7

ISSUED: October 28, 2002
BY: Joseph P. Lacher, President - FL
Miami, Florida

EFFECTIVE: November 13, 2002

A107. OBSOLETE SERVICE OFFERINGS - COIN TELEPHONE SERVICE

A107.8 SmartLine® Service for Public Telephone Access (Cont'd)

A107.8.1 General (Cont'd)

D. Features of the SmartLine® Service are as follows: (Cont'd)

10. International Call Blocking (011+) is available through the BellSouth Telecommunications, Inc., Tariff F.C.C. No. 1.
11. All 0+ interLATA and intraLATA calls will be routed to the SmartLine® Service subscriber presubscribed carrier.
12. The Company shall not be liable for shortages of coins collected and deposited at the subscriber's equipment. The limit of the Company's liability for end user fraud of whatever nature occurring at or in association with the subscriber's equipment shall be governed by provisions of this Tariff and rule or regulation of the Florida Public Service Commission (PSC). In the case of a conflict between the Company's Tariff and a rule or regulation of the Florida PSC, the rule or regulation shall prevail.

A107.8.2 Rates and Charges

A. SmartLine® Service will be provided on a usage rate basis where facilities are available.

1. Usage Rate Service - The following monthly rate is applicable to SmartLine® Service on a per line basis.

	Monthly Rate	USOC
(a) Two way, per line	\$35.00	SLU
(b) Outward only, per line	35.00	SLN

- B. The following measured rate charges apply to calls within the local calling area and to the calls in the Local Calling Plus exchanges specified in A3.8.50 and to calls in the Extended Calling Service exchanges specified in A3.8.49 other than those specified in C. following.¹

Initial Minutes or Fraction Thereof	Additional Minute, Each or Fraction Thereof
\$0.0275	\$0.0125

- C. The following charges apply to calls within the local calling area and to calls in the Local Calling Plus exchanges specified in A3.8.50 of this Tariff placed between 12:00 P.M. and 2:00 P.M., 9:00 P.M. and 9:00 A.M., and Saturday and Sunday all day.¹

Initial Minutes or Fraction Thereof	Additional Minute, Each or Fraction Thereof
\$0.0175	\$0.0075

- D. Where usage rate service is not available on SmartLine® Service, the line will be provided on a Fixed Usage Equivalent rate basis until usage rate service is available. Fixed Usage Equivalent Service will be converted to usage rate service as it becomes available at no cost to the subscriber.

1. Fixed Usage Equivalent - Charges per line

	Monthly Rate	USOC
(a) Two Way, per line	\$45.00	SLF
(b) One way, per line	45.00	SLA

- E. The rate for sent paid local calls will be established by the SmartLine® Service subscriber's set. The network will determine if the local rate has been satisfied.

- F. Operator handled sent paid local calls, calls to the Extended Calling Service exchanges outlined in A3.3 and calls to the Local Calling Plus exchanges outlined in A3.8.50 will be rated to the SmartLine® Service subscriber at the usage rates in A7.8 preceding.

- G. Non-sent paid local calls will be rated to the end user at the rate set forth in A3.10 plus the appropriate operator surcharge in Section A3.10 plus the set use fee as provided in A7.6 of this Tariff.

- H. Sent paid intraLATA long distance calls carried by the Company will be rated to the end user at the long distance rate and the appropriate operator surcharge set forth in Section A18. of this Tariff. The SmartLine® Service subscriber will be charged the long distance rate set forth in Section A18. of this Tariff.

Note 1: Calls within the local calling area and calls in the Local Calling Plus exchanges specified in A3.8.50 are each charged for at least one (1) minute of use. For calls that exceed one (1) minute, usage charges are based on conversation time rounded up to the nearest one tenth (1/10) minute.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: December 15, 2000
BY: Joseph P. Lacher, President -FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Third Revised Page 17
Cancels Second Revised Page 17

EFFECTIVE: January 19, 2001

A3. BASIC LOCAL EXCHANGE SERVICE

A3.4 Flat Rate Service

A3.4.1 General

- A. Monthly exchange rates shown in A3.4.2 are applicable in each exchange for classes of basic local exchange service offered.

A3.4.2 Monthly Rates

- A. The rates specified herein entitle subscribers to an unlimited number of messages to all exchange access lines bearing the designation of central offices within the serving exchange and extended area service additional exchanges or portions of exchanges as shown in A3.3.1 of this Tariff.

B. Residence and Business Exchange Access Line Rates

1. Flat Rate Service

a. Residence Service

(1) Rate Groups 1 - 6

	Group						USOC
	1	2	3	4	5	6	1FR++
(a) Individual service	\$7.30	\$7.70	\$8.10	\$8.40	\$8.80	\$9.15	
(2) Rate Groups 7 - 12							

	Group						USOC
	7	8	9	10	11	12	1FR++
(a) Individual service	\$9.50	\$9.80	\$10.05	\$10.30	\$10.45	\$10.65	

b. Business Service

(1) Rate Groups 1-6

	Group						USOC
	1	2	3	4	5	6	1FB
(a) Individual line service	\$19.80	\$20.80	\$21.90	\$22.90	\$23.85	\$24.90	
(b) Multi-line Exchange Access Line Additive, per line ¹	3.25	3.42	3.60	3.76	3.92	4.09	NA
(2) Rate Groups 7 - 12							

	Group						USOC
	7	8	9	10	11	12	1FB
(a) Individual line service	\$25.75	\$26.60	\$27.40	\$28.00	\$28.60	\$29.10	
(b) Multi-line Exchange Access Line Additive, per line ¹	4.25	4.37	4.50	4.60	4.70	4.78	NA

2. Residence and Business Basic Rates by Exchanges:

Exchange	Residence Ind. ²	Business Ind. ²
Archer (Group 5)	\$8.80	\$23.85
Baldwin (Group 9)	10.05	27.40
Belle Glade (Group 3)	8.10	21.90
Big Pine Key (See A3.8.5)	-	-
Boca Raton (Group 10)	10.30	28.00
Boynton Beach (Group 10)	10.30	28.00

Note 1: The Multi-line Exchange Access Line Additive does not apply to subscribers with one exchange access line.

Note 2: The Multi-line Exchange Access Line Additive applies per line to Flat Rate service and Auxiliary Line service subscribers with more than one exchange access line. The Multi-line Exchange Access Line Additive does not apply to Back-Up[®] line or Business Plus[®] service.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Sixth Revised Page 11
Cancels Fifth Revised Page 11

ISSUED: February 1, 1994
BY: Joseph P. Lacher, President - FL
Miami, Florida

EFFECTIVE: February 17, 1994

A3. BASIC LOCAL EXCHANGE SERVICE

A3.4 Flat Rate Service (Cont'd)

A3.4.2 Monthly Rates (Cont'd)

B. Residence and Business Exchange Access Line Rates (Cont'd)

1. Flat Rate Service (Cont'd)

b. Business Service

(1) Rate Groups 1-6

	1	2	Group 3	4	5	6	USOC
(a) Individual line service	\$19.80	\$20.80	\$21.90	\$22.90	\$23.85	\$24.90	1FB
(2) Rate Groups 7 - 12							

	7	8	Group 9	10	11	12	USOC
(a) Individual line service	\$25.75	\$26.60	\$27.40	\$28.00	\$28.40	\$29.10	1FB

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BELLSOUTH TELECOMMUNICATIONS, INC.
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ISSUED: NOVEMBER 26, 1997

TARIFF F.C.C. NO. 1
2ND REVISED PAGE 4-1
CANCELS 1ST REVISED PAGE 4-1

EFFECTIVE: JANUARY 1, 1998

ACCESS SERVICE

4 - End User Access Service

The Telephone Company will provide End User Access Service to end users who obtain local telephone exchange service from the Telephone Company under its General Subscriber Service Tariffs.

4.1 General Description

End User Access Service provides for the use of an End User Common Line (EUCL).

4.2 Limitations

- (A) A telephone number is not provided with End User Access Service.
- (B) Detail billing is not provided with End User Access Service.
- (C) Directory listings are not included with End User Access Service.
- (D) Intercept arrangements are not included with End User Access Service.

4.3 Undertaking of the Telephone Company

The Telephone Company will provide End User Access Service at rates and charges as set forth in 4.7 following, as follows:

- (A) Use of an EUCL by an end user in connection with interstate access services provided under this Tariff. Such use will be provided when the end user obtains local exchange service.
- (B) The Telephone Company will be responsible for contacts and arrangements with end user subscribers of Telephone Company-provided Local Exchange Service, or resellers thereof, for the billing of End User Access Service charges.

(C) (X)
(D) (X)

4.4 Obligations of the End User

- (A) When the end user is a Radio Common Carrier (RCC) or a Maritime Radio Common Carrier (MRCC), it shall designate whether the local exchange services it is provided by the Telephone Company are used as access lines for its services or used as administrative lines.
- (B) When the end user is provided with a local exchange service which is not identified as Centrex Type Services, Business Service or Residence or Residence Service, it shall provide the Telephone Company any requested information necessary for the Telephone Company to determine the appropriate charges.

- (x) Issued on not less than 36 days' notice under authority of and in compliance with FCC Orders DA 97-2358 and FCC 97-158, as amended.

***** 000183

BELLSOUTH TELECOMMUNICATIONS, INC.
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ISSUED: JUNE 16, 2000

TARIFF F.C.C. NO. 1
2ND REVISED PAGE 4-2
CANCELS 1ST REVISED PAGE 4-2

EFFECTIVE: JULY 1, 2000

ACCESS SERVICE

4 - End User Access Service (Cont'd)

(T)

4.5 Payment Arrangements and Credit Allowances

(A) Minimum Period

The minimum period for which EUCL End User Access Service s provided to an end user and for which charges are applicable is the same as that in the General Subscriber Service Tariffs for the associated local telephone exchange service.

(B) Cancellation of Application

End User Access Service s cancelled when the order for the associated local telephone exchange service is cancelled. No cancellation charges apply.

(C) Changes to Orders

When changes are made to orders for the local telephone exchange service associated with End User Access Service, any necessary changes will be made for End User Access Service. No charges will apply.

(D) Allowance for Interruptions

When there is an interruption to an EUCL, requested End User Access Service and Federal Universal Service (FUS) credit allowances for interruptions will be provided as set forth for credit allowance for interruptions in 2.4.4 preceding.

(C)

(E) Temporary Suspension of Service

When an end user temporarily suspends its local exchange service, which is associated with EUCL, one-half of the EUCL and FUS per month charge will be temporarily suspended for the time period the local exchange service is suspended.

(C)

4.6 Rate Regulations

(A) End User Access Service and Federal Universal Service charges, as set forth in 4.7, following, will be billed to the end user subscriber of the associated local exchange service, including, where applicable, a reseller of the associated local exchange service, in which case the reseller shall be deemed an end user for purposes of application of such charges. Presubscribed Interexchange Carrier Charges (PICCs) may also apply as described in Section 3.

(C)

(B) For each local exchange service provided as remote call forwarding residential service or remote call forwarding business service under the General Subscriber Service Tariffs, End User Access Service and Federal Universal Service charges do not apply.

(C)
(C)

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BST000214

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ISSUED: JUNE 16, 1999

TARIFF F.C.C. NO. 1
3RD REVISED PAGE 4-3
CANCELS 2ND REVISED PAGE 4-3

EFFECTIVE: JULY 1, 1999

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.6 Rate Regulations (Cont')

(B) (Cont'd)

For each local exchange service, other than local exchange service used for administrative purposes, provided to Radio Common Carriers (RCC) and/or Maritime Radio Common Carriers (MRCC) as access lines for their services under the General Subscriber Service Tariffs, End User Access Service charges do not apply.

- (C) (1) Centrex-type services are those that (i) use a portion of a Telephone Company switch, located at a Telephone Company central office, to meet the customer's internal needs and serve as the customer's interface with the local and interexchange networks; and (ii) link the customer's station lines to the Telephone Company switch with subscriber loops.

(2) For Centrex-type service station lines, the End User Common Line (EUCL) Charge - Multiline Business Subscriber - Individual Line or Trunk rate as set forth in 4.7(C), following, applies to each line.

(3) Centrex-type services may be used to serve college, university or school offices and/or dormitory quarters. For non-dormitory station lines, the Multiline Business EUCL Charges set forth in 4.7(C), following, will apply to each line.

(4) For dormitory quarters, however, the Telephone Company shall deem each line terminating therein a Primary or Additional Residential Local Exchange Service line pursuant to the Primary and Additional Residential Line definitions specified in Section 2.6. The Primary or Additional Residential Local Exchange Service rate set forth in 4.7(A), following, will apply for each dormitory station line.

(C)(X)
(C)(X)
(C)(X)
(C)(X)
(C)(X)

(5) Charges shall be based on the total number of non-dormitory and dormitory lines reported to the Telephone Company by the customer.

- (D) For Basic Rate and Primary Rate ISDN service, the Excess Line Port Charge set forth in 4.7(D), following, will be assessed as a monthly charge, per Basic Rate ISDN Digital Subscriber Line or Primary Rate ISDN Interface.

(x) Issued in compliance with the Federal Communications Commission's Report and Order & Further Notice of Proposed Rulemaking, CC Docket No. 97-181, Released March 10, 1999.

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BST000215

BELLSOUTH TELECOMMUNICATIONS, INC.
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ISSUED: JUNE 16, 1999

TARIFF F.C.C. NO. 1
3RD REVISED PAGE 4-4
CANCELS 2ND REVISED PAGE 4-4

EFFECTIVE: JULY 1, 1999

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.6 Rate Regulations (Cont'd)

- (E) When an end user is provided more than one local business exchange service in a state by the Telephone Company, or a reseller of the Telephone Company's business local exchange service, and when a local business exchange service is provided as a multiparty service under the General Subscriber Service Tariffs, each party is deemed to be a user of an EUCL and the EUCL-Multiline Business Subscriber-Individual line or trunk rate, as set forth in 4.7(C) following applies to each such party. (C)(x)
- (F) When a payphone service provider is provided a pay telephone line the EUCL-Multiline Business subscriber-Individual line or trunk rate as set forth in 4.7(C) will apply.
- (G) When an end user is provided more than one local business exchange service in a state by the Telephone Company, or a reseller of the Telephone Company's business local exchange service, other than that specified in (B) preceding and when the local business exchange service is provided under the General Subscriber Service Tariffs and is not covered by (C) and (E) preceding, the EUCL-Multiline Business Subscribers-Individual line or trunk rate as set forth in 4.7 following applies to each such local business exchange service. (C)(x)
- (H) When an end user is provided only a single local business exchange service by the Telephone Company, or a reseller of the Telephone Company's business local exchange service, other than that specified in (B) preceding and when the local business exchange service is provided as a multiparty service under the General Subscriber Service Tariffs, each party is deemed to be a user of an EUCL and the EUCL-Single Line Business Subscriber-Individual line or trunk rate as set forth in 4.7(B) following applies to each such party. (C)(x)
- (I) When an end user is provided only a single local business exchange service by the Telephone Company, or a reseller of the Telephone Company's business local exchange service, other than that specified in (B) preceding under the General Subscriber Service Tariffs, the EUCL-Single Line Business Subscriber-Individual line or trunk charge as set forth in 4.7(B) following applies to each single business service. (C)(x)
- (J) When an end user is provided local exchange residence service by the Telephone Company, or a reseller of the Telephone Company's business local exchange service, other than that specified in (B) preceding, the Primary Residential EUCL Charge as set forth in 4.7(A)(1) will apply to one local exchange residence line at the premises. Each additional local exchange residence line at the same premises will be billed at the Additional Residential EUCL Charge as set forth in 4.7(A)(2); provided that Basic Rate ISDN service provided to a residential premises will be assessed the charge set forth in 4.7(A)(3) per Basic Rate ISDN Digital Subscriber Line. (C)(x)

Certain material previously appearing on this page has been moved to 12th Revised Page 4-5.

(x) Issued in compliance with the Federal Communications Commission's Report and Order & Further Notice of Proposed Rulemaking, CC Docket No. 97-181, Released March 10, 1999.

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EST000216

BELLSOUTH TELECOMMUNICATIONS, INC.
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ISSUED: JUNE 16, 2003

TARIFF F.C.C. NO. 1
16TH REVISED PAGE 4-5
CANCELS 15TH REVISED PAGE 4-5

EFFECTIVE: JULY 1, 2003

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.6 Rate Regulations (Cont'd)

The following exceptions apply to the assessment of the EUCL Charge:
(1) Each line that receives Lifeline treatment as described in 4.6(M), following, will be assessed the Primary Residential EUCL Charge as set forth in 4.7(A)(1). (2) Dormitory lines served by C.O.-based services that receive residential treatment as described in 4.6(C), preceding, will be assessed the Primary Residential EUCL Charge as set forth in 4.7(A)(1).

- (K) When an end user is provided a local residence exchange service by the Telephone Company, other than that specified in (B) preceding and when the local residence exchange service is provided as a multiparty service under the General Subscriber Service Tariffs, each party is deemed to be a user of an EUCL and the EUCL-Residence Subscriber-Primary Residential Local Exchange Service line or trunk rate as set forth in 4.7(A) following applies to each such party.
- (L) For Telephone Company-provided Basic Rate ISDN local exchange service provided to business subscribers, the EUCL Charge will be assessed as set forth in 4.7(B) and 4.7(C), following, per Digital Subscriber Line. For Primary Rate ISDN local exchange service, the EUCL will be assessed at five times the Multiline Business Subscriber Individual line or trunk rate as set forth in 4.7(C) following, per Primary Rate ISDN Interface.
- (M) When an end user is provided a local residence exchange service by the Telephone Company, and if the residential local exchange rate for such end user is a reduced residential local exchange rate based upon a means test that is subject to verification, the EUCL-Residence Subscriber - Primary Residential Local Exchange Service Line or Trunk rate in 4.7(A) following shall be applied to that line and reduced by the amount indicated:

<u>State</u>	<u>Amount</u>
Alabama	\$6.50
Florida	\$6.50
Georgia	\$6.50
Kentucky	\$6.50
Louisiana	\$6.50
Mississippi	\$6.50
North Carolina	\$6.50
South Carolina	\$6.50
Tennessee	\$6.50

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BST000217

BELLSOUTH TELECOMMUNICATIONS, INC.
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ISSUED: SEPTEMBER 16, 2003

TARIFF F.C.C. NO. 1
29TH REVISED PAGE 4-6
CANCELS 28TH REVISED PAGE 4-6
EFFECTIVE: OCTOBER 1, 2003

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.6 Rate Regulations (Cont'd)

(N) When an end user is provided a local exchange service which is not identified as Centrex, Business Service or Residence Service (e.g., Farm Service, Local Service), the Telephone Company will designate the service as Centrex Type Services, Business Service or Residence Service. The charges as set forth in 4.7 following for Centrex Type Services, Business Subscriber or Residence Subscriber in accordance with the designation will apply.

(O) With the exception of Federal Universal Service (FUS) charges recovered from Special Access end user customers described in Section 4.6(P) following, the Telephone Company will recover the FUS charges through flat-rated, monthly charges. FUS charges, as set forth in 4.7(E), following, will be billed to the end user subscriber of the associated local exchange service, with exception to Lifeline and Reseller customers.

Dormitory lines that receive residential treatment as described in Section 4.6(C) preceding will be assessed the Primary or Additional Residential FUS charge as set forth in 4.7(E) following.

(P) A Federal Universal Service charge will be assessed to end user customers with direct Special Access Service billing. The monthly charge will be applied at the billing account level. The charge will be determined monthly by multiplying the current quarterly Universal Service Fund (USF) contribution factor, listed below, as released by the F.C.C., by the end user customer's monthly, billing account level, Special Access Service charges.

USF Contribution Factor 0.092

(R)

4.7 Rates and Charges

(A) End User Common Line (EUCL) Charge-Residence Subscriber

	USOC	Rate Per Month
<u>ALL STATES</u>		
(1) Primary Residential Local Exchange Service line or trunk, each	9LM	\$ 6.50
(2) Additional Residential Local Exchange Service line or trunk, each	9LA	7.00
(3) Basic Rate ISDN Line, per Digital Subscriber Line	9LM	7.00

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BST000216

BELLSOUTH TELECOMMUNICATIONS, INC.
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ISSUED: JUNE 16, 2003

TARIFF F.C.C. NO. 1
20TH REVISED PAGE 4-7
CANCELS 19TH REVISED PAGE 4-7

EFFECTIVE: JULY 1, 2003

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(B) End User Common Line (EUCL) Charge - Single Line Business Subscriber

	USOC	Rate Per Month	
<u>ALL STATES</u>			
(1) Individual line or trunk, each	9LM	\$ 6.50	(I)
(2) Basic Rate ISDN Line, per Digital Subscriber Line	9LM	7.00	

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber

	USOC	Rate Per Month	
<u>ALABAMA</u>			
-Individual line or trunk, each	9ZR	\$ 7.13	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

<u>FLORIDA</u>			
-Individual line or trunk, each	9ZR	\$ 7.13	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

<u>GEORGIA</u>			
-Individual line or trunk, each	9ZR	\$ 7.13	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

<u>KENTUCKY</u>			
-Individual line or trunk, each	9ZR	\$ 7.13	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business EUCL Charge rate, per Primary Rate ISDN interface.

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BELLSOUTH TELECOMMUNICATIONS, INC.
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ISSUED: JUNE 16, 2003

TARIFF F.C.C. NO. 1
14TH REVISED PAGE 4-8
CANCELS 13TH REVISED PAGE 4-8

EFFECTIVE: JULY 1, 2003

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber
(Cont'd)

	USOC	Rate Per Month	
<u>LOUISIANA</u>			
-Individual line or trunk, each	9ZR	\$ 7.13	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>MISSISSIPPI</u>			
-Individual line or trunk, each	9ZR	\$ 7.13	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>NORTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 7.13	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>SOUTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 7.13	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>TENNESSEE</u>			
-Individual line or trunk, each	9ZR	\$ 7.13	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

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BST000220

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ISSUED: SEPTEMBER 16, 2003

TARIFF F.C.C. NO. 1
17TH REVISED PAGE 4-9
CANCELS 16TH REVISED PAGE 4-9

EFFECTIVE: OCTOBER 1, 2003

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(D) Excess Line Port Charge

ALL STATES

	<u>USOC</u>	<u>Rate Per Month</u>
- Per Basic Rate ISDN Digital Subscriber Line	9ZEPR	\$ 2.44
- Per Primary Rate ISDN Interface	9ZEPR	14.00

(E) Federal Universal Service Charge

ALL STATES

- Per Primary Residential Line or Trunk	FUJIX	\$0.63	(R)
- Per Additional Residential Line or Trunk	FUJAX	\$0.68	(R)
- Per Single Line Business Line or Trunk	FUJIX	\$0.63	(R)
- Per Multi-Line Business Line or Trunk	FUJMX	\$0.86	(R)
- Per Centrex Station Line (Note 1)	FUJMX	\$0.10	
- Per Basic Rate ISDN Digital Subscriber Line, Residence Subscriber	FUJAX	\$0.90	(R)
- Per Basic Rate ISDN Digital Subscriber Line, Single Line Business Subscriber	FUJAX	\$0.90	(R)
- Per Basic Rate ISDN Digital Subscriber Line, Multiline Business Subscriber (Note 2)	FUJAX	\$0.90	(R)
- Per Primary Rate ISDN Interface	FUJMX	\$5.55	(R)

Note 1: For Centrex-type services (e.g. BellSouth ESSX service, BellSouth MultiServ service, BellSouth MultiServ Plus and BellSouth Centrex), the FUS charge will be assessed at one-ninth the Multiline Business charge.

Note 2: This Basic Rate ISDN FUS charge also applies to Basic Rate ISDN lines that are provided as part of a Centrex system, in lieu of the Centrex Station Line rate.

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BST000221

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ISSUED: DECEMBER 17, 1998

TARIFF F.C.C. NO. 1
3RD REVISED PAGE 4-8
CANCELS 2ND REVISED PAGE 4-8
EFFECTIVE: JANUARY 1, 1999

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber
(Cont'd)

	USOC	Rate Per Month	
<u>MISSISSIPPI</u>			
-Individual line or trunk, each	9ZR	\$ 8.25	(I)(x)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	(I)(x)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	(I)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>NORTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 8.25	(I)(x)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	(I)(x)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	(I)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>SOUTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 8.25	(I)(x)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	(I)(x)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	(I)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>TENNESSEE</u>			
-Individual line or trunk, each	9ZR	\$ 8.25	(I)(x)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	(I)(x)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	(I)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business Subscriber EUCL Charge rate.

(x) Filed in compliance with FCC Order, In the Matter of January 1, 1999
Access Charge Tariff Filings, DA98-2522, released December 9, 1998.

000288

BST000222

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: JUNE 16, 2003

TARIFF F.C.C. NO. 1
14TH REVISED PAGE 4-8
CANCELS 13TH REVISED PAGE 4-8
EFFECTIVE: JULY 1, 2003

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber
(Cont'd)

	USOC	Rate Per Month	
<u>LOUISIANA</u>			
-Individual line or trunk, each	9ZR	\$ 7.13	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>MISSISSIPPI</u>			
-Individual line or trunk, each	9ZR	\$ 7.13	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>NORTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 7.13	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>SOUTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 7.13	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>TENNESSEE</u>			
-Individual line or trunk, each	9ZR	\$ 7.13	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

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BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: JUNE 7, 2002

TARIFF F.C.C. NO. 1
13TH REVISED PAGE 4-8
CANCELS 12TH REVISED PAGE 4-8
EFFECTIVE: JUNE 7, 2002

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber
(Cont'd)

	USOC	Rate Per Month	
<u>LOUISIANA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	(S)(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	(S)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>MISSISSIPPI</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	(S)(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	(S)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>NORTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	(S)(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	(S)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>SOUTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per (x) Reissues material originally scheduled to take effect May 11, 2002, and subsequently suspended to October 11, 2002, per Supplement 107. Digital Subscriber Line	9ZR	7.00	(S)(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	(S)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>TENNESSEE</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	(S)(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	(S)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

(x) Reissued material effective June 7, 2002, and deferred to July 2, 2002,
pursuant to Special Permission #02-078.

000230

BST000224

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: OCTOBER 25, 1999

TARIFF F.C.C. NO. 1
5TH REVISED PAGE 4-8
CANCELS 4TH REVISED PAGE 4-8
EFFECTIVE: NOVEMBER 1, 1999

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber
(Cont'd)

	<u>USOC</u>	<u>Rate</u> <u>Per Month</u>	
<u>MISSISSIPPI</u>			
-Individual line or trunk, each	9ZR	\$ 7.85	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>NORTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 7.85	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>SOUTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 7.85	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>TENNESSEE</u>			
-Individual line or trunk, each	9ZR	\$ 7.85	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business Subscriber EUCL Charge rate.

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BST000225

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29G57, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: JUNE 16, 1999

TARIFF F.C.C. NO. 1
4TH REVISED PAGE 4-8
CANCELS 3RD REVISED PAGE 4-8
EFFECTIVE: JULY 1, 1999

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber
(Cont'd)

	USOC	Rate Per Month	
<u>MISSISSIPPI</u>			
-Individual line or trunk, each	9ZR	\$ 7.90	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>NORTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 7.90	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>SOUTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 7.90	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>TENNESSEE</u>			
-Individual line or trunk, each	9ZR	\$ 7.90	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business Subscriber EUCL Charge rate.

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BST000226

BELLSOUTH TELECOMMUNICATIONS, INC.
 BY: Operations Manager - Pricing
 29657, 675 W. Peachtree St., N.E.
 Atlanta, Georgia 30375
 ISSUED: MAY 21, 2002

TARIFF F.C.C. NO. 1
 12TH REVISED PAGE 4-8
 CANCELS 11TH REVISED PAGE 4-8
 EFFECTIVE: MAY 22, 2002

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber (Cont'd)

	USOC	Rate Per Month	
<u>LOUISIANA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	(S)(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(S)(x)
<u>MISSISSIPPI</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	(S)(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	(S)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>NORTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	(S)(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	(S)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>SOUTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per (x) Reissues material originally scheduled to take effect May 11, 2002, and subsequently suspended to October 11, 2002, per Supplement 107.	9ZR	7.00	
Digital Subscriber Line			
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	(S)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>TENNESSEE</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	(S)(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(S)(x)

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business EUCL Charge rate, per Primary Rate ISDN interface.

(x) Reissues material originally scheduled to take effect May 11, 2002, and subsequently suspended to October 11, 2002, per Supplement 107.

BST000227

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: MAY 21, 2002

TARIFF F.C.C. NO. 1
11TH REVISED PAGE 4-8
CANCELS 10TH REVISED PAGE 4-8
EFFECTIVE: MAY 22, 2002

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber
(Cont'd)

	USOC	Rate Per Month	
<u>LOUISIANA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.95	(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.95	(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>MISSISSIPPI</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.95	(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.95	(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>NORTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.95	(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.95	(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>SOUTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.95	(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.95	(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>TENNESSEE</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.95	(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.95	(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business EUCL Charge rate, per Primary Rate ISDN interface.

(x) Filed under the authority of Special Permission No. 02-072 to withdraw material filed under Transmittal No. 623 and to reinstate currently effective rates.

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EST000226

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: MARCH 17, 2000

TARIFF F.C.C. NO. 1
6TH REVISED PAGE 4-8
CANCELS 5TH REVISED PAGE 4-8
EFFECTIVE: APRIL 1, 2000

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber
(Cont'd)

	<u>USOC</u>	<u>Rate</u> <u>Per Month</u>	
<u>MISSISSIPPI</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>NORTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>SOUTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>TENNESSEE</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business Subscriber EUCL Charge rate.

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BST000229

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: SEPTEMBER 18, 2000

TARIFF F.C.C. NO. 1
8TH REVISED PAGE 4-8
CANCELS 7TH REVISED PAGE 4-8
EFFECTIVE: OCTOBER 3, 2000

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber
(Cont'd)

	USOC	Rate Per Month	
<u>LOUISIANA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.95	(R)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.95	(R)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>MISSISSIPPI</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.95	(R)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.95	(R)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>NORTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.95	(R)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.95	(R)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>SOUTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.95	(R)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.95	(R)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>TENNESSEE</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.95	(R)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.95	(R)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business EUCL Charge rate, per Primary Rate ISDN interface.

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BST000230

BELLSOUTH TELECOMMUNICATIONS, INC.
 BY: Operations Manager - Pricing
 29657, 675 W. Peachtree St., N.E.
 Atlanta, Georgia 30375
 ISSUED: JUNE 16, 2000

TARIFF F.C.C. NO. 1
 7TH REVISED PAGE 4-8
 CANCELS 6TH REVISED PAGE 4-8
 EFFECTIVE: JULY 1, 2000

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber (Cont'd)

	USOC	Rate Per Month	
<u>LOUISIANA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	(M)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.96	(M)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.96	(M)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(M)
<u>MISSISSIPPI</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.96	(I)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.96	(I)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>NORTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.96	(I)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.96	(I)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>SOUTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.96	(I)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.96	(I)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>TENNESSEE</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.96	(I)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.96	(I)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business EUCL Charge rate, per Primary Rate ISDN interface.

Certain material now appearing on this page previously appeared on 10th Revised Page 4-7.

RST000231

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: DECEMBER 17, 1997

TARIFF F.C.C. NO. 1
1ST REVISED PAGE 4-8
CANCELS ORIGINAL PAGE 4-8
EFFECTIVE: JANUARY 1, 1998

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber
(Cont'd)

	USOC	Rate Per Month	
<u>MISSISSIPPI</u>			
-Individual line or trunk, each	9ZR	\$ 8.17	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	(S)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	(S)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(S)
<u>NORTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 8.17	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	(S)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	(S)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(S)
<u>SOUTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 8.17	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	(S)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	(S)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(S)
<u>TENNESSEE</u>			
-Individual line or trunk, each	9ZR	\$ 8.17	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	(S)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	(S)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(S)

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be (S)
assessed at five times the Multiline Business Subscriber EUCL Charge (S)
rate. (S)

(S) Originally filed under Transmittal No. 434 to become effective 1/1/98.

000208

BST000232

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: JUNE 16, 1998

TARIFF F.C.C. NO. 1
2ND REVISED PAGE 4-8
CANCELS 1ST REVISED PAGE 4-8
EFFECTIVE: JULY 1, 1998

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber
(Cont'd)

	<u>USOC</u>	<u>Rate</u> <u>Per Month</u>	
<u>MISSISSIPPI</u>			
-Individual line or trunk, each	9ZR	\$ 8.14	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>NORTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 8.14	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>SOUTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 8.14	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>TENNESSEE</u>			
-Individual line or trunk, each	9ZR	\$ 8.14	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will
be assessed at five times the Multiline Business Subscriber EUCL Charge
rate.

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BST000223

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: NOVEMBER 26, 1997

TARIFF F.C.C. NO. 1
ORIGINAL PAGE 4-8

EFFECTIVE: JANUARY 1, 1998

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber
(Cont'd)

	<u>USOC</u>	<u>Rate</u> <u>Per Month</u>	
<u>MISSISSIPPI</u>			
-Individual line or trunk, each	9ZR	\$ 8.24	(I)(x)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	(N)(x)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	(N)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(N)(x)
<u>NORTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 8.24	(I)(x)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	(N)(x)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	(N)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(N)(x)
<u>SOUTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 8.24	(I)(x)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	(N)(x)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	(N)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(N)(x)
<u>TENNESSEE</u>			
-Individual line or trunk, each	9ZR	\$ 8.24	(I)(x)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	(N)(x)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	(N)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(N)(x)

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be (N)(x)
assessed at five times the Multiline Business Subscriber EUCL Charge (N)(x)
rate. (N)(x)

(x) Issued on not less than 36 days' notice under authority of and in
compliance with FCC Orders DA 97-2358 and FCC 97-158, as amended.

Certain material now appearing on this page previously appeared on 3rd Revised
Page 4-7.

*****6890236

EST000234

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: DECEMBER 17, 1997

TARIFF F.C.C. NO. 1
1ST REVISED PAGE 4-8
CANCELS ORIGINAL PAGE 4-8
EFFECTIVE: JANUARY 1, 1998

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber
(Cont'd)

	<u>USOC</u>	<u>Rate</u> <u>Per Month</u>	
<u>MISSISSIPPI</u>			
-Individual line or trunk, each	9ZR	\$ 8.17	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	(S)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	(S)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(S)
<u>NORTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 8.17	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	(S)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	(S)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(S)
<u>SOUTH CAROLINA</u>			
-Individual line or trunk, each	9ZR	\$ 8.17	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	(S)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	(S)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(S)
<u>TENNESSEE</u>			
-Individual line or trunk, each	9ZR	\$ 8.17	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	(S)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	(S)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(S)

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business Subscriber EUCL Charge rate. (S)

(S) Originally filed under Transmittal No. 434 to become effective 1/1/98.

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BST000235

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: JUNE 16, 2000

TARIFF F.C.C. NO. 1
11TH REVISED PAGE 4-7
CANCELS 10TH REVISED PAGE 4-7

EFFECTIVE: JULY 1, 2000

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(B) End User Common Line (EUCL) Charge - Single Line Business Subscriber

	<u>USOC</u>	<u>Rate</u> <u>Per Month</u>
<u>ALL STATES</u>		
(1) Individual line or trunk, each	9LM	\$ 4.35
(2) Basic Rate ISDN Line, per Digital Subscriber Line	9LM	6.96

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber

	<u>USOC</u>	<u>Rate</u> <u>Per Month</u>
<u>ALABAMA</u>		
-Individual line or trunk, each	9ZR	\$ 7.84
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.96
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.96
-Primary Rate ISDN, per Interface	9ZR	(Note 1)

<u>FLORIDA</u>		
-Individual line or trunk, each	9ZR	\$ 7.84
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.96
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.96
-Primary Rate ISDN, per Interface	9ZR	(Note 1)

<u>GEORGIA</u>		
-Individual line or trunk, each	9ZR	\$ 7.84
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.96
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.96
-Primary Rate ISDN, per Interface	9ZR	(Note 1)

<u>KENTUCKY</u>		
-Individual line or trunk, each	9ZR	\$ 7.84
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.96
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.96
-Primary Rate ISDN, per Interface	9ZR	(Note 1)

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business EUCL Charge rate, per Primary Rate ISDN interface.

Certain material now appearing on this page previously appeared on 12th Revised Page 4-6.
Certain material previously appearing on this page now appears on 7th Revised Page 4-8.

BST000236

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: SEPTEMBER 18, 2000

TARIFF F.C.C. NO. 1
12TH REVISED PAGE 4-7
CANCELS 11TH REVISED PAGE 4-7

EFFECTIVE: OCTOBER 3, 2000

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(B) End User Common Line (EUCL) Charge - Single Line Business Subscriber

	<u>USOC</u>	<u>Rate Per Month</u>	
<u>ALL STATES</u>			
(1) Individual line or trunk, each	9LM	\$ 4.35	
(2) Basic Rate ISDN Line, per Digital Subscriber Line	9LM	6.95	(R)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber

	<u>USOC</u>	<u>Rate Per Month</u>	
<u>ALABAMA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.95	(R)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.95	(R)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

<u>FLORIDA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.95	(R)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.95	(R)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

<u>GEORGIA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.95	(R)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.95	(R)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

<u>KENTUCKY</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.95	(R)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.95	(R)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business EUCL Charge rate, per Primary Rate ISDN interface.

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EST000237

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: MAY 21, 2002

TARIFF F.C.C. NO. 1
16TH REVISED PAGE 4-7
CANCELS 15TH REVISED PAGE 4-7
EFFECTIVE: MAY 22, 2002

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(B) End User Common Line (EUCL) Charge - Single Line Business Subscriber

	USOC	Rate Per Month	
<u>ALL STATES</u>			
(1) Individual line or trunk, each	9LM	\$ 5.00	
(2) Basic Rate ISDN Line, per Digital Subscriber Line	9LM	6.95	(x)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber

	USOC	Rate Per Month	
<u>ALABAMA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.95	(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.95	(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

<u>FLORIDA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.95	(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.95	(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

<u>GEORGIA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.95	(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.95	(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

<u>KENTUCKY</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.95	(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	6.95	(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business EUCL Charge rate, per Primary Rate ISDN interface.

(x) Filed under the authority of Special Permission No. 02-072 to withdraw material filed under Transmittal No. 623 and to reinstate currently effective rates.

EST000238

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: MAY 21, 2002

TARIFF F.C.C. NO. 1
17TH REVISED PAGE 4-7
CANCELS 16TH REVISED PAGE 4-7
EFFECTIVE: MAY 22, 2002

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(B) End User Common Line (EUCL) Charge - Single Line Business Subscriber

	USOC	Rate Per Month	
<u>ALL STATES</u>			
(1) Individual line or trunk, each	9LM	\$ 5.00	
(2) Basic Rate ISDN Line, per Digital Subscriber Line	9LM	7.00	(S)(x)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber

	USOC	Rate Per Month	
<u>ALABAMA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	(S)(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	(S)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>FLORIDA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	(S)(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	(S)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>GEORGIA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	(S)(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	(S)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>KENTUCKY</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	(S)(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	(S)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business EUCL Charge rate, per Primary Rate ISDN interface.

(x) Reissues material originally scheduled to take effect May 11, 2002, and subsequently suspended to October 11, 2002, per Supplement 107.

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: JUNE 7, 2002

TARIFF F.C.C. NO. 1
18TH REVISED PAGE 4-7
CANCELS 17TH REVISED PAGE 4-7
EFFECTIVE: JUNE 7, 2002

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(B) End User Common Line (EUCL) Charge - Single Line Business Subscriber

	USOC	Rate Per Month	
<u>ALL STATES</u>			
(1) Individual line or trunk, each	9LM	\$ 5.00	
(2) Basic Rate ISDN Line, per Digital Subscriber Line	9LM	7.00	(S)(x)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber

	USOC	Rate Per Month	
<u>ALABAMA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	(S)(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	(S)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>FLORIDA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	(S)(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	(S)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>GEORGIA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	(S)(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	(S)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>KENTUCKY</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	(S)(x)
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	(S)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business EUCL Charge rate, per Primary Rate ISDN interface.

(x) Reissued material effective June 7, 2002, and deferred to July 2, 2002, pursuant to Special Permission #02-078.

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: JUNE 17, 2002

TARIFF F.C.C. NO. 1
19TH REVISED PAGE 4-7
CANCELS 18TH REVISED PAGE 4-7
EFFECTIVE: JULY 2, 2002

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(B) End User Common Line (EUCL) Charge - Single Line Business Subscriber

	USOC	Rate Per Month	
<u>ALL STATES</u>			
(1) Individual line or trunk, each	9LM	\$ 6.00	(I)
(2) Basic Rate ISDN Line, per Digital Subscriber Line	9LM	7.00	

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber

	USOC	Rate Per Month	
<u>ALABAMA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>FLORIDA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>GEORGIA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>KENTUCKY</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business EUCL Charge rate, per Primary Rate ISDN interface.

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: JUNE 16, 2003

TARIFF F.C.C. NO. 1
20TH REVISED PAGE 4-7
CANCELS 19TH REVISED PAGE 4-7

EFFECTIVE: JULY 1, 2003

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(B) End User Common Line (EUCL) Charge - Single Line Business Subscriber

	USOC	Rate Per Month	
<u>ALL STATES</u>			
(1) Individual line or trunk, each	9LM	\$ 6.50	(I)
(2) Basic Rate ISDN Line, per Digital Subscriber Line	9LM	7.00	

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber

	USOC	Rate Per Month	
<u>ALABAMA</u>			
-Individual line or trunk, each	9ZR	\$ 7.13	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>FLORIDA</u>			
-Individual line or trunk, each	9ZR	\$ 7.13	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>GEORGIA</u>			
-Individual line or trunk, each	9ZR	\$ 7.13	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>KENTUCKY</u>			
-Individual line or trunk, each	9ZR	\$ 7.13	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	7.00	
-Basic Rate ISDN, per Digital Subscriber Line- Centrex subscribers	9Z1	7.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business EUCL Charge rate, per Primary Rate ISDN interface.

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BST000242

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: JUNE 18, 2001

TARIFF F.C.C. NO. 1
13TH REVISED PAGE 4-7
CANCELS 12TH REVISED PAGE 4-7
EFFECTIVE: JULY 3, 2001

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(B) End User Common Line (EUCL) Charge - Single Line Business Subscriber

	<u>USOC</u>	<u>Rate</u> <u>Per Month</u>	
<u>ALL STATES</u>			
(1) Individual line or trunk, each	9LM	\$ 5.00	(1)
(2) Basic Rate ISDN Line, per Digital Subscriber Line	9LM	6.95	

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber

	<u>USOC</u>	<u>Rate</u> <u>Per Month</u>	
<u>ALABAMA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.95	
-Basic Rate ISDN, per Digital Subscriber Line-Centrex subscribers	9Z1	6.95	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

<u>FLORIDA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.95	
-Basic Rate ISDN, per Digital Subscriber Line-Centrex subscribers	9Z1	6.95	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

<u>GEORGIA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.95	
-Basic Rate ISDN, per Digital Subscriber Line-Centrex subscribers	9Z1	6.95	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

<u>KENTUCKY</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.95	
-Basic Rate ISDN, per Digital Subscriber Line-Centrex subscribers	9Z1	6.95	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business EUCL Charge rate, per Primary Rate ISDN interface.

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BST000243

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: DECEMBER 17, 1998

TARIFF F.C.C. NO. 1
7TH REVISED PAGE 4-7
CANCELS 6TH REVISED PAGE 4-7
EFFECTIVE: JANUARY 1, 1999

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber
(Cont'd)

	<u>USOC</u>	<u>Rate</u> <u>Per Month</u>	
<u>FLORIDA</u>			
-Individual line or trunk, each	9ZR	\$ 8.25	(1)(x)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	(1)(x)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	(1)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>GEORGIA</u>			
-Individual line or trunk, each	9ZR	\$ 8.25	(1)(x)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	(1)(x)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	(1)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>KENTUCKY</u>			
-Individual line or trunk, each	9ZR	\$ 8.25	(1)(x)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	(1)(x)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	(1)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>LOUISIANA</u>			
-Individual line or trunk, each	9ZR	\$ 8.25	(1)(x)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	(1)(x)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	(1)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business EUCL Charge rate, per Primary Rate ISDN interface.

(x) Filed in compliance with FCC Order, In the Matter of January 1, 1999
Access Charge Tariff Filings, DA98-2522, released December 9, 1998.

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BST000244

BELLSOUTH TELECOMMUNICATIONS, INC.
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29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: JUNE 16, 1999

TARIFF F.C.C. NO. 1
8TH REVISED PAGE 4-7
CANCELS 7TH REVISED PAGE 4-7

EFFECTIVE: JULY 1, 1999

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber
(Cont'd)

	<u>USOC</u>	<u>Rate</u> <u>Per Month</u>	
<u>FLORIDA</u>			
-Individual line or trunk, each	9ZR	\$ 7.90	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>GEORGIA</u>			
-Individual line or trunk, each	9ZR	\$ 7.90	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>KENTUCKY</u>			
-Individual line or trunk, each	9ZR	\$ 7.90	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>LOUISIANA</u>			
-Individual line or trunk, each	9ZR	\$ 7.90	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business EUCL Charge rate, per Primary Rate ISDN interface.

BELLSOUTH TELECOMMUNICATIONS, INC.
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ISSUED: OCTOBER 25, 1999

TARIFF F.C.C. NO. 1
9TH REVISED PAGE 4-7
CANCELS 8TH REVISED PAGE 4-7
EFFECTIVE: NOVEMBER 1, 1999

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber
(Cont'd)

	USOC	Rate Per Month	
<u>FLORIDA</u>			
-Individual line or trunk, each	9ZR	\$ 7.85	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>GEORGIA</u>			
-Individual line or trunk, each	9ZR	\$ 7.85	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>KENTUCKY</u>			
-Individual line or trunk, each	9ZR	\$ 7.85	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>LOUISIANA</u>			
-Individual line or trunk, each	9ZR	\$ 7.85	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business EUCL Charge rate, per Primary Rate ISDN interface.

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BST000246

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: MARCH 17, 2000

TARIFF F.C.C. NO. 1
10TH REVISED PAGE 4-7
CANCELS 9TH REVISED PAGE 4-7

EFFECTIVE: APRIL 1, 2000

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber
(Cont'd)

	<u>USOC</u>	<u>Rate</u> <u>Per Month</u>	
<u>FLORIDA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>GEORGIA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>KENTUCKY</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>LOUISIANA</u>			
-Individual line or trunk, each	9ZR	\$ 7.84	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business EUCL Charge rate, per Primary Rate ISDN interface.

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BST000247

BELLSOUTH TELECOMMUNICATIONS, INC.
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ISSUED: JUNE 16, 1997

TARIFF F.C.C. NO. 1
3RD REVISED PAGE 4-7
CANCELS 2ND REVISED PAGE 4-7
EFFECTIVE: JULY 1, 1997

ACCESS SERVICE

4 - End User Access Service Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) - Multiline Business Subscriber (Cont'd)

FLORIDA

	<u>USOC</u>	<u>Rate Per Month</u>	
-Individual line or trunk, each	9ZR	\$ 6.97	(1)

GEORGIA

-Individual line or trunk, each	9ZR	\$ 6.97	(1)
---------------------------------	-----	---------	-----

KENTUCKY

-Individual line or trunk, each	9ZR	\$ 6.97	(1)
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LOUISIANA

-Individual line or trunk, each	9ZR	\$ 6.97	(1)
---------------------------------	-----	---------	-----

MISSISSIPPI

-Individual line or trunk, each	9ZR	\$ 6.97	(1)
---------------------------------	-----	---------	-----

NORTH CAROLINA

-Individual line or trunk, each	9ZR	\$ 6.97	(1)
---------------------------------	-----	---------	-----

SOUTH CAROLINA

-Individual line or trunk, each	9ZR	\$ 6.97	(1)
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TENNESSEE

-Individual line or trunk, each	9ZR	\$ 6.97	(1)
---------------------------------	-----	---------	-----

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BST000248

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29657, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: NOVEMBER 26, 1997

TARIFF F.C.C. NO. 1
4TH REVISED PAGE 4-7
CANCELS 3RD REVISED PAGE 4-7

EFFECTIVE: JANUARY 1, 1998

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber
(Cont'd)

	USOC	Rate Per Month	
<u>FLORIDA</u>			
-Individual line or trunk, each	9ZR	\$ 8.24	(I)(x)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	(N)(x)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	(N)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(N)(x)
<u>GEORGIA</u>			
-Individual line or trunk, each	9ZR	\$ 8.24	(I)(x)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	(N)(x)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	(N)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(N)(x)
<u>KENTUCKY</u>			
-Individual line or trunk, each	9ZR	\$ 8.24	(I)(x)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	(N)(x)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	(N)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(N)(x)
<u>LOUISIANA</u>			
-Individual line or trunk, each	9ZR	\$ 8.24	(I)(x)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	(N)(x)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	(N)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(N)(x)

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be (N)(x)
assessed at five times the Multiline Business EUCL Charge rate, per (N)(x)
Primary Rate ISDN interface. (N)(x)

(x) Issued on not less than 36 days' notice under authority of and in
compliance with FCC Orders DA 97-2358 and FCC 97-158, as amended.

Certain material previously appearing on this page now appears on Original
Page 4-8.

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BST000249

BELLSOUTH TELECOMMUNICATIONS, INC.
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ISSUED: DECEMBER 17, 1998

TARIFF F.C.C. NO. 1
7TH REVISED PAGE 4-7
CANCELS 6TH REVISED PAGE 4-7
EFFECTIVE: JANUARY 1, 1999

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber
(Cont'd)

	<u>USOC</u>	<u>Rate</u> <u>Per Month</u>	
<u>FLORIDA</u>			
-Individual line or trunk, each	9ZR	\$ 8.25	(I)(x)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	(I)(x)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	(I)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>GEORGIA</u>			
-Individual line or trunk, each	9ZR	\$ 8.25	(I)(x)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	(I)(x)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	(I)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>KENTUCKY</u>			
-Individual line or trunk, each	9ZR	\$ 8.25	(I)(x)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	(I)(x)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	(I)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>LOUISIANA</u>			
-Individual line or trunk, each	9ZR	\$ 8.25	(I)(x)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	6.07	(I)(x)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	6.07	(I)(x)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business EUCL Charge rate, per Primary Rate ISDN interface.

(x) Filed in compliance with FCC Order, In the Matter of January 1, 1999
Access Charge Tariff Filings, DA98-2522, released December 9, 1998.

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
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Atlanta, Georgia 30375
ISSUED: DECEMBER 17, 1997

TARIFF F.C.C. NO. 1
5TH REVISED PAGE 4-7
CANCELS 4TH REVISED PAGE 4-7
EFFECTIVE: JANUARY 1, 1998

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber
(Cont'd)

	USOC	Rate Per Month	
<u>FLORIDA</u>			
-Individual line or trunk, each	9ZR	\$ 8.17	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	(S)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	(S)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(S)
<u>GEORGIA</u>			
-Individual line or trunk, each	9ZR	\$ 8.17	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	(S)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	(S)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(S)
<u>KENTUCKY</u>			
-Individual line or trunk, each	9ZR	\$ 8.17	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	(S)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	(S)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(S)
<u>LOUISIANA</u>			
-Individual line or trunk, each	9ZR	\$ 8.17	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	(S)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	(S)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(S)

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be (S)
assessed at five times the Multiline Business EUCL Charge rate, per (S)
Primary Rate ISDN interface. (S)

(S) Originally filed under Transmittal No. 434 to become effective 1/1/98.

BST000251

BELLSOUTH TELECOMMUNICATIONS, INC.
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ISSUED: JUNE 16, 1998

TARIFF F.C.C. NO. 1
6TH REVISED PAGE 4-7
CANCELS 5TH REVISED PAGE 4-7
EFFECTIVE: JULY 1, 1998

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber
(Cont'd)

	USOC	Rate Per Month	
<u>FLORIDA</u>			
-Individual line or trunk, each	9ZR	\$ 8.14	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>GEORGIA</u>			
-Individual line or trunk, each	9ZR	\$ 8.14	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>KENTUCKY</u>			
-Individual line or trunk, each	9ZR	\$ 8.14	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	
<u>LOUISIANA</u>			
-Individual line or trunk, each	9ZR	\$ 8.14	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business EUCL Charge rate, per Primary Rate ISDN interface.

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BST000252

BELLSOUTH TELECOMMUNICATIONS, INC.
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ISSUED: DECEMBER 17, 1997

TARIFF F.C.C. NO. 1
5TH REVISED PAGE 4-7
CANCELS 4TH REVISED PAGE 4-7
EFFECTIVE: JANUARY 1, 1998

ACCESS SERVICE

4 - End User Access Service (Cont'd)

4.7 Rate Charges (Cont'd)

(C) End User Common Line (EUCL) Charge - Multiline Business Subscriber
(Cont'd)

	USOC	Rate Per Month	
<u>FLORIDA</u>			
-Individual line or trunk, each	9ZR	\$ 8.17	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	(S)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	(S)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(S)
<u>GEORGIA</u>			
-Individual line or trunk, each	9ZR	\$ 8.17	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	(S)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	(S)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(S)
<u>KENTUCKY</u>			
-Individual line or trunk, each	9ZR	\$ 8.17	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	(S)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	(S)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(S)
<u>LOUISIANA</u>			
-Individual line or trunk, each	9ZR	\$ 8.17	(R)
-Basic Rate ISDN, per Digital Subscriber Line	9ZR	5.00	(S)
-Basic Rate ISDN, per Digital Subscriber Line - Centrex Subscribers	9Z1	5.00	(S)
-Primary Rate ISDN, per Interface	9ZR	(Note 1)	(S)

Note 1: For Primary Rate ISDN local exchange service, the EUCL Charge will be assessed at five times the Multiline Business EUCL Charge rate, per Primary Rate ISDN interface.

(S) Originally filed under Transmittal No. 434 to become effective 1/1/98.

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 14

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

FCC 93-532

In the Matter of)
)
Open Network Architecture Tariffs)
of Bell Operating Companies)

CC Docket No. 92-91



ORDER

Adopted: December 2, 1993; Released: December 15, 1993

By the Commission: Chairman Hundt not participating.

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I. INTRODUCTION

1. This Final Order completes the investigation of Open Network Architecture (ONA) rates that took effect pursuant to the Commission's decision in the Part 69 ONA Order.¹ In that Order, the Commission adopted revisions to Part 69 of the Commission's Rules, specifying rate structure and other tariffing requirements for BOCs when implementing Open Network Architecture (ONA), including the filing of tariffs for ONA services. The Commission ordered the BOCs to unbundle from their existing feature group access arrangements optional service offerings, to be called basic service elements (BSEs). These BSEs were distinguished from the essential, underlying switching and transmission services called basic serving arrangements (BSAs). This structure, and related safeguards adopted in the Part 69 ONA Order, will enable BOCs to compete in the enhanced services market and encourage efficient prices and innovation, while preventing anticompetitive practices they might direct at independent enhanced service providers. Unbundled and optional BSEs are initially priced on a flexible cost-based standard reflecting Commission concern over BSE rate levels, while permitting flexibility to promote efficient pricing and the development of innovative new services. The essential BSA component is priced "residually" -- set at a level that maintains overall revenue neutrality for the repriced BSA and BSE services within the local switching category compared to pre-ONA feature group arrangements.

¹ Amendments 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 Reconsideration, and Supplemental Notice of Proposed Rulemaking, 6 FCC Red 4524 (1991) (Part 69 ONA Order), modified on recon. 7 FCC Red 5235 (1992) ~~and~~ petitions for recon. pending. The BOCs' ONA plans had been previously approved. See Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Phase I, 5 FCC Red 3103 (1990) (ONA Amended Plans Order).

2. The Common Carrier Bureau (Bureau) suspended for one day the ONA tariffs of the Ameritech Operating Companies (Ameritech), imposed an accounting order, and initiated an investigation to determine whether these rates are just and reasonable.² This investigation was later expanded to include the ONA tariffs of other Bell Operating Companies (BOCs).³ On April 16, 1992, in the ONA Designation Order, the Bureau designated ten issues in the ONA investigation, and directed one or more of the BOCs to respond to each issue.⁴ Eight parties filed oppositions to the direct cases, and each BOC filed a reply.⁵ The Bureau also required the BOCs to submit cost support materials to review by an independent auditor which reported its findings to the Commission and intervening parties. A key element of BSE cost support in this investigation consists of computer models that are intended to provide a measure of the unit cost of providing BSEs resident in BOC switches and software. Six of the regions employed the Switching Cost Investment System (SCIS) software provided under license by Bellcore to develop unit investments used to justify rates for BSEs; US West used SCIS as well as a second model developed in-house, the Switching Cost Model (SCM).⁶

3. Based on our examination of the ONA tariffs, the BOCs' direct cases, the oppositions and replies associated with those direct cases, and other information described in more detail below, we conclude that many BSE rates have been developed using specific costing methodologies that were in whole or part unreasonable, therefore resulting in rates that are unjust and unreasonable. At the same time, the methods employed by BOCs are generally sound apart from these specific deficiencies. Accordingly, we order the BOCs to revise their rates to reflect reasonable costing methodologies as set forth below, or provide a justification for using some other costing methodology. In addition, we are prescribing one element of BSE ratemaking methodology: BOCs must base their BSEs on prospective technology mixes. This is discussed in more detail below. Most of our recommended revisions tend to moderate the extent of BSE rate variation among BOCs, and tend to reduce BSE rates, while a few tend to increase BSE rates slightly. Overall, the variation in BSE rates of different carriers has been

² Ameritech Operating Companies, Revisions to Tariff F.C.C. No. 2, Open Network Architecture, Memorandum Opinion and Order, 7 FCC Red 257 (Com.Car.Bur. 1991) (Ameritech ONA Tariff Order), modified by Ameritech Operating Companies, 7 FCC Red 948 (Com.Car.Bur. 1992) (correcting the ordering clause establishing an accounting order).

³ Bell Atlantic Telephone Companies, et al., Open Network Architecture Tariffs, 7 FCC Red 1512 (Com.Car.Bur. 1992) (ONA Investigation Order); Ameritech Operating Companies, et al., 7 FCC Red 1936 (Com.Car.Bur. 1992); Nevada Bell, CC Docket No. 92-91, 7 FCC Red 4051 (Com.Car.Bur. 1992) (Nevada Bell Order). In all these Orders, the Bureau suspended the tariffs before it for one day, and subjected those rates to accounting orders. The Bell Operating Companies are the Ameritech Operating Companies (Ameritech), Bell Atlantic Telephone Companies (Bell Atlantic), BellSouth Telephone Companies (BellSouth), New York Telephone Company and New England Telephone and Telegraph Company (NYNEX), Pacific Bell, Nevada Bell, Southwestern Bell Telephone Company (Southwestern Bell), and US West Communications, Inc. (US West).

⁴ Open Network Architecture Tariffs of Bell Operating Companies, CC Docket No. 92-91, 7 FCC Red 2604 (Com.Car.Bur. 1992) (ONA Designation Order).

⁵ A list of parties filing pleadings, and the names by which we refer to them in this order, is included as Attachment A.

⁶ In this Order, for simplicity in expression, we use the acronym SCIS in our general discussions that include both the SCIS and SCM cost models. US West developed rates using a combination of both models which results in unlawful rates. (See paras. 57 ff). Therefore, specific remedial steps directed toward curing SCIS-based rates are not necessarily applicable to curing SCM-based rates. US West in its subsequent 1993 annual access filing based ONA rates on a later version of SCM not reviewed in this investigation. The adequacy of the later-developed SCM model will be considered in the pending investigation of annual 1993 access filings. 1993 Annual Access Tariff Filings, CC Docket No. 93-193, 8 FCC Red 4960, *erratum*, 8 FCC Red 5119 (1993).

reduced significantly.⁷ Under our revisions to the BOCs' costing methodologies, the BOCs retain substantial pricing flexibility consistent with our policy of encouraging efficient pricing and innovation.⁸ With respect to US West only, we conclude that US West has filed BSE rates so unsupported that, based on the record before us, its fundamental investment method must be found unreasonable. ~~US West is required to file replacement, cost-supported ONA rates on the schedule established for other BOCs' corrective filings.~~

II. BACKGROUND

A. General

4. In the Computer III proceeding,⁹ the Commission initiated a process for replacing the structural separation requirements for BOCs' enhanced service operations with nonstructural safeguards, including ONA. ONA was designed to unbundle certain services provided by BOCs, both to promote efficient and innovative use of the network by independent enhanced service providers (ESPs) and to prevent discrimination by BOCs in their offerings of BSEs to competing ESPs and BOC-owned ESPs. The Commission concluded that the provision of unbundled basic service "building blocks" would promote the ability of the BOCs' ESP competitors to compete effectively. Hence, the Commission ordered the BOCs to unbundle from their existing feature group access arrangements optional features called BSEs. The BOCs described this unbundling in detail in their ONA Plans, which were approved by the Commission in 1990.¹⁰

5. For purposes of tariff review, unbundled ONA service elements are considered as new services rather than restructured offerings, and so must satisfy the costing standard for new services established in the Part 69 ONA Order and subsequent ONA Reconsideration. The Part 69 ONA Order adopted a flexible, cost-based approach to pricing these ONA services that requires BOCs to base rates for BSEs on direct costs plus reasonable, uniform overheads. Specifically, this flexible cost-based approach permits carriers to adopt their own methodologies for developing direct costs and overhead costs, allows deviations from these uniform overhead loading methodologies if adequately justified, and gives BOCs an opportunity to earn a "risk premium" to encourage particularly risky new services.¹¹

⁷ A chart specifying the effects of our requirements is included as Attachment B.

⁸ See Part 69 ONA Order, 6 FCC Red at 4531, para. 38.

⁹ Amendments of Section 64.702 of the Commission's Rules and Regulations, Report and Order, CC Docket No. 85-229, 104 FCC 2d 958 (1986); recon., 2 FCC Red 3035 (1987) (Phase I Reconsideration), further recon., 3 FCC Red 1135 (1988) (Phase I Further Reconsideration), second further recon., 4 FCC Red 5927 (1989) (Phase I Second Further Reconsideration), Amendments of Sections 64.702 of the Commission's Rules and Regulations, Report and Order, CC Docket No. 85-229, 2 FCC Red 3072 (1988) (Phase II Order), recon., 3 FCC Red 1150 (Phase II Reconsideration), vacated sub nom. California v. FCC, 905 F.2d 1217 (9th Cir. 1990), appeal pending sub nom. Illinois Bell Tel. v. FCC, No. 881364 (D.C. Cir. pet. for rev. filed May 16, 1988). See also Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, CC Docket No. 90-623, 6 FCC Red 7571 (1991).

¹⁰ Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Phase I, 5 FCC Red 3103 (1990) (ONA Amended Plans Order).

¹¹ Part 69 ONA Order, 6 FCC Red at 4531, paras. 42-44. In addition, in the ONA Reconsideration, we relaxed our new service requirements in cases in which a BOC is offering a new service sufficiently similar to an existing service that the BOC expects customer migration between services. In those cases, the BOC is allowed to establish any new service price less than or equal to the price of the existing service. ONA Reconsideration Order, 7 FCC Red at 5236-37, paras. 8-11.

6. In the wake of the Part 69 ONA Order in 1991, the BOCs tariffed several dozen different BSEs.¹² One example of a BSE is Automatic Number Identification, which identifies the billing number of the calling party. Other examples of separately useful BSEs include services used by burglar alarm companies, such as the Derived Channels (Monitoring) BSE,¹³ and Uniform Call Distribution (UCD), which avoids over-burdening individual stations in large-scale operations such as reservation systems by distributing calls uniformly among incoming telephone lines.

7. To develop initial BSE rates, BOCs first enter switch usage data from traffic studies and capital costs from plant records into computer models. These computer models also contain detailed price and performance specifications from switch manufacturers about their switches. The SCIS/SCM models are used to generate unit investment for specific switch types, for each BSE. As an early step in this process, SCIS develops a "model office," which is an average of all the existing switches of a certain type in the BOC's network.¹⁴ SCIS employs the model office to generate unit investments associated with providing each BSE over a particular switch type. Then the BOCs develop a total unit investment for each BSE by calculating a weighted average of the unit investments produced by each model office. In weighing the unit investments associated with particular switch types, the BOC either assumes the mix of switch technologies present in its network (the "embedded" approach) or a mix based on planned replacement decisions (the "prospective" technology mix). Finally, using these aggregate unit investment amounts as a base, the carriers apply direct cost factors and overhead loading factors to estimate the costs used to compute BSE rates.

B. Use of Proprietary Data to Compute Rates

8. In the ONA context, the Commission for the first time is involved in the detailed oversight of exchange carrier ratemaking processes that disaggregate local switching functions into discrete services. As explained in detail in the SCIS Disclosure Order¹⁵ and related Freedom of Information Act decisions, review of this process inherently entails review of sophisticated computer models, as there is no other practicable method by which to reasonably and consistently recognize the use and associated investment of switch sub-components in a variety of service offerings.¹⁶

9. Both SCIS and SCM employ proprietary pricing and switch design information supplied by switch vendors. Bellcore and US West also hold intellectual property rights in the models. After reviewing SCIS/SCM in camera and evaluating manufacturers' assertions that they would

¹² ONA Amended Plans Order, 5 FCC Red at 3122-23, App. C.

¹³ NYNEX offers this BSE under a trademark name, PULSENET.

¹⁴ By a "type" of switch, we mean a brand of switch produced by a specific manufacturer, such as AT&T's 1AESS switch or SESS switch, or Northern Telecom's DMS 10 or DMS 100.

¹⁵ Commission Requirements for Cost Support Material To Be Filed with Open Network Architecture Access Tariffs, 7 FCC Red 1526 (Com.Car.Bur. 1992) (SCIS Disclosure Order). A companion Order adopted today denies MCI's application for review of the SCIS Disclosure Order. We consider below, in Section IV.B., contentions that the disclosure of these materials was inadequate for meaningful intervenor participation.

¹⁶ It is well established that "the Administrative Procedure Act does not require that every bit of background information used by an administrative agency be published for public comment," as long as data sufficient to support the agency's actions were available to petitioners for comment. *B.F. Goodrich Co. v. Dept. of Transportation*, 541 F.2d 1178, 1184 (6th Cir. 1976), cert. denied, 430 U.S. 930 (1977); *in re Surface Mining Regulation Litigation*, 627 F.2d 1346, 1354 n.9 (D.C. Cir. 1980). As discussed more fully below, SCIS Redaction II did not prevent meaningful review of SCIS.

suffer competitive harm from the disclosure of the model or vendors' data used to develop and maintain it, the Bureau determined in the SCIS In Camera Order that the BOCs need not make these models available on the public record under the Freedom of Information Act (FOIA) or Commission Rules.¹⁷ Specifically, FOIA Exemption 4 provides that "trade secret and ~~commercial or financial information obtained from a person and privileged or confidential~~" is not subject to mandatory disclosure.¹⁸ However, in the subsequent SCIS Disclosure Order, the Bureau established two discretionary procedures in order to balance the interests of Bellcore and switch vendors in keeping proprietary information confidential, and of intervenors in participating effectively in the ONA investigation. Specifically, the Bureau required Bellcore and US West, in cooperation with switch vendors, to develop redacted SCIS and SCM models, which would allow intervenors to observe the models in operation, and determine their sensitivity to changes in various input data values, without disclosing the most sensitive proprietary data. These redacted SCIS and SCM models, as they were later refined, were provided to intervenors subject to nondisclosure agreements.¹⁹ In addition, the SCIS Disclosure Order required BOCs to hire an independent auditor to review SCIS, file a report with the Commission, and provide intervenors a redacted version of this report. The BOCs hired Arthur Andersen and Co. (Andersen) for this purpose.

10. On March 4, 1992, MCI made an *ex parte* presentation to the Bureau staff contending that the SCIS redactions were so excessive that the model had been made useless to intervenors. Bureau staff had also identified deficiencies in the first redaction, and the BOCs subsequently developed a second redacted model. This model, hereafter referred to as "Redaction II," is discussed below. Several intervenors filed comments under protective cover based on their examination of the redacted SCIS/SCM models and Andersen Report, and the BOCs filed replies under protective cover.²⁰

III. ISSUES

A. Flexible Cost-Based Rates and Rate Variation

11. Some intervenors have asserted that BSE rates that vary as much as these cannot all be reasonable.²¹ Others state a more general position: that the Commission's "flexible cost-based approach" allows too much flexibility, and may lead to unreasonable or discriminatory rates.²² The BOCs respond that the flexibility provided by SCIS and other aspects of their

¹⁷ Commission Requirements for Cost Support Materials To Be Filed with Open Network Architecture Access Tariffs, 7 FCC Rcd 521, 521 n.4 (Com.Car.Bur. 1991) (SCIS In Camera Order); App'n for Review denied, 8 FCC Rcd 422 (1993); Allnet Communications Services, FOIA Control No. 52-266, 7 FCC Rcd 6329 (1992) (Allnet Order), upheld Allnet Communications Services, Inc. v. FCC, 800 F.Supp. 984 (D.D.C. 1992).

¹⁸ Freedom of Information Act, 5 U.S.C. § 552(b)(4).

¹⁹ See Letter from James F. Britt, Bellcore, to Chief, Common Carrier Bureau (July 31, 1992).

²⁰ In addition to the pleadings and the Andersen Report, the Bureau by its letter of December 11, 1992, directed Andersen to respond to several queries developed by the Bureau and intervenors. Furthermore, Andersen and the BOCs were required to comply with a data request issued by the Bureau on December 14, 1992.

²¹ Sprint Opposition at 2-3; GSA Opposition at 2-3; MCI Opposition at 3-4; Ad Hoc Opposition at 7-9.

²² Sprint Opposition Appendix at 1-2; Metromedia Opposition at 7-8; Wiltel Opposition at 17-18; Ad Hoc Opposition, Appendix 1, at 4-6; MCI Opposition at 34-35. See also Sprint Opposition Appendix at 3-5 (criticizing variation in BSE rates resulting in differences in the way BOCs aggregate data, and recommending use of benchmarking in review of BSE rates).

ratemaking process is consistent with the Commission's flexible cost based approach, and any further limits on their flexibility would be inconsistent with the Part 69 ONA Order.²

12. Dramatic rate variance alone does not establish that individual rates are unreasonable. Rather, we determine the causes of the variance and assess whether some ratemaking flaw makes some of these variant rates unreasonable. Legitimate reasons for rate variance include differences in demand patterns, population density, or network configurations. As to the BOCs' assertion that any revision to their rates would conflict with the Part 69 ONA Order, the "flexible cost-based approach" described in the Part 69 ONA Order was intended to give carriers flexibility sufficient to encourage efficiency and innovation, not complete freedom in developing rates.

Once the direct costs have been identified, LECs will add an appropriate level of overhead costs to derive the overall price of the new service. To provide the flexibility needed to achieve efficient pricing, we are not mandating uniform loading, but BOCs will be expected to justify the loading methodology they select as well as any deviations from it.

Part 69 ONA Order, at 4531, para. 44 (emphasis supplied). The Commission's intent was to permit carriers to establish a reasonable and consistent method for their identification of direct costs, with the flexibility needed for efficient pricing to be achieved in the administrative loadings applied to the direct cost figures. Thus, limiting carriers' ratemaking discretion, as we do in this Order below, is entirely consistent with our intent in the Part 69 ONA Order.³ None of these limitations on ratemaking flexibility noticeably reduce the incentives we established in the Part 69 ONA Order for development of innovative new services and efficient prices.

13. In considering whether carrier ratemaking discretion associated with specific designated issues has led to the development of unreasonable rates, we therefore have considered (i) the specific cost justification requirements announced in the Part 69 ONA Order and (ii) the consistency of specific BOC procedures or assumptions with general economic theory, as recognized in Commission policy. In addition, while not directly related to rate levels *per se*, we have considered the extent to which such exercises of discretion are exempt from public disclosure and, therefore, precluded from examination by interested parties. A recurring challenge in this proceeding has been to afford intervenors, accustomed to full disclosure of carriers' cost support materials under our Rules, a meaningful opportunity to review ratemaking processes obscured by legitimate proprietary concerns. This difficulty is inherent in the use of models, as explained previously, but to the extent that ratemaking discretion can be exercised in a more publicly accessible stage of the process without compromising carrier flexibility, we consider the exercise of discretion at inaccessible stages to be a less reasonable approach.

14. The issues surrounding the BOCs' BSE rate development process can be broken down into three groups. First, there are issues presented by the inputs chosen by BOCs to put into

² PacTel Reply at 1; US West Reply at 6-7; BellSouth Reply at 3-4, 18, 25-26; Ameritech Reply at 2; NYNEX Reply at 6; PacTel Reply at 7-8; Bell Atlantic Reply at 6-7.

³ GSA and Metromedia contend that the issues designated by the Bureau do not adequately focus discussion on the sources of variation or unreasonableness of BSE rates. GSA Opposition at 7-8; Metromedia Opposition at 3-4. According to Wilhel and Ad Hoc, the small costs associated with many BSEs, other than ANI, do not warrant the unbundling of those BSEs. Wilhel Opposition at 4, 13-15; Ad Hoc Opposition, Appendix I, at 10-11. Ad Hoc concludes that the BOCs have not justified any ONA rates, and so they should all be rejected. Ad Hoc Opposition, Appendix I, at 10-11. These petitioners raise issues which have been resolved in prior Commission Orders, or are nothing more than misplaced petitions for reconsideration of the Part 69 ONA Order or the ONA Designation Order. Thus, none of these issues warrant rate revisions.

the SCIS/SCM models. Second, the equations within the SCIS/SCM models include variables that enable the BOCs to reflect their specific networks and service areas in their BSE cost development. Third, SCIS outputs only represent the BOCs' unit investment in each type of switch for each BSE. The BOCs then develop direct costs based on switch investment, and overhead costs, to develop BSE rates. There are several issues surrounding the BOCs' development of direct cost factors and overhead loading factors. These issues are considered below.

B. SCIS Input Issues

1. Representative Model Offices

15. SCIS bases its BSE investment studies for each switch technology on a "model office." As already noted, each model office is an average of all the existing switches of a certain type in the BOC's network. Whether SCIS produces reasonable results depends in part on whether the model office is based on a representative sample of actual switches.²⁵ Ameritech, BellSouth, Nevada Bell, NYNEX, Pacific Bell, and Southwestern Bell state that they developed their model offices on all or practically all the switching offices from which they will provide BSE services.²⁶ Bell Atlantic, on the other hand, uses a statistical sampling technique for its larger study areas. Bell Atlantic bases its model office on a sample of 60 percent of the switching offices.²⁷ For all but two BSEs, US West used all of its switches to develop its model offices. For Make Busy Key and Message Delivery, US West used only switches in its central region (formerly Mountain Bell) in developing its model office.²⁸ Several intervenors assert that the data available to them is insufficient to determine whether the BOCs have skewed their sampling techniques or strategically selected switches for inclusion in the model office, and emphasize the need both for standardized sampling procedures and for current data.²⁹

16. The Commission strongly prefers that BOCs base their model offices on all switching offices in their service regions. This eliminates a possible source of bias in rate development. We conclude that the model offices of Ameritech, Nevada Bell, NYNEX, Pacific Bell, and Southwestern Bell are generally representative of offices that will be used to provide BSEs. We also conclude that Bell Atlantic's sampling techniques produce model offices that are representative of offices that will be used to provide BSEs. Bell Atlantic's statistical sampling

²⁵ For each switching office and remote included in the carriers' investment cost studies, the carriers were directed to provide on the record the corresponding schedule for switch replacement, and switch capacity at replacement, that are used as inputs to SCIS. None of the intervenors commented specifically on the switch exhaustion assumptions provided in the BOCs' direct cases. Based on our examination of these assumptions, they appear reasonable, and we see no reason to require revision of these assumptions. Ad Hoc recommends generally that BOCs be required to specify their switch exhaustion assumptions for a standard period three years into the future. Ad Hoc Opposition, Appendix at 6-7, 12. However, Ad Hoc has not explained why a standardized three year forecasting period would be more instructive than the switch exhaustion data actually submitted by the BOCs in their direct cases.

²⁶ Ameritech Direct Case at 2; BellSouth Direct Case at 24-25; Nevada Bell Direct Case at 1-2; Nevada Bell Supplemental Direct Case at 2-3; NYNEX Direct Case, Appendix A at 1; Pacific Bell Direct Case at 1-2; Southwestern Bell Direct Case at 3-4.

²⁷ Bell Atlantic Direct Case at 2-3.

²⁸ US West Direct Case at 2-3.

²⁹ Witel Opposition at 15-17; MCI Opposition at 16-19; Ad Hoc Opposition, Appendix 1, at 8-9; Metromedia Opposition at 11; Sprint Opposition Appendix at 4; Ad Hoc Opposition, Appendix 1, at 8-9. But see GSA Opposition at 4-5. Witel criticizes Arthur Andersen for not discussing the averaging process used by BOCs to develop model offices. Witel Opposition at 35-36.

technique selects switching offices in a random fashion which will not skew the resulting model office in any way. Furthermore, Bell Atlantic's sample size of 60 percent is large enough to provide statistically reliable sampling results.

~~17. Because SCIS does not have sufficient capacity to accommodate the large number of~~ switching offices in BellSouth's service region, BellSouth created and employed a "user-defined study" to develop model offices. Andersen examined BellSouth's user-defined study as part of its Supplemental Report.³⁰ Andersen verified that SCIS cannot accommodate all the switching offices in BellSouth's region, and that the user-defined study produces results which are virtually identical to the result BellSouth would have obtained if it could include all its switching offices in the model office.³¹ Based on Andersen's findings and our own review of BellSouth's user-defined study, we conclude that BellSouth's user defined study is representative of offices that will be used to provide BSEs.³²

18. In contrast, US West provides no reasonable explanation for using only central offices in its central region to develop model offices for Make Busy Key and Message Delivery BSEs.³³ Nor has US West shown that its central region is representative of its entire service territory. The US West rates for these BSEs are therefore unreasonable because they are based on an unexplained methodology which could distort rates, and we find those rates unlawful on this ground. Specific instructions regarding US West are discussed in Section III.E. of this Order, *infra*.

2. Noncurrent SCIS Models and Traffic Data

19. Bellcore updates the SCIS model several times each year to reflect switch manufacturers' hardware and software upgrades.³⁴ The algorithms in SCIS are based in part on actual traffic data for all of the switching offices the BOCs use in a study. Staff review and the Andersen Report indicate that outdated SCIS versions and traffic data each can significantly affect SCIS investment studies.³⁵

20. Allnet and AT&T contend that none of the BOCs have justified their use of either

³⁰ See Letter from Chief, Tariff Division, to James F. Britt, Bellcore, December 11, 1992 (December 11 Letter).

³¹ Supplemental Arthur Andersen Report at 9.

³² Where a carrier elects to depart from the model office procedures of SCIS and utilize a "user-defined study," it must, in the ONA context, describe the SCIS limitations that require the departure and demonstrate the equivalence of its user-defined study results to SCIS operations under standard settings, as BellSouth has done in this context.

³³ See US West Direct Case at 2-3.

³⁴ The frequency of updates to reflect changes in switch technology is one distinguishing characteristic between SCIS and SCM. See Andersen Report at 48, 71; Supplemental Andersen Report at 54. The examination of models by Commission staff confirms that SCIS is updated much more often than SCM. For example, in its ONA filing, US West used SCM to model SESS switch software version 5E5, which became available in 1989, while version 5E6.1 became available in early 1991. For the DMS-NTX40 switch, US West used SCM to model software version BCS29, which was available from March to September 1990, while version BCS31 became available in January 1992. See Andersen Report, Appendix 1E; Supplemental Andersen Report, Exh. 5.

³⁵ See Supplemental Andersen Report at 33-35.

outdated versions of SCIS or old traffic studies.³⁶ PacTel contends that it is appropriate to use different versions of SCIS because BOCs have different versions of vendors' software controlling their switches.³⁷ BellSouth insists that it used the most current version of SCIS available at the time of its most recent traffic study, and asserts, in any event, that the effect of different SCIS versions on rates is small.³⁸ ~~NYNEX notes that it did not use the most~~ current version of SCIS for the BSEs offered by New England Telephone and Telegraph Co. (NET), but maintains that no major updates in switch technology occurred since the release of the SCIS version used by NYNEX.³⁹ Many carriers point out that traffic studies require considerable effort and cannot be performed on short notice.⁴⁰ Several BOCs insist that model office input data are updated on a regular basis, and that the data are updated periodically to reflect changes in demand.⁴¹ NYNEX and US West maintain that traffic studies have little effect on BSE rates.⁴² BellSouth maintains that its traffic input data varies little over time.⁴³

21. We have determined, based on our internal review of SCIS and on Andersen's supplemental analysis, that SCIS will not derive accurate unit investments unless the switches used to provide BSE services (including hardware and software) for which the study is undertaken are accurately reflected in the SCIS version used in the cost analysis.⁴⁴ Use of different versions of SCIS can often have a significant effect upon SCIS outputs, and therefore, upon BSE rates.⁴⁵ To allow carriers to select any version of SCIS for investment studies, or to use models and input data that do not reflect the actual plant used to provide the service, does not lead to rates designed to recover reasonable costs as required in the Part 69 ONA Order. SCIS is a forward-looking model that calculates investment based on switch replacement costs rather than historical or embedded costs, and the more recent SCIS software provides the most up-to-date design and pricing basis from which to estimate future BSE-specific investment. Therefore, we conclude that any carrier using SCIS to develop BSE investment must rely on

³⁶ Allnet Opposition at 6-7; AT&T Opposition at 9-13. See also Wiltel Opposition at 39 (criticizing use of outdated versions of SCIS); Allnet Opposition at 7-8 (noting that Andersen discussed Ameritech's and NYNEX's use of old versions of SCIS); Ad Hoc Opposition, Appendix at 12-13 (recommending that the Commission require BOCs to use the most recent version of SCIS available).

³⁷ PacTel Reply at 2.

³⁸ BellSouth Reply at 26-27.

³⁹ NYNEX Reply, App. at 8-9, as modified by NYNEX Erratum at 2-3.

⁴⁰ NYNEX Reply, App. at 8.

⁴¹ Bell Atlantic Reply at 6; Ameritech Reply at 6; Southwestern Bell Reply at 9-10.

⁴² NYNEX Erratum at 4-5, revising NYNEX Reply, App. at 8-9; US West Reply at 15-16.

⁴³ BellSouth Reply at 27.

⁴⁴ Wiltel complains that the Andersen Report does not adequately display the effects of using different SCIS versions on BSE rates. Wiltel Opposition at 30-31. Therefore, the Bureau directed Andersen in its Supplemental Analysis to examine further the effects of different SCIS versions on BSE rates.

⁴⁵ For example, the Andersen data show that for its Multiline Hunt Group UCD Line Hunting BSE, BellSouth used an older SCIS version. Based on the older version BellSouth filed direct recurring costs of \$5.91. If, however, it had used the current SCIS version, direct recurring costs would have been \$3.90, or a reduction in direct costs of approximately 34 percent.

Metromedia recommends that the Commission develop some means to verify that future updates to investment models are reasonable. Metromedia Opposition at 4. We delegate authority to the Common Carrier Bureau to develop procedures for review of future model updates.

the most current version of SCIS available for its switch and associated operating software, or explain its use of an older version.⁴⁶

22. One of the issues the staff referred to Andersen was the extent to which use of outdated traffic studies may affect calculation of BSE rates.⁴⁷ Andersen found that the age of traffic studies can significantly affect BSE rates when increases in traffic are not reflected in the SCIS investment studies.⁴⁸ We cannot rely on old traffic studies, which may no longer accurately reflect current traffic patterns, to justify BSE rates. From the Andersen information, it appears that all carriers except US West have now used traffic data and studies sufficiently recent to accurately reflect current traffic characteristics. We require all BOCs to continue to use recent traffic studies in future ONA tariff filings. Instructions for US West rate revisions are discussed in Section III.E. of this Order, *infra*.
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23. Finally, because traffic studies are conducted less frequently than SCIS and switch revisions occur, and do not consistently affect SCIS investment outputs to the same degree, we cannot accept BellSouth's argument that SCIS versions contemporaneous with traffic studies are inherently reasonable. Carriers should use the most recent SCIS version except when they can demonstrate that a less recent SCIS, when used in conjunction with older traffic study data, does not generate investment outputs that are so distorted as to be unreasonable.

3. Cost of Money

24. SCIS allows BOCs to recognize their time value of money through a discount factor called the "cost of money" factor. The ONA Designation Order directed BOCs to justify use of a cost of money in excess of the Commission's current authorized rate of return of 11.25 percent. The BOCs argue that 11.25 percent is merely the industry average that was developed in 1989, and that this is not appropriate for a forward-looking cost model like SCIS.⁴⁹ Most BOCs also assert that variations in cost of money produce *de minimis* effects on BSE rates.⁵⁰

25. The BOCs are incorrect in arguing that they should be allowed to use cost of money factors that they believe will be necessary to attract capital in the future. While the Commission's rate of return prescription reflects an industry average that was developed in

⁴⁶ The use of an outmoded version of SCIS to reach NET rates is adequate, in light of NYNEX's explanation and demonstration that no major updates in switch technology had occurred that would affect unit investment results.

⁴⁷ See December 11 Letter.

⁴⁸ For example, the Andersen data show that for a specific switch technology, Ameritech used as an input for the Multihunt Hunt Group BSE, a value of 11.8 hunt group calls terminated during the busy hour, whereas the BOC average was 5.51 calls terminated. Based on its traffic assumption of 11.8, Ameritech filed direct recurring costs of \$1.22, whereas if its direct recurring costs were based on the BOC average, they would have been \$0.88, or a reduction in direct costs of 28 percent.

⁴⁹ The BOCs contend that their cost of money factors represent the forward-looking cost of debt and equity. Ameritech Direct Case at 3-4; Bell Atlantic Direct Case at 3-4; BellSouth Direct Case at 27-28; Nevada Bell Direct Case at 2-3; NYNEX Direct Case, Appendix A at 3; Pacific Bell Direct Case at 3; Southwestern Bell Direct Case at 4-5; US West Direct Case at 3-5.

⁵⁰ Ameritech Direct Case at 4-5; BellSouth Direct Case at 28-29; Nevada Bell Direct Case at 3; Nevada Bell Supplemental Direct Case at 3; Pacific Bell Direct Case at 4; Southwestern Bell Direct Case at 4-5; US West Direct Case at 3-5; Bell Atlantic Direct Case at 4-5. For its part, Bell Atlantic maintains that, if it used the 11.25 percent figure for cost of money, then the unit investment for its BSEs would be reduced by an average of 1 percent for analog switches, 1.5 percent for digital switches, and in no case would the reduction be more than 6 percent. *Id.*

1989, it took into account fluctuations in the costs of capital in the future.³¹ The BOCs have not shown that they will need a cost of money exceeding 11.25 percent to attract capital in the future. Accordingly, absent a stronger evidentiary showing, we require the BOCs to develop their BSE rates using a cost of money factor not to exceed 11.25 percent.

C. Assumptions Made When Using SCIS

1. Average or Marginal Unit Investment Studies

26. Conceptually, allocation of common investment involves two stages: (1) distinguishing common investment from BSE-specific investment; and (2) allocating common investment in an economically rational way between two or more services. In SCIS, the Average Study and Marginal Study methods are the two ways to allocate shared or "common" investment among several services (the various BSEs and BSAs). For each BSE, the common investment is combined with the BSE-specific investment for each feature. The choice of Average or Marginal Study methods has a substantial effect on the unit investment developed by SCIS.

27. SCIS implements this two-stage procedure in the following way. As a first step, SCIS broadly defines common investment as investment that is insensitive to the level of demand for the various BSEs and BSAs, up to the capacity of the switch. The SCIS term for this common investment is "Getting Started Costs" (GSCs). The dollar value of GSCs is significant and includes all hardware and software that cannot be directly assigned to lines, calls, or holding time.³² As described below, the identification of GSCs with common investment is not, however, a final determination.

28. The next step in SCIS is determining whether the Average Study method or Marginal Study method will be used for BSE investment studies. Under the "average study" method, SCIS assigns a portion of common switching investment to each BSE (and, implicitly, to the BSAs),³³ while the "marginal study" method does not routinely assign any common switching investment to the BSEs. There are two exceptions to the latter method: where the SCIS user assumes that provision of the BSE will accelerate the exhaustion of switch capacity (the "exhaust before replacement" assumption) or for other reasons directs the model to assign some common investment to the BSE under study (the "capacity override" assumption), some common investment will be assigned. Thus, two variations of the Marginal Study method recharacterize some GSCs as demand sensitive and reassign them as BSE-specific investment. Neither the usual Marginal Study method nor the Average Study method recharacterize any GSCs.

³¹ See Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket No. 89-624, 5 FCC Red 7507, 7532 paras. 214-215 (1990) (1990 Represcription Order), recon. denied, 6 FCC Red 7193 (1991) (1990 Represcription Reconsideration Order), petitions for review docketed sub nom., Illinois Bell Telephone Co., et. al., v. FCC, No. 91-1020 (D.C. Cir., filed January 11, 1991).

³² GSCs include central processor investment, and certain other investment associated with maintenance, testing, and certain underutilization of capacity (i.e., the cost of unused capacity that must be allocated to the various features using the switch).

³³ As required in this proceeding, the SCIS develops costs for BSEs only, not BSAs. Because BSAs are priced as the residual of total switching costs after removal of all BSE costs, however, common costs that are not assigned to BSEs are captured by BSAs.

³⁴ In the "exhaust before replacement" variation, SCIS analyzes the situation in which provision of a BSE causes the switch to exhaust its capacity prior to the time it would otherwise be replaced. In such a case, provision of the BSE does, in fact, cause additional GSCs and these are, therefore, assigned directly to the BSE. The "capacity override" option analyzes a similar situation, but allows SCIS users to quantify the amount of GSCs that are directly assigned to the BSE.

29. After thus adjusting GSCs to recognize any exceptions directed by the SCIS user, the Average Study method allocates a portion of the adjusted GSCs to the BSE. Under the Average Study method, GSCs are allocated to each BSE based on relative central processor usage (cycles or milliseconds per busy hour, depending on the type of switch). The Marginal Study method allocates no *adjusted* GSCs to the BSE.

30. To determine the reasonableness of this aspect of BOC ratemaking, the Commission must ~~first~~ determine whether the BOCs have reasonably identified common investment. Distinguishing common investment from other switching investment is a difficult problem, both conceptually and practically. Whether or not investment is identified as common depends on assumptions made about such matters as the expected life, capacity, utilization and type of the switch. In large part, decisions concerning these matters properly rest on the expertise of the companies' engineers and cost analysts. Unless there is reason to believe that the companies have relied on unreasonable analysis, the Commission normally defers to their judgment. In the ONA context, neither the Commission's review nor the Andersen report has revealed obvious reliance on unreasonable analysis. Thus we believe, at present, that the BOCs' identification of common investment by the SCIS model is reasonable.

31. The second stage of our analysis requires that we determine whether the BOCs have reasonably allocated common investment to the BSEs. Several commenters suggest that we should prescribe use of the SCIS marginal investment study, because they believe BOCs should not include common switching investment in BSE rates.³⁵ Southwestern Bell and BellSouth claim that marginal investment studies produce the appropriate cost floor on which to base rates.³⁶ In contrast, MCI argues that investment developed through marginal investment studies allow SCIS users to underprice some services, which MCI believes would lead to overpricing of other services. MCI also maintains that the marginal investment study as described by BellSouth is flawed, because additional demand leading to premature switch exhaustion is not considered.³⁷ We believe that the switch exhaustion assumptions used by BellSouth are reasonable. See n. 25, *supra*.

32. The allocation of common investment among various services in an economically rational way has been a subject of considerable study by economists, regulators, and other public policy makers. One traditional method of allocating common investment is the fully distributed cost (FDC) method in which common investment is allocated based on measures of relative use. Other methods of allocating common investment include the Ramsey pricing method, which looks to the characteristics of demand for several services rather than their use

³⁵ Bell South Direct Case at 21-22; Southwestern Bell Direct Case at 2; Wiltel Opposition at 5-8; Metromedia Opposition at 7; Allnet Opposition at 4-5. *But see* Ameritech Reply at 4-5; GSA Opposition at 4 (reasonable arguments can be made for either Average or Marginal). *See also* Ad Hoc Opposition, Appendix I, at 6-8 (Use of Average or Marginal Cost Analysis is of secondary importance to the BOCs' assumptions regarding switch exhaustion); BellSouth Direct Case at 14-21 (the ONA investigation should focus on whether the pricing methodology is reasonable rather than whether it differs from the methodology of other BOCs).

³⁶ Southwestern Bell Direct Case at 2; BellSouth Direct Case at 9-12.

³⁷ MCI Opposition at 5-8; 9-11. Practically, the result would be that, to the extent that BSE rates failed to recover overhead costs, those costs would be recovered through the local switching BSA rates.

of common investment to determine appropriate prices.³³

33. Applying the Average Study method to common investment most closely resembles FDC; all BSEs and BSAs receive allocations of common investment based on relative use of, e.g., the central processor. The Marginal Study method departs from FDC in generally allocating no common switching investment to the BSEs, though as noted, some options in the Marginal Study method will allocate some common switching investment. Depending on the relative elasticities of the BSEs and BSA, the marginal study method may, in fact, enable a Ramsey pricing approach. Without knowledge of the relative elasticities, however, it is not possible to determine whether this would be the case.³⁴ Because there is an insufficient record in this proceeding regarding the theoretical and practical implications of the use of Ramsey pricing, we believe it is premature to endorse that approach. We note, however, that the Marginal Study method has the advantage of encouraging, through lower BSE prices, innovative services employing BSEs. We find that this advantage outweighs the very small increase in BSA prices that will be passed through to interstate switched access rates as a result. We therefore permit the use of the Marginal Study method for ONA.

34. At this stage, however, the implications of the marginal and average study methods for pricing individual BSEs are not fully developed, and there is insufficient evidence in the record from which to require use of either method. Although future experience may prove one of the methods, or some other method, preferable, we believe at this time that neither method is unreasonable for purposes of pricing ONA services. Therefore, we allow the LECs the flexibility to employ either method.³⁵

2. Accuracy of Switch Prices

35. The SCIS model allows BOCs to develop unit investments on the basis of different cost assumptions about the switches. Under the "engineered, furnished, and installed" assumption, the switch price includes the costs of actually installing the switch; under the "material" assumption, the price includes only the price of the switch itself. Parties have argued for a prescription of one method or the other, or a loading factor to reflect the difference between the two.³⁶ NYNEX and BellSouth maintain that, because the carriers' actual ordering and

³³ See Ramsey, F., "A Contribution to the Theory of Taxation," *Economic Journal*, Vol. 37, No.1, pp. 47-61, 1927. See also, e.g., William Baumol, *Economic Theory and Operations Analysis*, pp. 513-16, and Kenneth Train, *Optimal Regulation*, Chapter 4. See also Allnet Opposition at 4-5 (arguing in favor of Ramsey pricing). Essentially, this method is based on the assumption that, in monopoly markets, overall consumer welfare is maximized by allocating common costs in proportion to the utility of the service to the consumer. Under this method, services for which demand is relatively elastic would be allocated a proportionately small amount of common costs, and services for which demand is relatively inelastic would be allocated a proportionately larger amount of common costs. As an example, consider several word processor users connected to a central processor. The central processor's software is configured for a multi-user environment and the cost of the software is fixed and will not vary with the number of users, up to a certain capacity. An FDC standard might assign the costs of the software to word processor users based on each user's total minutes on the system. A Ramsey pricing standard would assign the costs of the software to users based on its utility to each customer. Those for whom the ability to use the system was essential would be assigned a higher per minute cost than those for whom system use was discretionary. Such a standard would involve estimating elasticities of demand for each class of users.

³⁴ Because BSEs have not been generally available to customers, no studies have been conducted regarding the relative demand elasticities of BSEs and BSAs. No party has provided us with convincing arguments regarding the relative elasticities of the BSEs and BSAs. But see Allnet Opposition at 5; Metromedia Opposition at 6-7.

³⁵ However, a single investment study method must be used consistently across a study area to reach closure for overall investment, and all study areas included in development of a specific rate should employ the same investment study method.

³⁶ Ad Hoc Opposition, Appendix 1, at 12.

installation practices vary, we should permit carriers to select the switch costing investment methodology that comports with their actual practice regarding the booking of installation costs.⁴² We agree with NYNEX and BellSouth that no instruction is necessary in this area.

D. SCIS Output Issues

1. Embedded or Prospective Costs

36. In order to identify the direct cost of a service, a carrier must first identify the inputs necessary to provide the service. To translate these inputs into costs, carriers must choose either the inputs that are reflected in its current mix of facilities, at the price it originally paid for those inputs, i.e., embedded costs, or the inputs it would purchase today at the price it would have to pay to purchase those inputs today, i.e., prospective or "forward-looking" costs.

37. BOCs develop BSE rates from a weighted average of switch-specific SCIS investment costs. These weighted averages can be based on the current, or "embedded," mix of switches used by the BOCs to provide BSEs, or on a future, or "prospective," mix of switches. In the ONA Investigation Order, the Bureau identified as an area of concern the appropriate mix of switching technologies on which to base BSE rates. Specifically, the Bureau noted that many BSEs are more expensive to provide from older switch technologies than from newer switches. The Bureau tentatively found that a prospective view might more accurately reflect the direct costs of providing BSEs in the future, and might also encourage cost-effective technological improvements by discouraging BOCs from using old and costly types of switches when more cost-effective types of switches are available.⁴³

38. All BOCs, including those who do not include analog switch costs in their BSE rates, maintain that it is appropriate to include analog switch costs in BSE rates. Several BOCs plan to continue to use analog switches to provide BSEs for the foreseeable future, and in some cases it is more economical to expand capacity in an analog switch to provide a BSE than to replace it with a digital switch.⁴⁴ Pacific Bell and BellSouth maintain that including analog switch costs in BSE rates would be a forward-looking approach for those carriers who intend to continue using analog switches.⁴⁵ US West believes it is appropriate to include analog switch costs in BSE rates because, at the time US West conducted some of its cost studies, the BSEs were available only from analog switches.⁴⁶ Several carriers assert that some BSE rates go up when analog switches are excluded from the technology mix,⁴⁷ and staff review and the independent auditor's analysis confirm this.

39. Many intervenors contend that the BOCs' arguments contending that analog switches

⁴² BellSouth Reply at 27; NYNEX Reply, App. at 9-10.

⁴³ ONA Investigation Order, 7 FCC Rcd at 1515, paras. 17-18.

⁴⁴ Ameritech Direct Case at 5-6; Bell Atlantic Direct Case at 5-6; NYNEX Direct Case, Appendix A at 4; Pacific Bell Direct Case at 5-6; Southwestern Bell Direct Case at 5-6.

⁴⁵ Pacific Bell Direct Case at 5-6; BellSouth Direct Case at 29-31. See also Southwestern Bell Direct Case at 5-6 (use of "embedded" technology mix is appropriate when carrier plans to continue to use that technology mix.)

⁴⁶ US West Direct Case at 5-6.

⁴⁷ Ameritech Direct Case at 6 and Att. C; Bell Atlantic Direct Case at 6-7; NYNEX Direct Case, Appendix A at 4-5; Pacific Bell Direct Case at 6 and Att. C; US West Bell Direct Case at 6.

should be included miss the point. Rather, the issue should be whether analog switches will be used to replace existing switches in the future.⁶⁴ Wiltel emphasizes that, although some individual BSE rates would go up if analog switches are included, total expected BSE revenue would decrease by 61 percent.⁶⁵ Alternatively, Ad Hoc believes it is reasonable to base ~~technology mix on the existing mix of switch facilities, since estimates of future technology mixes are open to BOC manipulation.~~⁶⁶ However, if a forward-looking technology mix is used, Ad Hoc believes it is very important to insure that the cost development and ratemaking factors utilized by the BOCs are consistent with their engineering plans over a reasonable period of time, such as three years, and that this projection is adequately documented.⁶⁷ GSA believes that the BOCs have shown that their use of analog switches in establishing technology mixes is not unreasonable.⁶⁸ Most BOCs and most intervenors agree that a prospective technology mix is preferable, although they disagree on the extent to which this should include analog switches.⁶⁹

40. The Part 69 ONA Order specifies that rates for BSEs must be cost supported under the new service standard for price cap filings.⁷⁰ 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.⁷¹ 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.⁷² In contrast, the embedded technology mix advocated by Ad Hoc would not provide the desired economic incentives for BOCs to provide BSEs.⁷³

⁶⁴ Wiltel Opposition at 9-11; Allnet Opposition at 6-7; Metromedia Opposition at 4-5.

⁶⁵ Wiltel Opposition at 11-13.

⁶⁶ Ad Hoc Opposition at 8.

⁶⁷ Ad Hoc Opposition, Appendix I, at 9-10. See also MCI Opposition at 13-21.

⁶⁸ GSA Opposition at 5.

⁶⁹ Ameritech Direct Case at 5-6; Bell Atlantic Direct Case at 5-6; NYNEX Direct Case, Appendix A at 4; Pacific Bell Direct Case at 5-6; Southwestern Bell Direct Case at 5-6; Pacific Bell Direct Case at 29-31; Wiltel Opposition at 9-11; Allnet Opposition at 6-7; Metromedia Opposition at 4-5; GSA Opposition at 5. See also Southwestern Bell Direct Case at 5-6 (use of "embedded" technology mix is appropriate when carrier plans to continue to use that technology mix.)

⁷⁰ Part 69 ONA Order, 6 FCC Red at 4529, para. 25.

⁷¹ See MCI Comm. Corp. v. AT&T Co., 706 F.2d 1081, 1116-17 (7th Cir. 1983); Areeda and Turner, Predatory Pricing and Related Practices Under Section 2 of the Sherman Act, 88 Harv. L. Rev. 716 (1975).

⁷² The Supplemental Andersen Report indicates the effect of altering the ratemaking process to rely on embedded technology mixes would be to increase aggregate BSE rate levels. For example, the Andersen data indicate that the average investment required to support the ANI BSE using prospective technology weightings is \$0.000334, and \$0.000612 using embedded technology weightings, an average increase of 83 percent in average investment required to support ANI.

⁷³ In the ONA Designation Order, 7 FCC Red at 2605, BOCs were directed to reconcile use of embedded technology mixes with the four goals of BSE pricing we announced in the Part 69 ONA Order, 6 FCC Red at 4531, para. 38. None of the parties' responses leads us to reconsider the conclusion we reached above, that a prospective technology mix is the most reasonable method by which to develop BSE rates. US West Bell Direct Case at 6; Ameritech Direct Case at 6; Metromedia

41. We therefore hold that the filed ONA rates, to the extent they are based on the carrier's technology mix and costs associated with embedded investment, are unjust and unreasonable. We further determine, under our prescriptive authority contained in Section 205 of the Communications Act, that ONA rates developed from technology mix and associated cost data which reflect a prospective view of the carrier's investment are, to the extent that rate levels are determined by these factors, just and reasonable.

42. We also conclude that a forward-looking technology mix may properly include analog investment whenever the carrier plans to use analog switches in the future. Five out of seven BOCs with analog switches in their technology mixes argue that it is appropriate to include these switches because they will continue to be in service in the future. In other words, these BOCs maintain that a prospective technology mix may reasonably include analog switches. The Commission finds these arguments to be persuasive. Our requirement to justify inclusion of analog switches should adequately protect against the manipulation of projections feared by Ad Hoc.

43. Ameritech and NYNEX did not base their BSE rates on a forward-looking technology mix, and therefore are hereby ordered to recalculate their BSE rates based on a forward-looking technology mix, i.e., on the basis of current and future switch purchasing decisions. In future ONA filings, BOCs must continue to use a prospective technology mix for the weighing of SCIS investment results, and to explain the basis for including any analog switching equipment in that mix.⁷ Unlike the other methodological instructions directed to BOCs in this Order, which recognize that some circumstances may require different treatment, this determination constitutes a formal prescription under Section 205 of the Communications Act, 47 U.S.C. § 205.

2. Excessive Estimates for Direct Costs and Overhead Loadings

44. Typically, in the ratemaking process, rates are set to recover the sum of direct costs and overheads. Direct costs, which are predominantly capital costs and other plant specific costs, are closely linked to direct investment and are, therefore, usually calculated using direct investment as a starting point. Overheads, in turn, are usually calculated using direct costs as a base. In acknowledging this typical ratemaking process, the Part 69 ONA Order required carriers to provide ratios for each BSE for (1) direct cost to direct investment; and (2) price to direct cost.⁸ In this section, we discuss carriers' estimates of direct costs and overheads.

45. Initial staff review of the tariff filings indicated that direct costs for BSEs were generally calculated from annual cost factors developed from internal company records. These cost factors were applied to the BSE-specific unit investment to calculate annual direct costs. Because most companies based their factors on internal records, the resulting factors could not be evaluated. As a result we cannot determine whether the direct costs are reasonable. Also, to the extent overhead loadings are usually based on direct costs, the reasonableness of the

Opposition at 5-6, citing Part 69 ONA Order, 6 FCC Red at 4531, para. 3E.

⁷ NYNEX asserts that BOCs should be permitted flexibility to adjust technology mix assumptions to adapt to market conditions. NYNEX Direct Case, Appendix A at 5. However, since at any given time a BOC has only one technology mix reflecting its existing network, it would be unrealistic to permit a BOC to adjust switch mixes for a particular BSE or market.

⁸ Part 69 ONA Order, 6 FCC Red 4524, 4531 at para. 44.

carrier's overheads is questionable.

46. With specific respect to overheads, the staff initially compared overhead ratios⁸⁰ among the carriers and identified BellSouth's and US West's overhead loadings factors as being ~~significantly higher than other carriers'. Accordingly, in the ONA Designation Order, the Bureau directed BellSouth and US West to justify their loadings factors.~~ BellSouth asserts that its overheads loading factor is based on the ratio of total local switching revenues to total local switching incremental costs.⁸¹ BellSouth explains that this loading factor is similar to the loading factor it uses for non-ONA new services. BellSouth insists that this is one of several possible reasonable overhead loading methodologies.⁸² BellSouth states that the ONA investigation should focus on whether each carrier's pricing methodology is reasonable, rather than whether it differs from the methodology of other BOCs.⁸³ According to BellSouth, with the application of the local switching loadings factor, rates for the new services are established in the same relationship to their incremental costs as are existing local switching services priced with respect to their incremental costs.⁸⁴ The local switching revenues data for BellSouth are publicly available and can be verified.⁸⁵ However, the local switching incremental costs data are not publicly available. To develop its factor, BellSouth claims direct costs of approximately \$125 million without explanation. Absent a clear, verifiable explanation of the method, including an explanation of direct costs, the method cannot be deemed reasonable.

47. Similarly, US West believes its overhead loadings only appear excessive, because it uses overhead loading methodologies different from those of the other BOCs, but notes that its BSE rates are not excessive relative to those of the other BOCs.⁸⁶ US West asserts its overhead loading factor is the ratio between its local switching revenue requirement and its local switching direct costs.⁸⁷ However, while US West provides total local switching costs from its 1990 ARMIS Report 43-01, it fails to provide a clear, verifiable explanation for its direct costs.

48. MCI contends that these administrative overhead loadings are evidence that BOCs are permitted too much flexibility to manipulate their rates based on marketing rather than cost considerations. MCI asserts these manipulations permit BOCs to price non-competitive BSEs

⁸⁰ Overhead ratios are the quotient of price divided by unit direct cost.

⁸¹ BellSouth Direct Case at 33-34.

⁸² As explained later in this section, while the initial designation of issues respecting overhead factors used by BellSouth and US West was based in part on their divergence from other carriers' factors, our determination that their factors are not justified on the present record relies on an independent, case-by-case review of their ratemaking methods, and the staff's development of a contingent, ARMIS-based reasonableness analysis as a benchmark for application when the carriers do not justify their methods.

⁸³ BellSouth Direct Case at 34.

⁸⁴ BellSouth claims it used 1990 recurring local switching basket revenues of approximately \$399 million which is not unreasonable since its 1991 TRP reflects local switching revenues of approximately \$400 million.

⁸⁵ US West Direct Case at 7-8.

⁸⁶ US West maintains that it developed its overhead loading factors on a Part 69 category basis from the 1990 ARMIS 43-01 Report. Specifically, US West divides its 1990 fully distributed cost (FDC) revenue requirement by the sum of the 1990 direct unit cost times 1990 demand for each rate element in that Part 69 category. *Id.* at 8-5 and Appendix D; US West Reply at 7-8. US West fails, however, to substantiate the method by which direct costs used to develop its overhead loading factors were calculated.

unreasonably high, and price BSEs that do not face competition unreasonably low.⁷⁷ MCI also maintains that the marginal investment study as described by BellSouth is flawed, because it fails to consider additional demand leading to premature switch exhaustion.⁷⁸ Metromedia believes that US West cannot justify an overhead loading factor greater than the overhead loading factors of other BOCs merely by stating it uses a different overhead loading methodology.⁷⁹ Ad Hoc asserts that it does not have sufficient information to determine whether these overhead loadings are excessive.⁸⁰ GSA maintains that, although the overhead loadings of BellSouth and US West appear excessive, the resulting rates do not appear excessive relative to other BOCs' rates, and therefore not unreasonable.⁸¹

49. While we authorized some carrier flexibility in methods used to determine both direct costs and overheads in the Part 69 ONA Order, we are concerned that some carriers have used cost allocation methods that have resulted in excessive direct costs and overheads, which in turn has led to excessive rates and contributed to dramatic rate variances between companies. On the present record, we have been unable to identify any reasonable explanation for direct costs claimed by a number of companies and for overhead loading factors selected by BellSouth and US West. The direct costs and overhead loadings claimed by these companies appear unreasonable and, absent further justification of their method, the companies specified in Attachment C must reduce their rates to reflect lower direct costs and overheads, as described below.

50. The absence of reasonable explanations by the carriers of their direct costs, and of BellSouth's and US West's overhead loadings, require that we conclude that the LEC ONA rates are not supported.⁸² For example, the direct cost factors were based on "internal studies" that were never filed or reviewed at the Commission, and which are not currently available. We will therefore require carriers to refile their ONA rates, providing justification for their rates now in effect, or adjusting ONA rates to a level that can be justified. If the LECs fail again on refiling to provide adequate justification for their rates, we believe that the use of the ARMIS database to calculate an upper limit for both direct costs and overheads would be reasonable, using the ARMIS data the company itself provides to the Commission.⁸³ Therefore, upon refiling of ONA rates, we will evaluate any justifications the LECs offer in

⁷⁷ MCI Opposition at 21-25.

⁷⁸ MCI Opposition at 6-8. As described in Section III.C.1., the carrier exercises its judgment when performing investment studies with respect to the probability that a switch will exhaust prematurely due to additional demand, and we have not constrained the carriers' flexibility in this respect.

⁷⁹ Metromedia Opposition at 8.

⁸⁰ Ad Hoc Opposition, Appendix I, at 10.

⁸¹ GSA Opposition at 5-6.

⁸² Our examination of rates included an analysis of the direct cases, as well as how the filed direct cost factors compared to recent cost data in the ARMIS database. We examined the relationships between (1) direct costs and direct investment (direct cost ratio) and (2) total cost and direct cost (overhead ratio). As specified in Attachment C, the ARMIS comparison revealed all BOCs other than New England exceeded ARMIS estimates of direct costs. Also, as specified in Attachment C, BellSouth and US West exceeded ARMIS estimates of overhead loadings. Thus, our review of existing data on file at the Commission did not provide any independent justification for the ONA rates as filed.

⁸³ The ARMIS data is a reasonable basis for alternative overhead calculations, and is the only verifiable alternative method available. Our use of ARMIS in the ONA context should not be construed as approving ARMIS as an ideal standard, or as applicable to all circumstances where overhead calculations are questioned, but its use appears reasonable in this instance.

support of direct cost ratios or overhead ratios.

3. Non-uniform Administrative Overhead Loadings

51. ~~In the Part 69 ONA Order, we required each BOC to load overhead costs onto each~~ of its BSE rates in a manner consistent with the overhead loading methodology used for its other BSEs, or to justify any inconsistencies.⁹⁸ The majority of BOCs claim any apparent nonuniformity in their overhead loading ratios is due to mathematical rounding.⁹⁹ Pacific Bell alleges that its overhead loading for the Network Reconfiguration BSE is different from the loadings for other BSEs because Network Reconfiguration is a special access service and the other BSEs are switched services.¹⁰⁰ MCI rejects Pacific's argument regarding special access, and asserts this is another example of improper manipulation of costs.¹⁰¹ Ad Hoc asserts that it does not have sufficient information to determine whether the nonuniform overhead loadings are reasonable.¹⁰² GSA asserts that the BOCs have given reasonable explanations for their nonuniform loadings.¹⁰³

52. We conclude that the nonuniform loadings at issue here, whose nonuniformity is due solely to mathematical rounding, are reasonable. Since the BSE rates in these cases are fractions of a cent per unit, it is often very difficult for carriers to load overhead costs on BSEs at exactly the same rate for all. Similarly, as the overhead loadings for special access services have always been different from those for switched access services, we find that PacTel has in this instance adequately justified its nonuniform loading for Network Reconfiguration.¹⁰⁴

4. Differences Between BSE Rates and Unit Costs

53. The Bureau's designation Order directed the BOCs to justify any differences between BSE rates and the total unit costs, including a reasonable rate of return, used to derive those BSEs. Some BOCs claim the differences between unit costs and rates for some BSEs are due to rounding.¹⁰⁵ Nevada Bell and Southwestern Bell maintain that they must set some BSE rates

⁹⁸ Part 69 ONA Order, 6 FCC Rod at 4531, para. 44.

⁹⁹ Ameritech Direct Case at 7-8; BellSouth Direct Case at 37-39; Southwestern Bell Direct Case at 6-7; US West Direct Case at 10-11.

¹⁰⁰ Pacific Bell Direct Case at 7-8; PacTel Reply at 6-7.

¹⁰¹ MCI Opposition at 25-26.

¹⁰² Ad Hoc Opposition, Appendix I, at 10.

¹⁰³ GSA Opposition at 6.

¹⁰⁴ Southwestern Bell and BellSouth assert that, in the future, carriers should be free to use nonuniform overhead loadings when market conditions would make it advantageous to do so. Southwestern Bell Direct Case at 6-7; BellSouth Reply at 5, 7, 9-10, 17-18. Because no BOCs advocate specific nonuniform loadings in order to "adapt to market forces," we need not reach BellSouth's and Southwestern Bell's argument at this time.

¹⁰⁵ Bell Atlantic Direct Case at 7-8; BellSouth Direct Case at 39-40; NYNEX Direct Case, Appendix A at 7-8; Pacific Bell Direct Case at 8.

above unit costs to establish nonpremium rates for those BSEs.¹⁰² For Multiline Hunt Group and Multiline Hunt Group - Uniform Call Distribution, Nevada Bell set its rates assuming that it would use other technologies in the future to provide those BSEs.¹⁰³ For Multiline Hunt Group - Preferred, Ameritech set the rate equal to a weighted average of other hunt group BSEs.¹⁰⁴ NYNEX set its interstate Three Way Calling BSE rate equal to its intrastate BSE rate to avoid "arbitrage" between jurisdictions.¹⁰⁵ NYNEX alleges that if interstate rates are reduced below intrastate rates, customers will choose the least costly alternative. This would result in an overall decrease in net revenue. NYNEX therefore asserts that the Part 69 ONA Reconsideration Order permits it to use the net revenue test to justify a rate otherwise unsupported by a cost showing.¹⁰⁶

54. According to AT&T, the only discrepancies permitted by the Part 69 ONA Order are rates set using a risk premium, and AT&T maintains that NYNEX has not justified a risk premium.¹⁰⁷ MCI and AT&T believe that NYNEX's explanation regarding migration from intrastate to interstate BSEs to be insufficient to justify the interstate BSE rate and assert that the Bureau has rejected similar arguments in the past.¹⁰⁸ Metromedia asserts that Nevada Bell simply set its ANI rate as high as possible consistent with revenue neutrality for ONA services as a whole.¹⁰⁹ GSA asserts that the BOCs have given reasonable explanations for the differences between unit costs and rates; namely, differences due to rounding.¹¹⁰

55. We find the slight discrepancies between unit costs and rates that result from mathematical rounding do not make the rates unreasonable. For the same reason as was discussed in Section III.D.3. above, it is often very difficult for carriers to set BSE rates exactly equal to unit costs when BSE rates are fractions of a cent per unit. We also find that to set prices of similar Multiline Hunt Group BSEs equal, as Ameritech did, is reasonable. However, we reject NYNEX's "arbitrage" argument that it must set its interstate rate at the intrastate level. In the ONA Investigation Order, the Bureau noted that claims of potential tariff shopping had been considered in the Part 69 ONA Order, were the subject of a petition for partial

¹⁰² Nevada Bell Direct Case at 3-4; PacTel Reply at 7; Southwestern Bell Direct Case at 7-8. Nonpremium rates are rates for access services of lesser quality than was available to AT&T prior to divestiture of the Bell System. The Commission's Rules require BOCs to establish nonpremium local switching rates by multiplying premium rates by 0.45. See Section 69.113 of the Commission's Rules, 47 C.F.R. § 69.113.

¹⁰³ *Id.*

¹⁰⁴ Ameritech Direct Case at 9 and Att. 3. For Call Detail Reporting (CDR), Ameritech asserts the difference between direct costs and rates is necessary to recover the costs of mailing reports to customers, and to recover a portion of non-recurring costs. Ameritech claims CDR would be prohibitively expensive if the non-recurring costs were recovered exclusively through a non-recurring charge. Ameritech Direct Case at 8-9. For reasons discussed below, we find that Ameritech's CDR is a detariffed billing and collection service and order that it be detariffed. Therefore we do not need to reach the issue of whether Ameritech's tariff would be just and reasonable if CDR were a tariffed service.

¹⁰⁵ NYNEX Direct Case, Appendix A at 6-7; NYNEX Reply at 5-6.

¹⁰⁶ NYNEX Reply at 5-6.

¹⁰⁷ AT&T Opposition at 7. See also MCI Opposition at 27, citing Part 69 ONA Reconsideration Order, 7 FCC Rod at 5235.

¹⁰⁸ MCI Opposition at 27; AT&T Opposition at 8-9, citing ONA Investigation Order, 7 FCC Rod at 1522.

¹⁰⁹ Metromedia Opposition at 8-9.

¹¹⁰ GSA Opposition at 6.

reconsideration, and so would not be considered in the context of this tariff proceeding.¹¹¹ NYNEX has provided no reason to reconsider this conclusion in this context. NYNEX's reliance on our discussion of the net revenue test in the ONA Reconsideration Order is misplaced. In that Order, we noted that a requirement of uniform loadings for new and existing services might lead to a reduced recovery of overhead costs, and so might discourage companies from offering new services.¹¹² This situation is distinguishable from the claims of jurisdictional arbitrage that NYNEX makes here. Accordingly, we direct NYNEX to establish interstate BSE rates equal to the total unit costs of providing those BSEs.

E. US West Unit Investment Studies

56. We now consider several unique issues raised by US West's reliance upon its own SCM software model, in conjunction with SCIS, to develop unit investment for BSEs. Of the 24 BSE rates in US West's filing, 15 were developed from the pre-1987 version of SCIS. The remaining nine BSE elements were developed from US West's SCM model.¹¹³ As discussed below, we find that US West has failed to meet its burden of showing that its BSE rates are just and reasonable.

57. The Part 69 ONA Order requires that "the same methodology must be used for all BSEs unbundled from local switching."¹¹⁴ The reasons for the requirement are fundamental. First, it is not reasonable to assume that multiple investment models, even if individually valid, would necessarily lead to a consistent allocation of costs for individual services. Our *in camera* review of the SCIS software reveals the complexity of these models, and the numerous assumptions made in their development. Thus, if a carrier used one method to develop the investments associated with a specific switch technology for half the BSEs provided by that switch, and a different method for the remaining BSEs, there is no reason to expect that the several investments developed under the two methods would sum to the total cost of the switch.¹¹⁵ Second, a single methodology minimizes obscurity and complexity in a process that inherently resists simplification. If prices of unbundled BSEs are to stand in some reasonable relation to one another, the complex interactions within a single investment model, which have already occasioned substantial procedural burdens beyond the usual tariff review process, should not be multiplied by the challenge of using two such models to disaggregate the costs of a single switch technology.

58. These are general considerations that may not apply invariably to specific methods. Therefore, we need to determine whether using these two software models satisfies the

¹¹¹ ONA Investigation Order, 7 FCC Red at 1522, para. 73.

¹¹² ONA Reconsideration Order, 7 FCC Red at 5236-37, paras. 8-11.

¹¹³ US West did not offer any justification for its reliance upon these two models in the cost support initially filed with an ONA tariff. US West also did not submit the pre-1987 SCIS version it used to develop the majority of its BSE rates in January 1992, as was required by the SCIS In Camera Order. In April 1992, US West explained which software had been used to develop each of its 24 BSEs, and offered to submit the SCIS software it had used. Letter from A. Lim to J. Cimko, Chief, Tariff Division (April 16, 1992).

¹¹⁴ Part 69 ONA Order, 6 FCC Red at 4531.

¹¹⁵ For the SCIS and SCM models, each model office is engineered according to the vendor's recommended engineering specifications. The total engineering costs are determined and compared to the model office data to validate the SCIS and SCM models. No comparable aggregate validation of a "half-and-half" model that uses SCIS to develop some BSE investments and SCM for others is possible.

requirement that BOCs develop all their BSE rates using a consistent methodology. As a threshold matter we note that US West has used an out-of-date SCIS model, incorporating comparably out-of-date vendor pricing data and operating software, for some of its investment studies. Its SCM model used for other BSE investment studies is similarly based on older vendor hardware and software.¹¹⁶ US West has not sought to justify these practices as based on its continuing use of, e.g., older switch software in its operations. Indeed, a US West letter filed January 15, 1993, suggests some BSEs may become unavailable as the carrier increases its reliance in the future on digital switches. Absent a justification for these practices, we conclude that the US West rates are unlawful because they are based on outdated software and associated vendor data.¹¹⁷ Therefore, US West has failed to meet its burden of proving that its rates, which are computed using these models, are reasonable.

59. We now examine the combined application of these two outdated software models. While we need not consider whether the combination of two such investment models invariably conflicts with the Part 69 ONA Order requirement that a consistent methodology be employed in cost-justifying BSEs, it is clear that SCIS and SCM are not sufficiently similar in structure and process to be considered a consistent methodology. This dissimilarity makes a quantitative comparison of the effects of these combined investment study processes with a single, consistent method extremely difficult. Nor is it possible to determine whether SCIS and SCM would produce the same set of outputs from a given set of inputs. These conclusions are endorsed by the independent auditor.¹¹⁸ Thus, aside from its reliance on outdated software, US West has sought to combine in its ratemaking process two models that, considered together, cannot provide a consistent investment methodology for all unbundled BSEs. US West has not met the requirements of the Part 69 ONA Order in this respect and on this ground as well, its rates developed using this method have not been established as reasonable.

60. In addition to the significant difficulties posed by its use of two outdated investment models, the US West submission presents several other ratemaking deficiencies, which we have discussed more generally elsewhere in this Order. For example, US West provides no reasonable explanation for using only central offices in its central region to develop model offices for Make Busy Key and Message Delivery. Nor has US West shown that its central region is representative of its entire service territory.¹¹⁹ Also, US West has used overstated overhead loadings, and should reduce those loadings to conform with loadings consistent with

¹¹⁶ Andersen Report, Appendix 18 at 5.

¹¹⁷ See Section III.B.2. of this Order, *supra*.

¹¹⁸ Supplemental Andersen Report, January 15, 1993, Section 4, at 5-6. Our *in camera* review, confirmed by the independent auditor's report, identifies numerous obstacles to using SCIS and SCM in an integrated manner to develop BSE investments. In a January 15, 1993, letter to the Common Carrier Bureau, Tariff Division, US West announced its intent to develop the BSE rates in its 1993 annual access filing using a later version of SCM (SCM II), and excluding any reliance on SCIS. While the letter characterizes SCM II as having no effect on unit investment studies, an attachment to the letter suggests that the contemplated unit investments for the 1993 annual access filing diverge dramatically from those contained in the direct case in this docket. As US West has indicated its intent to abandon efforts to use SCIS and SCM in tandem, we only note two of the problems: (i) the SCIS and SCM inputs are based on different assumptions, and the inputs for each model cannot be adapted for use in the other model without making further assumptions that will alter study results; and (ii) the SCM model is composed of two distinct software components, linked by external calculations, while SCIS is a self-contained model. In sum, the differences between the models are so significant that after consultation with the independent auditor, the Bureau determined that to attempt a rate sensitivity analysis including the US West rates would entail an effort disproportionate to any useful result.

¹¹⁹ See Section III.E.1. of this Order, *supra*.

its ARMIS data.¹²⁰

61. We therefore conclude that US West has failed to meet its burden of proving that its ONA rates filed November 1, 1991, are just and reasonable, because they are unsupported by ~~a consistent unit investment methodology, which is an integral element of the cost support~~ specified in the Part 69 ONA Order.

62. Given the substantial deficiencies in US West's rate development, we would normally prescribe replacement ONA rates rather than allow the unlawful rates to remain in effect on an interim basis. Several considerations, however, persuade us that this approach would not best serve the public interest in the present circumstances. First, and of primary importance, the initial demand for unbundled BSEs has been modest and because their rates were developed on a revenue neutral basis compared to feature group arrangements, few if any customers have been significantly burdened by these BSE rates. Because ONA is designed to be revenue neutral, excessive BSE rates are offset somewhat by lower BSA rates, although BSE rate adjustments may not be offset exactly by BSA rate adjustments given the uncertainties of ONA demand. In addition, under the terms of the Third Further Reconsideration of Part 69 ONA Order,¹²¹ BOCs will be permitted to continue to offer feature group arrangements. So long as the feature groups will likely remain available as an option for US West's local switching customers,¹²² there is little prospect that the US West subscribers most affected by unlawful BSE rates will be constrained to take service under those rates unless that alternative is preferable to the feature group configuration.¹²³ Moreover, given the deficiencies in the US West method and the corrective adjustments imposed on other carriers, we lack an adequate basis from which to prescribe replacement rates. The development of rates for individual BSE elements is a particularly complex undertaking when proprietary computer models must be utilized to perform investment studies, and in US West's case that process might well be further complicated if the operational and support difficulties encountered in reviewing the original SCM model persist in the replacement model.

63. These considerations, however, do not vitiate the requirement that US West promptly develop replacement ONA rates, based on a single investment study method and otherwise consistent with the methodological requirements of this Order. Implementing ONA on a basis consistent with our announced goals of enhancing competition and avoiding unreasonable pricing practices requires that US West expedite a curative tariff filing, failing which we will prescribe replacement rates.¹²⁴ US West should also submit as part of any replacement filing full documentation and software for the expanded SCM model, to facilitate initial in camera review by staff and any subsequent referral to an independent auditor.

¹²⁰ See Section III.D.2. of this Order, supra.

¹²¹ Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 8 FCC Rcd 3114 (1993) (Third Further Reconsideration of Part 69 ONA Order).

¹²² See US West Reply in Third Further Reconsideration, filed Oct. 18, 1991, at 3.

¹²³ To the extent that customers have paid US West's unlawful BSE rates and are constrained to continue doing so pending reformation of those rates, the Commission's formal complaint process provides recourse for parties seeking refunds.

¹²⁴ Should US West not file replacement rates within 60 days, or should those rates entail investigation, we will consider prescribing ~~interim~~ BSE rates based on an average of the other BOCs' revised rates, in the absence of any more rigorous basis for an alternative.

IV. OTHER ISSUES

A. Other Designated Issues

I. Southwestern Bell Packet Switching BSE Rates

64. Background. The Bureau designated as an issue in this investigation "Are the rates for Southwestern Bell's packet switching BSEs excessive?" The Bureau specifically directed Southwestern Bell to provide the following information regarding its packet switching BSE rates:

(a) The classification and amounts of investment underlying each of the nine BSEs tariffed in Transmittal No. 2146, and the methods used to determine investment.

(b) Identification of and full documentation for all direct costs and overheads applied to the investment identified above, and a description of the ratemaking methods used, and if the ratemaking methodology differs from the method used for other Southwestern Bell switched access BSEs, an explanation of why a different method was used.

(c) For ONA elements priced substantially above cost, and allegedly priced to avoid arbitrage between the jurisdictions, an explanation of why it believes avoiding arbitrage justifies such pricing and of the basis for its expectation that significant arbitrage would result absent such pricing adjustments.

65. Pleadings. In response to (a), Southwestern Bell asserts that it charges nonrecurring rates for seven of the nine BSEs offered in Transmittal 2146, based on one time labor expenses. Southwestern Bell further asserts that only the Customer Alerting and Menu Server BSEs have recurring rates.¹²⁵ For (b), Southwestern Bell asserts that packet services are excluded from price cap regulation, and claims this justifies pricing these services on the basis of "competitive necessity." Thus, Southwestern Bell set rates for Customer Alerting and Menu Server based on its perception of the competitive market price.¹²⁶ Southwestern Bell responds to (c) only by stating that it has always maintained a parity between its intrastate and interstate packet switching rates in the past, and it should be allowed to continue to do so in the future.¹²⁷

66. Discussion. In the Part 69 ONA Order, we required carriers who file BSE rates to provide cost support as is required by the Commission's price cap rules. Packet switching services are excluded from price cap regulation.¹²⁸ Thus, our price cap rules do not govern interstate packet switching service filings, and our packet switching cost support requirements do not change simply because these services are offered as BSEs. Therefore, Southwestern Bell is required to provide cost support for its packet switching BSE rates similar to the cost support required of other packet filings.

67. The Bureau designated these rates for investigation because Southwestern Bell did not

¹²⁵ Southwestern Bell Direct Case at 9-10.

¹²⁶ *Id.* at 11-15.

¹²⁷ *Id.* at 15-16.

¹²⁸ LEC Price Cap Order, 5 FCC Rod at 6810, para. 195.

provide any of the workpapers with Transmittal 2146 from which it derived its packet switching BSE cost figures, and thus did not comply with Section 61.38 of the Commission's Rules governing packet switching.¹²⁵ Southwestern Bell argued that its cost support was adequate because that cost support was similar to the cost support it submitted in conjunction with another packet switching filing in the past, Southwestern Bell's MicroLink II service.¹²⁶ The Bureau concluded that the prior packet switching filing cited by Southwestern Bell was not relevant because that cost support was filed under a waiver of our cost support rules.¹²⁷

68. The Bureau has misconstrued Southwestern Bell's packet switching waiver. The BSEs at issue in Transmittal 2146 are new BSEs to be available with Southwestern Bell's MicroLink II service.¹²⁸ In the Southwestern Bell Protocol Conversion Waiver Review Order, we found that the detailed cost support requirements of Section 61.38 were not necessary with respect to MicroLink II service, because market conditions at that time made it unlikely that Southwestern Bell would be able to engage in anti-competitive or otherwise improper pricing, and Section 61.38 cost support would be of little value in promoting our pro-competitive policies.¹²⁹ Nothing has occurred in the packet switching services market that would lead us to revise these conclusions today. The packet switching services market is still highly competitive. Furthermore, in the Part 69 ONA Order, we have adopted policies which permit competition to an even greater extent than was possible at the time of the Southwestern Bell Protocol Conversion Waiver Review Order.¹³⁰ For these reasons, and because none of the intervenors argued against Southwestern Bell's direct case on this issue, we determine that our waiver of Section 61.38 cost support rules for Southwestern Bell's MicroLink II service should be extended to the nine BSEs in Southwestern Bell's Transmittal 2146.¹³¹ We also conclude that the cost support filed by Southwestern Bell for Transmittal 2146, as supplemented by its direct case, is adequate in light of this waiver.

2. Southwestern Bell Access Service Request

69. Southwestern Bell plans to require IXCs to submit an access service request (ASR) to order BSA/BSE combinations. In the ONA Investigation Order, the Bureau was concerned that

¹²⁵ ONA Investigation Order, 7 FCC Red at 1518, para. 36.

¹²⁶ ONA Investigation Order, 7 FCC Red at 1518, para. 35. See Southwestern Bell Telephone Company, Petition for Waiver of Section 64.702 of the Commission's Rules and Regulations to Provide and Market Asynchronous Protocol Conversion on an Unseparated Basis, 5 FCC Red 161, 162, para. 5 (1990) (Southwestern Bell Protocol Conversion Waiver Review Order). See also Southwestern Bell Telephone Company, Petition for Waiver of Section 64.702 of the Commission's Rules and Regulations to Provide and Market Asynchronous Protocol Conversion on an Unseparated Basis, 2 FCC Red 20 (Com. Car. Bur. 1987) (Southwestern Bell Protocol Conversion Waiver Order), review denied Southwestern Bell Protocol Conversion Waiver Review Order, 5 FCC Red 161 (1990).

¹²⁷ ONA Investigation Order, 7 FCC Red at 1518 n.32.

¹²⁸ Southwestern Bell Telephone Company, Transmittal 2146 Description and Justification (D&J), at 1-1 (filed Nov. 1, 1991).

¹²⁹ Southwestern Bell Protocol Conversion Waiver Review Order, 5 FCC Red at 164, para. 19.

¹³⁰ Specifically, the rules adopted in Part 69 ONA Order were designed to permit BOCs to compete with independent ESPs on an integrated basis, and at the same time prevent BOCs from engaging in unreasonable discrimination. Part 69 ONA Order, 6 FCC Red at 4525, para. 2.

¹³¹ The Commission has authority to grant waivers on its own motion under Section 1.3 of its rules, 47 CFR § 1.3, if there is "good cause" to do so.

Southwestern Bell's ASR requirement might impose unnecessary additional costs on its customers at the time they order ONA services.¹³⁶

70. Southwestern Bell maintains that use of ASRs is not a new requirement imposed for ONA, but is the standardized vehicle developed by the Ordering and Billing Forum (OBF) that applies to all access services. Southwestern Bell participated in OBF planning for ONA and claims no participant raised objections to using established access ordering procedures for ONA services. Southwestern Bell also states it uses ASRs as tracking documents that enable it to comply with Commission requirements for annual reports on ordering and installation intervals for ONA service ordered by Southwestern Bell affiliates. According to Southwestern Bell, any alternative to ASRs would likely be a burdensome non-automated mechanism.¹³⁷ Finally, Southwestern Bell notes that its tariff establishes a procedure for converting customers from feature group services to ONA on July 1, 1993, when feature group services are scheduled to be eliminated. This procedure occurs automatically without requiring customers to submit ASRs.¹³⁸

71. According to Sprint, the OBF was intended to develop a uniform ASR document and procedures, not ONA implementation plans of individual companies. Sprint maintains that the tariff review process, not the OBF, is the proper forum for considering ONA conversion plans.¹³⁹ It is not clear to Sprint why only Southwestern Bell requires ASRs, or why converting from Feature Group service to the equivalent BSEs and BSA involves anything more than a record change.¹⁴⁰ Sprint recalls that it proposed allowing customers to submit letters to BOCs describing which circuits to convert. Sprint also maintains that Southwestern Bell said it might consider accepting ASRs on a per-LATA or a per-customer basis.¹⁴¹

72. Southwestern Bell has explained that its tariff permits converting from Feature Group services to the equivalent BSEs and BSA without requiring ASRs. Southwestern Bell has also established that its use of ASRs is a standard method for ordering services, which has been developed in an appropriate industry forum. Southwestern Bell has also shown that taking orders for ONA services without ASRs would be very burdensome, because it would preclude Southwestern Bell from using the computerized procedures it has developed for filling orders for other services. Alternatively, Sprint has not provided a good reason for the Commission to interfere with the OBF and extend regulation into an area in which we have not exercised our jurisdiction. Nor has Sprint explained why automatic conversion at the time Feature Group service offerings are eliminated is not a reasonable alternative. Accordingly, we conclude that Southwestern Bell's use of ASRs does not impose unnecessary additional costs on ONA customers, and that this is not an unreasonable practice.

3. Ameritech Call Detail Recording Tariff

¹³⁶ ONA Investigation Order, 7 FCC Red at 1521, para. 67.

¹³⁷ Id. at 16-20.

¹³⁸ Southwestern Bell Reply at 15. See Part 69 ONA Order, 6 FCC Red at 4526, para. 20 (Feature Group service offerings are to be eliminated when the BOCs incorporate their BSE rates into their price caps.)

¹³⁹ Sprint Opposition at 7-8.

¹⁴⁰ Id. at 9.

¹⁴¹ Id. at 10 n.12.

73. The Bureau directed Ameritech to explain why its Call Detail Recording (CDR) BSE was not a detariffed billing and collection service. Ameritech argues that, "[w]hile call detail reports may be used for billing and collection purposes, it is not identical to [Ameritech's] ~~billing and collection service.~~"¹⁴² ~~Ameritech asserts that CDR was developed on a Feature Group-specific basis to provide ESPs with specific kinds of call detail they requested in the ONA proceeding. Ameritech maintains that billing and collection service is different because Ameritech's billing and collection service records all the customer's traffic, is not Feature Group-specific, and contains additional call detail necessary for billing purposes.~~¹⁴³ Ameritech also notes that CDR was included in its ONA plan approved by the Commission.¹⁴⁴

74. We have defined billing and collection as "recording [interexchange carrier (IC)] message detail, aggregating the details to create individual messages (a completed call originated by an IC's end user), applying the IC's rates to such messages, processing these rated messages into customer invoice form, mailing bills, collecting payments, accepting customer deposits, handling customer inquiries and investigating billing evasion activities."¹⁴⁵ This definition does not exclude call detail recording done on a Feature Group-specific basis, or call detail recording tailored to the specific needs of ESPs. Ameritech admits that its CDR service "may be used for billing and collection purposes."¹⁴⁶ For these reasons, we conclude that Ameritech's description of CDR does not adequately distinguish this service from the services we detariffed in the Billing and Collection Order. Therefore, Ameritech is required to remove material regarding CDR service from its tariff.¹⁴⁷

B. Non-designated Issues

1. Adequacy of SCIS Redaction II

75. Background. The SCIS Disclosure Order ordered Bellcore to make available to intervenors in the investigation a version of SCIS with proprietary information redacted from the model and documentation, and also established procedures by which parties in the ONA

¹⁴² Ameritech Direct Case at 10.

¹⁴³ *Id.* Ameritech does not specify in its direct case what this additional information is, or what kind of billing it is collected for.

¹⁴⁴ Ameritech Direct Case at 10-11.

¹⁴⁵ Detariffing of Billing and Collection Services, CC Docket No. 85-88, 102 FCC 2d 1150, 1151 n.2 (1986) (Billing and Collection Order). The Commission did retain Title I jurisdiction over call detail recording services, but only until 1989 or conversion to equal access, whichever came later. See Billing and Collection Order, 102 FCC 2d at 1174, Ameritech ONA Tariff Order, 7 FCC Rod at 261-62, para. 34.

¹⁴⁶ Ameritech Direct Case at 10.

¹⁴⁷ We also note that Ameritech has requested a waiver to withdraw lineside CDR from its ONA plan. Amendments 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, 7 FCC Rod 811, 812, para. 4 (Com.Car.Bur. 1992). We have stated that we would "not look favorably upon the BOCs' withdrawal of services that were approved in their ONA plans." Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Phase I, 6 FCC Rod 7646, 7653, para. 10 (1991). Thus, Ameritech requested a waiver of the Part 69 ONA Order to withdraw lineside CDR from its tariffs, because it was still conducting tests for that service. The Bureau granted this waiver on a tentative basis pending the outcome of this investigation. The Commission hereby finds Ameritech's petition for waiver regarding this service moot.

tariff investigation may examine this redacted version of SCIS.¹⁴¹ The redacted model and procedures were expected to permit the maximum extent of public participation in the ONA tariff investigation consistent with adequate protection of proprietary materials.¹⁴⁹

76. Pleadings. Several intervenors assert that the information made available to them does not permit them to fully participate in the investigation.¹⁵⁰ Ad Hoc asserts that more than competitively sensitive information has been redacted.¹⁵¹ Some parties believe they should be permitted to see SCIS inputs to determine whether they are reasonable.¹⁵² Many intervenors complain that, because they were allowed to examine one version of the model for only one switch type, they were not permitted to see the effect of different SCIS versions or different technology mixes on SCIS outputs.¹⁵³ Sprint alleges that there may be "stand alone" modules of SCIS or SCM used to develop BSE rates that were not provided to intervenors.¹⁵⁴

77. Ad Hoc and Sprint argue that redactions should be unnecessary for intervenors signing nondisclosure agreements.¹⁵⁵ MCI contends that the restriction against signatories to the nondisclosure agreement communicating with each other is unreasonable.¹⁵⁶ Ad Hoc asserts that its examination of Redaction II was unnecessarily hampered by Bellcore's provision of a slow computer, and by software that seemed to "bomb" after five or six SCIS runs.¹⁵⁷ Allnet complains that it was not permitted to examine Redaction II without first giving up Redaction I.¹⁵⁸ Allnet criticizes the Commission for not "ruling" on the reasonableness of Redaction II

¹⁴⁹ Commission Requirements for Cost Support Material To Be Filed with Open Network Architecture Access Tariffs, 7 FCC Red 1526 (Com.Car.Bur. 1992) (SCIS Disclosure Order).

¹⁵⁰ SCIS Disclosure Order, 7 FCC Red at 1534, para. 42. Some intervenors alleged that, in Bellcore's initial response, both the software and the documentation explaining operation of the software were so deeply redacted as to be seriously deficient. ONA Rescheduling Order, 7 FCC Red at 5307, para. 3. See also MCI Opposition at 29-32. As a result, the Bureau informally encouraged vendors and Bellcore to work toward creating a second redacted model within the general parameters set by the SCIS Disclosure Order. ONA Rescheduling Order, 7 FCC Red at 5307, para. 4. A more complete description of this second redacted model, hereafter referred to as "Redaction II," and the associated nondisclosure agreements, are discussed in the SCIS Disclosure Reconsideration Order, which we adopt today. Commission Requirements for Cost Support Material To Be Filed with Open Network Architecture Access Tariffs, FCC 93-531 (adopted December 2, 1993) (SCIS Disclosure Reconsideration Order).

¹⁵¹ Sprint Opposition at 1-3; MCI Opposition at 3-4, 33-34; Metromedia Opposition at 4; Ad Hoc Opposition at 6.

¹⁵² Ad Hoc Opposition, Appendix I at 4. See also Sprint Opposition at 5 (details of capital cost calculation and definition of "getting started costs" have been redacted).

¹⁵³ Sprint Opposition at 3; MCI Opposition at 21-29; Allnet Opposition at 2-3; Witel Opposition at 20.

¹⁵⁴ Sprint Opposition at 3-5; AT&T Opposition at 9-12; Metromedia Opposition at 9-13; Ad Hoc Opposition, Appendix I at 12-13; Allnet Opposition at 6-7; Witel Opposition at 19.

¹⁵⁵ Sprint Opposition at 5.

¹⁵⁶ Ad Hoc Opposition at 4-6; Sprint Opposition at 7.

¹⁵⁷ MCI Opposition at 33-34.

¹⁵⁸ Ad Hoc Opposition, Appendix I, at 3-4.

¹⁵⁹ Allnet Opposition at 8-9.

prior to the filing of oppositions to direct cases.¹⁵⁵

78. Discussion. As a threshold matter, we first conclude that the Bureau properly determined that nondisclosure agreements alone would not be sufficient to protect the vendors' competitive interests or the Commission's interests in program effectiveness, and instead relied on the redaction procedures, coupled with the independent auditor's report and staff review. In our decision in the Allnet Order,¹⁵⁶ we recognized that such determinations involve the exercise of the agency's discretionary disclosure authority rather than FOIA requirements, and so deferred consideration of the discretionary procedures adopted in the Bureau's SCIS Disclosure Order to a subsequent order. We have now reviewed the Bureau's discretionary procedures as finally implemented, and in the companion SCIS Disclosure Reconsideration Order approve those procedures.¹⁵⁷ For present purposes we need only emphasize the record statements that vendors would consider withdrawing or limiting their participation in the SCIS model process if proprietary data were disclosed in full subject only to nondisclosure agreements. The serious implications of such a withdrawal for the effective implementation of ONA were described in the Allnet Order.¹⁵⁸ While cited there to support the program's effectiveness prong of Exemption 4 of the FOIA, the implications equally support the Bureau's determination as a matter of discretionary disclosure processes, that nondisclosure agreements would not sufficiently safeguard the ONA implementation process that disclosure of sensitive vendor data, subject only to such agreements, should be required.

79. Redaction II resulted from a compromise designed to allow adequate access to SCIS documentation and software by interested parties without revealing proprietary information used in the model.¹⁵⁹ All the SCIS/SCM redactions were necessary to prevent disclosure of information proprietary to the switch vendors or Bellcore.¹⁶⁰ For example, disclosure of certain elements of the SCIS model could reveal switch design information, or could reveal information regarding negotiated switch prices, which switch vendors consider proprietary. The SCIS

¹⁵⁵ Allnet Opposition at 8-9. The Bureau concluded in the ONA Rescheduling Order that the proper procedural vehicle for comments on the Redaction II process would be oppositions to the BOC's direct cases. ONA Rescheduling Order, 7 FCC Rcd at 5306, para. 10. Allnet has provided no reason to question this conclusion.

¹⁵⁶ Allnet Order, 7 FCC Rcd 6329 at n. 7.

¹⁵⁷ See n. 149, *supra*. MCI's contention respecting communication between signatories to nondisclosure agreements was also raised in its application for review of the SCIS Disclosure Order, and is considered in the Companion Order.
¹⁵⁸ Allnet Order, 7 FCC Rcd at 6330, para. 17. See also Allnet Communications Services, Inc. (FOIA Control No. 92-149), 8 FCC Rcd 5629 (1993).

¹⁵⁹ Unusual procedures were necessary in the ONA context to enable a degree of intervendor access to these proprietary models and proprietary vendor data, including the requirement of an independent review of the software model. While we cannot rule out the prospect that some subsequent rate development method will entail a similar procedure, carriers should not routinely support proposed rates through the use of proprietary models or data. This entails substantial additional burdens on carriers, intervenors and Commission staff in order to ensure intervenors maximum access consistent with protection of proprietary materials. Therefore, when carriers rely on such materials to support tariff filings, they bear a substantial, unusual burden of demonstrating the circumstances that preclude reliance on publicly available data.

¹⁶⁰ Southwestern Bell Reply, Exh. 1 at 1; BellSouth Reply at 21.

¹⁶¹ PacTel Reply at 3; Southwestern Bell Reply, Exh. 1 at 2; BellSouth Reply at 20; Ameritech Reply, Att. B at 1-2; Bell Atlantic Reply at 3. See also US West Reply at 8-9.

¹⁶² Southwestern Bell Reply, Exh. 1 at 2; NYNEX Reply, App. at 2; Ameritech Reply, Att. B at 1. See also US West Reply at 13-14.

algorithms must also be kept confidential to protect Bellcore's substantial investment in SCIS, and the income it earns from SCIS licensing fees.¹⁶⁷ Moreover, it is not clear that disclosure of algorithms would help intervenors to determine whether the model calculates switching costs properly.¹⁶⁸ Finally, some intervenors purchase switches from AT&T and Northern Telecom, and providing unredacted SCIS access to these intervenors would give them a particular competitive advantage in negotiations over switch prices. This information is so sensitive in this hotly competitive market that the dangers of disclosure outweigh benefits gained in their release.¹⁶⁹

80. We conclude that the redactions did not prevent interested parties from making a meaningful review of SCIS for purposes of evaluating the ONA tariffs. The intervenors were able to conduct sensitivity analyses, i.e., to examine how changes in SCIS inputs affect SCIS outputs, on most of the relevant SCIS inputs. These sensitivity analyses, in addition to the information in the Andersen Report, enabled the intervenors to raise specific questions regarding the reasonableness of the cost and rate development.¹⁷⁰ For example, intervenors brought to our attention the issue of the age of traffic data and SCIS versions.¹⁷¹ Intervenors also raised several specific issues regarding US West's SCM model.¹⁷² We conclude that the restrictions placed by Bellcore and US West on the examination of Redaction II permitted intervenors an adequate opportunity for review.¹⁷³

2. Adequacy of Andersen Report

81. Several intervenors criticize the Andersen Report as either inaccurate or insufficiently detailed. Wiltel criticizes Andersen for concluding that the costing principles inherent in SCIS are reasonable without describing the standards by which those costing principles were evaluated. Wiltel also contends that Andersen did not discuss alleged inconsistencies between the Average Study option in SCIS and the long run incremental cost analysis SCIS is supposed to produce. Wiltel further notes that Andersen never quantified variation in BSE rates due to differences in actual cost characteristics among BOCs.¹⁷⁴ Metromedia and Wiltel complain that Andersen performed sensitivity analyses on the BSEs of all BOCs on an aggregated basis, rather

¹⁶⁷ Southwestern Bell Reply, Exh. 1 at 3-4; Ameritech Reply, Att. B at 2; NYNEX Reply, App. at 3-4. See also US West Reply at 9.

¹⁶⁸ Bell Atlantic Reply at 3-4.

¹⁶⁹ NYNEX Reply, App. at 3.

¹⁷⁰ See NYNEX Reply, App. at 4; Ameritech Reply, Att. B at 2; Southwestern Bell Reply, Exh. 1 at 4. See also US West Reply at 9-10.

¹⁷¹ Supplemental Andersen Report, Exh. 5-6; Wiltel Opposition at 30-31.

¹⁷² Supplemental Andersen Report at Exh. 10; MCI Opposition at 32.

¹⁷³ We have established in prior Orders that the information in SCIS is exempt from mandatory public disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4). See, e.g., Allnet Communication Services, FOIA Control No. 92-266, Memorandum Opinion and Order, 7 FCC Rcd 6329 (1992) (Allnet FOIA Reconsideration Order); upheld, Allnet Communications Services, Inc. v. FCC, 800 F.Supp. 984 (D.D.C., 1992), appeal docketed, Allnet Communications Services, Inc. v. FCC, No. 92-5351 (D.C. Cir. September 25, 1992).

¹⁷⁴ Wiltel Opposition at 20-23. See also MCI Opposition, Appendix, at 3-4 (asserting some differences in actual cost characteristics described by Andersen are open to BOC manipulation).

than BOC by BOC.¹⁷⁵ Allnet notes that the Andersen Report found that SCIS/SCM models assume BOCs do not build "more or less capacity than prescribed by engineering rules."¹⁷⁶ Allnet asserts that, because of this assumption, SCIS has little to do with real world costs, and calls this a "fatal flaw" in the model.¹⁷⁷ Allnet alleges that Andersen is biased in favor of the BOCs.¹⁷⁸

82. Andersen concluded in its report that, although SCIS permits users fairly wide discretion in selecting variables, the SCIS model itself is fundamentally sound. This finding is consistent with the findings of the Commission's review of the SCIS models submitted to us in camera in December 1991.¹⁷⁹ Furthermore, the results of Andersen's analysis were consistent with our conclusions, based on independent staff review, regarding the appropriate treatment for BellSouth's model office development,¹⁸⁰ noncurrent SCIS models and traffic data,¹⁸¹ average or marginal SCIS studies,¹⁸² and embedded or prospective technology mixes.¹⁸³ The staff review process did not duplicate the Andersen effort, but examined proprietary materials from additional or different perspectives. The different emphases of each approach, however, add to the scope of review and enable us to determine, contrary to Allnet's unsupported assertion, that the Andersen study is free of bias.

83. The issues raised by Wiltel regarding sources of BSE rate variation or whether the SCIS Average Study option results in long run rates do not in any way cast doubt on Andersen's conclusion that SCIS is fundamentally sound. In the Supplemental Report submitted at the direction of the Commission staff, Andersen explains in more detail the procedures it used to evaluate SCIS costing principles.¹⁸⁴ We have examined Andersen's supplemental report in light of Commission staff's independent review of the models, and we find this explanation to be adequate. The SCIS model is internally valid; as described above, our concerns and revisions to BOC ratemaking practices involving SCIS-based rates are directed at specific exercises of the discretion afforded carriers by the model, not at the model's internal structure. It is not a criticism of the model proper to constrain the SCIS user's assumptions, or factual inputs, to assure their reasonableness, and we have done so in several respects as summarized in the following paragraph. Finally, Allnet's assertions that BOCs ignore engineering specifications while installing switches, are at best speculative, and do not merit further

¹⁷⁵ Metromedia Opposition at 13; Wiltel Opposition at 23-29.

¹⁷⁶ Allnet Opposition at 3.

¹⁷⁷ Id.

¹⁷⁸ Allnet Opposition at 2.

¹⁷⁹ SCIS In Camera Order, 7 FCC Red at 524, para. 22.

¹⁸⁰ Section III.B.1. of this Order, supra.

¹⁸¹ Section III.B.2 of this Order, supra.

¹⁸² Section III.C.1. of this Order, supra.

¹⁸³ Section III.D.1. of this Order, supra.

¹⁸⁴ Supplemental Andersen Report, Exh. 1-3.

consideration.¹⁴⁵

V. CONCLUSION

84. In this Order, we have: prescribed that BOCs should base their BSE rates on forward-looking technology mixes; limited presumptively reasonable overhead loadings to reasonable levels; directed that the cost of money factor used to compute unit investment be set equal to the authorized rate of return; directed BOCs to use recent SCIS models and traffic studies when performing investment studies; and prohibited non-uniform overhead loadings based on jurisdictional arbitrage. These decisions have significantly reduced the rate variation in BSE rates of different BOCs, but without unduly limiting the flexibility intended and permitted by our new service rules.¹⁴⁶ The remaining rate variation results from genuine cost differences attributable to differences in demand characteristics or service areas, and is not by itself indicative of unreasonable rates.¹⁴⁷

85. In this Order, we direct Ameritech, Bell Atlantic, NYNEX, Pacific Bell, Nevada Bell, and Southwestern Bell to recalculate their BSE rates using a cost of money factor no higher than 11.25 percent. We require Ameritech and NYNEX to recalculate their BSE rates using a prospective technology mix. We direct BellSouth to adjust its BSE rates to reflect an administrative overhead factor consistent with the ARMIS-based overhead factor described in Attachment C of this Order, or to provide substantial justification for a different approach. We require NYNEX to set its Three Way Calling BSE rate no higher than its total unit costs for that BSE. We direct Ameritech to withdraw its CDR BSE from its tariff. With respect to US West, we have concluded that its BSE rates filed on November 1, 1991, based in part on SCIS and in part on SCM, are inconsistent with the Part 69 ONA Order requiring BSE rates to be developed using a consistent methodology, and with our requirement that up-to-date software be used for investment studies. We also direct US West to recalculate these rates, based on representative model offices, and an administrative overhead factor consistent with the ARMIS-based overhead loading factor test described in Attachment C of this Order, or to provide substantial justification for a different approach.

VI. ORDERING CLAUSES

86. Accordingly, pursuant to Sections 4(i), 4(j), 201(b), 203(c), 204(a), 205, and 403 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201(b), 203(c), 204(a), 205, and 403, WE FIND that the Open Network Architecture rates of the Ameritech Operating Companies, Bell Atlantic Telephone Companies, BellSouth Telephone Companies, New York Telephone Company and New England Telephone and Telegraph Company, Pacific Bell, Nevada Bell, Southwestern Bell Telephone Company, and US West Communications, Inc., ARE UNLAWFUL for the period those rates were in effect.

87. Accordingly, IT IS ORDERED that Ameritech Operating Companies, Bell Atlantic Telephone Companies, BellSouth Telephone Companies, New York Telephone Company and New England Telephone and Telegraph Company, Pacific Bell, Nevada Bell, Southwestern

¹⁴⁵ Allnet Opposition at 2.

¹⁴⁶ For a discussion of the relevance of BSE rate variation, see Section III.A. of this Order, supra.

¹⁴⁷ Ameritech Reply at 2; PacTel Reply at 1-2; Southwestern Bell Reply at 2; NYNEX Reply at 6; Bell Atlantic Reply at 4.

Bell Telephone Company, and US West Communications, Inc., SHALL FILE tariff revisions reflecting our findings in this investigation, as specified in paragraph 85 of this Order, no later than 10 days from the release date of this Order. For this purpose, we waive Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58, 61.59, and assign Special Permission No. 93-1163.

88. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 205 of the Communications Act, 47 U.S.C. §§ 154(i), 205, WE PRESCRIBE that carriers implementing Open Network Architecture requirements shall base their ratemaking process on their estimate of the prospective (i.e., replacement) investment necessary to provide and maintain these services, rather than embedded or booked costs associated with existing plant.

89. IT IS FURTHER ORDERED that authority is delegated to the Chief, Common Carrier Bureau, as specified herein, to effect the decisions set forth above.

90. IT IS FURTHER ORDERED that the motion to accept late filed pleading, filed by the American Telephone and Telegraph Co., IS GRANTED.

91. IT IS FURTHER ORDERED that the motion to accept late filed pleading, filed by the Metromedia Communications Corporation, IS GRANTED.

92. IT IS FURTHER ORDERED that the motion to accept late filed pleading, filed by the Williams Telecommunications Group, Inc., IS GRANTED.

93. IT IS FURTHER ORDERED that a waiver of Section 61.38 of the Commission's Rules, 47 C.F.R. § 61.38, IS GRANTED to Southwestern Bell Telephone Company with respect to its packet switching BSE rates filed in Transmittal No. 2146.

94. IT IS FURTHER ORDERED that the petition for waiver of the Part 69 ONA Order filed by Ameritech Operating Companies, IS DISMISSED AS MOOT.

95. IT IS FURTHER ORDERED that the investigation and accounting order imposed by the Common Carrier Bureau in CC Docket No. 92-91 IS TERMINATED, with respect to the Ameritech Operating Companies, Bell Atlantic Telephone Companies, BellSouth Telephone Companies, New York Telephone Company and New England Telephone and Telegraph Company, Pacific Bell, Nevada Bell, and Southwestern Bell Telephone Company.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

Parties Filing Direct Cases
May 18, 1992

The Ameritech Operating Companies (Ameritech)
The Bell Atlantic Telephone Companies (Bell Atlantic)
The BellSouth Telephone Companies (BellSouth)
The NYNEX Telephone Companies (NYNEX)
Pacific Bell
Nevada Bell
Southwestern Bell Telephone Company (Southwestern Bell)
US West Communications, Inc. (US West)

Parties Filing Supplemental Direct Cases

Nevada Bell

Parties Filing Oppositions to Direct Cases
October 16, 1991

Ad Hoc Telecommunications Users Committee (Ad Hoc)
Allnet Communication Services, Inc. (Allnet)
American Telephone and Telegraph Company (AT&T)
General Services Administration (GSA)
MCI Telecommunications Corporation (MCI)
Metromedia Communications Corporation (Metromedia)
US Sprint Communications Company Limited Partnership (Sprint)
Williams Telecommunications Group, Inc. (WilTel)

000265

Parties Filing Replies
November 13, 1992

Ameritech

Bell Atlantic

BellSouth

NNEX

PacTel (Joint Reply filed by Pacific Bell and Nevada Bell)

Southwestern Bell

US West

000266

BST000290

ESTIMATED EFFECT OF COMMISSION ECONOMIC DETERMINATIONS ON BSE RATES AND VARIANCE

DESCRIPTION	MULTILINE HUNT GROUP UCD LINE HUNTING	AUTOMATIC NUMBER IDENTIFICATION	MULTILINE HUNT GROUP	MAKE BUSY KEY
1 ORIGINAL RATES * (LN 10, COL 1)	\$6.18	\$0.000547	\$1.24	\$54.69
2 REVISED RATES (LN 11, COL 1)	\$6.18	\$0.000334	\$1.26	\$44.75
3 DIFFERENCE (LN 2 - LN 1)	0	(\$0.000213)	\$0.02	(\$10.14)
4 PERCENT CHANGE (LN 3 / LN 1)	0	-39%	2%	-18%
5 STATISTICAL VARIANCE; ORIGINAL RATES**	65.97	2.6E-07	0.34	346.39
6 STATISTICAL VARIANCE; REVISED RATES	51.97	.662E-07	0.1	77.65
7 PERCENT CHANGE (LN 5 - LN 4) / LN 4	-21%	-76%	-71%	-76%
8 CONTRIBUTION TO TOTAL BSE REVENUES (\$)	\$61,267	\$32,103,742	\$250,963	\$287,553
9 CONTRIBUTION TO TOTAL BSE REVENUES (%)***	0.18%	94.87%	0.74%	0.85%

NOTES:

The revised rates include the following revisions where applicable:

1. Cost of money is reduced to 11.25 percent.
2. Voluntary BOC corrections.
3. Prospective switching technology.
4. Current version of SCIS.

* TRP rates have been adjusted to reflect the same rate structures, e.g., Ameritech for Multiline Hunt Group provides a rate for a group of lines, whereas the other BOCs offer Multiline Hunt Group on a per line basis. For this analysis, Ameritech's rate was adjusted to reflect a per line rate.

** Variance is a statistical measure computed by summing the squares of the difference between individual values and their average and dividing by the number of values.

*** The total anticipated revenue for all BSEs is \$47,196,178 however the percentages are based on \$33,839,056. The difference results from excluding as an outlier Ameritech's Called Directory Number Delivery VIA 900 NXX BSE with estimated revenues of \$13,357,122.

SOURCE: Independent Review of SCIS/SCM; Supplemental Sensitivity Analyses, January 14, 1993, Runs 1 and 4.

Attachment C

1. The Common Carrier Bureau has analyzed the data provided by the BOCs in their Open Network Architecture (ONA) filings and in their ~~direct cases in response to the ONA Investigation Order~~¹ in support of rates for basic service elements (BSEs). These data include investment, direct costs, and overheads associated with providing BSEs on a per unit basis. These data were analyzed as described in this Attachment to assess the reasonableness of the BOCs' BSE rates.

2. The instant order requires that BOCs make various adjustments to their SCIS models and the post-SCIS treatment of investment. The Bureau believes that when the BOCs refile cost support in accordance with these requirements, the unit investments will be reasonable. Moreover, in several instances, we have determined that the direct costs and overheads proposed by the BOCs are overstated.

3. The Bureau evaluated the relationship of direct cost to direct investment for the BSEs.² Although we authorized some carrier flexibility in costing methodology in the Part 69/ONA Order³, we are concerned that in many instances BOCs provide direct costs ratios that appear higher than their historical levels. We do not find adequate explanation in either the filings or direct cases and we have therefore sought some other method to identify reasonable costs.

4. The most reliable information before us on relationships between direct costs and direct investment is in the ARMIS database. As a basis of comparison, the Bureau computed ratios of direct cost to direct investment from data for the local switching element in ARMIS.⁴ While

¹ See 7 FCC Rcd 1512, Common Carrier Bureau, 1992 (ONA Investigation Order).

² Companies are required, as part of their new services showing, to provide us with these ratios.

³ See 6 FCC Rcd at 4531.

⁴ The Bureau computed the direct costs, total costs, and investment from ARMIS using data from ARMIS charts 43-01 and 43-04. Plant costs were developed using plant amounts reported in ARMIS chart 43-04,

the cost categories in ARMIS are not specifically identified as direct costs or overheads, analyses of the costs claimed by the companies reveals that some categories can be identified exclusively as either direct costs or as overheads, while some categories include both kinds of costs.

5. The direct costs for the local switching element in ARMIS include, at a minimum, the plant specific expenses, depreciation, return, and taxes associated with central office equipment, information/origination termination equipment, and cable and wire facilities. Overhead costs include the plant specific expenses, depreciation, return, and taxes associated with general support facilities, and the two categories of expense reported in ARMIS as Customer Operations-Marketing and Corporate Operations expenses. The only other categories of expenses in ARMIS are the Plant Non-specific and Customer Operations-Services categories. These categories in ARMIS contain both direct and overhead expenses. Because these two categories contain both direct and overhead costs, we computed an upper limit of the direct cost to direct investment ratio from this data, assuming all of the costs in these categories is direct cost. *

6. Although the ratio of direct costs to direct investment may vary among services in a category, this upper limit should be large enough to capture all but the most unusual cases. Therefore, we believe that this upper limit ratio appears to be the maximum reasonable ratio of direct cost to investment for any individual service included in a category, absent a justification from the company. *

7. Reasonable overhead loading factors were estimated in a similar

computed at the authorized rate of return of 11.25 percent. Taxes were computed at the tax rate implicit in the ARMIS report. Since the ratios derived from ARMIS data appear to be fairly consistent over time, the analysis used data for 1991, the latest year available.

* The results, using the ANI BSE as an example, are displayed on the following chart. Refined rates for all BOCs should not reflect direct costs and overheads ratios greater than the upper limits reflected on the chart.

manner. As explained above, there are two categories of costs that contain both direct and overhead costs. We computed an upper limit of overhead cost to total cost from this data, assuming all of the costs in these categories are overhead costs. The ratios of the total costs for ~~BSES~~ to the direct costs were computed to determine the overhead loadings factors used by the BOCs. We compared these ratios to the upper limit of the ratio of the switching costs to direct switching costs computed from ARMIS.

8. The new services showing allows companies to set their rates at direct costs plus reasonable overhead loadings. We believe the upper limit overhead loading factor computed from ARMIS is the maximum overhead loading which is reasonable, absent further explanation by the companies. Companies have offered no explanation for the need for greater than normal overhead loadings in the case of ONA. Therefore, as explained in text, the companies' overhead loadings will be limited to the benchmark computed from the ARMIS data absent a justification for any greater loadings.

AUTOMATIC NUMBER IDENTIFICATION (ANI) RATIOS FOR DIRECT COSTS & OVERHEADS (% THOUSANDS)										
CLASSIFICATION	AMERITECH	BELL ATLANTIC	BELL SOUTH	NEW YORK	NEW ENGLAND	PACIFIC	NEVADA	SOUTHWESTERN	US WEST	
1 ANI'S DIRECT COST / DIRECT INVESTMENT UPPER LIMIT (LN 33 / 35)	28%	27%	27%	28%	NA	27%	28%	23%	23%	
2 BOC DIRECT COSTS / DIRECT INVESTMENT RATIO FOR ANI (TRIP CHART RATIO)	27%	33%	30%	30%	NA	30%	31%	27%	28%	
3 ANI'S TOTAL COSTS / DIRECT COSTS RATIO UPPER LIMIT (LN 35 / 36)	NA	NA	28%	NA	NA	NA	NA	NA	200%	
4 BOC TOTAL COSTS / DIRECT COSTS RATIO FOR ANI (TRIP CHART LIMITS / LIMIT)	NA	NA	317%	NA	NA	NA	NA	NA	204%	

Attachment C
Chart

000270

REQUEST: All documents which support your contention on page 7 of your Motion to Dismiss filed in this docket that "[t]he filed rate doctrine also prohibits the FPTA's claims for a refund."

RESPONSE: BellSouth incorporates by reference its response to Interrogatory No. 12. Copies of the relevant tariffs are attached; the statute cited is available to FPTA as a matter of public record. BellSouth also directs FPTA to cases cited in BellSouth's motion to dismiss, cases which BellSouth has sought this Commission to officially recognize, and the decision provided in response to Request for Production No. 11.

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 13
Page 1 of 1

REQUEST: All documents which relate to Daonne D. Caldwell's statement, on page 3 of her Rebuttal Testimony filed in this docket, that "[t]he inputs and assumptions in BellSouth's cost study are consistent with those that would have been used to support a TSLRIC analysis of a service. Thus, the studies reflect the forward-looking, long-run incremental costs that BellSouth incurs in providing payphone lines to companies...and reflect the unique characteristics of the service under study."

RESPONSE: BellSouth incorporates by reference its response to Interrogatory No. 13.

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 14
Page 1 of 1

REQUEST: All documents which relate to Daonne D. Caldwell's statement, on page 3 of her Rebuttal Testimony filed in this docket, that BellSouth's use of ARMIS data "is consistent with the FCC's evaluation of the reasonableness of Open Network Architecture ("ONA") tariffs."

RESPONSE: BellSouth incorporates by reference its responses to Staff's Second Interrogatories and incorporates by reference its response to Interrogatory No. 14. BellSouth has also attached a copy of the *ONA Tariff Order*.

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 15
Page 1 of 1

REQUEST: All documents which relate to Daonne D. Caldwell's statement, on page 3 of her Rebuttal Testimony filed in this docket, that "direct costs must [not] be adjusted to account for the application of Federal charges, such as the SLC, in order to prevent a double-recovery of costs."

RESPONSE: BellSouth incorporates by reference its response to Interrogatory Item No. 15 and also directs FPTA to the *Wisconsin Order* which is available as a matter of public record.

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 16
Page 1 of 1

REQUEST: All documents which relate to Daonne D. Caldwell's statement, on page 4 of her Rebuttal Testimony filed in this docket, that "UNE costs and rates are [not] an appropriate benchmark for evaluating the level of payphone access service rates."

RESPONSE: BellSouth incorporates by reference its response to Interrogatory Item No. 16 and directs FPTA to the FCC's First Report and Order in CC Docket No. 96-98 and this Commission's orders in Docket No. 990649-TP.

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 17
Page 1 of 1

REQUEST: All documents which relate to BellSouth's determination of the flat-rate usage calculations utilized by BellSouth in the cost study filed in this docket with the Direct Testimony of Daonne D. Caldwell.

RESPONSE: BellSouth incorporates by reference its response to Interrogatory Item No. 17.

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 18
Page 1 of 1

REQUEST: All documents which relate to BellSouth's decision, as stated on Page 7 of the Direct Testimony of Daonne D. Caldwell filed in this docket, to utilize ARMIS data in calculating overhead loading for PTAS.

RESPONSE: BellSouth incorporates by reference its response to Interrogatory Item No. 18.

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 19
Page 1 of 1

REQUEST: All documents which evidence or suggest that the methodology by which BellSouth utilizes ARMIS data to calculate overhead loading, as described in Pages 6 through 7 of the Direct Testimony of Daonne D. Caldwell filed in this docket, is in compliance with the methodology outlined by the FCC in the *ONA Tariff Order*.

RESPONSE: BellSouth incorporates by reference its response to Interrogatory Item No. 19.

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 20
Page 1 of 1

REQUEST: All documents that evidence or suggest that BellSouth's utilization of ARMIS data in calculating overhead loading for PTAS, as described in Pages 6 through 7 of the Direct Testimony of Daonne D. Caldwell filed in this docket, is in compliance with the FCC's *Wisconsin Order* and *Second Wisconsin Order*.

RESPONSE: BellSouth incorporates by reference its response to Interrogatory Item No. 20.

000280

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 21
Page 1 of 1

REQUEST: All documents which relate to BellSouth's decision not to utilize the other methodologies for calculation overhead loadings described in the FCC's *Second Wisconsin Order*, to wit; the methodology set for in the *Physical Collocation Tariff Order* or UNE overhead loading factors.

RESPONSE: BellSouth incorporates by reference its response to Interrogatory Item No. 21.

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 22
Page 1 of 1

REQUEST: All documents which relate to Issue 1(a) of Appendix A of the Order Establishing Procedure (Order No. PSC-03-1066-PCO-TP) in this docket dated September 24, 2003.

RESPONSE: BellSouth directs FPTA to all of the prefiled testimony and discovery responses in this proceeding.

000282

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 23
Page 1 of 1

REQUEST: All documents which relate to Issue 1(b) of Appendix A of the Order Establishing Procedure (Order No. PSC-03-1066-PCO-TP) in this docket dated September 24, 2003.

RESPONSE: BellSouth directs FPTA to all of the prefiled testimony and discovery responses in this proceeding.

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 24.
Page 1 of 1

REQUEST: All documents which relate to Issue 1(c) of Appendix A of the Order Establishing Procedure (Order No. PSC-03-1066-PCO-TP) in this docket dated September 24, 2003.

RESPONSE: BellSouth directs FPTA to all of the prefiled testimony and discovery responses in this proceeding.

000284

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 25
Page 1 of 1

REQUEST: All documents which relate to Issue 2(a) of Appendix A of the Order Establishing Procedure (Order No. PSC-03-1066-PCO-TP) in this docket dated September 24, 2003.

RESPONSE: BellSouth directs FPTA to all of the prefiled testimony and discovery responses in this proceeding.

000285

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 26
Page 1 of 1

REQUEST: All documents which relate to Issue 2(b) of Appendix A of the Order Establishing Procedure (Order No. PSC-03-1066-PCO-TP) in this docket dated September 24, 2003.

RESPONSE: BellSouth directs FPTA to all of the prefiled testimony and discovery responses in this proceeding.

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 27
Page 1 of 1

REQUEST: All documents which relate to Issue 2(c) of Appendix A of the Order Establishing Procedure (Order No. PSC-03-1066-PCO-TP) in this docket dated September 24, 2003.

RESPONSE: BellSouth directs FPTA to all of the prefiled testimony and discovery responses in this proceeding.

000287

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 28
Page 1 of 1

REQUEST: All documents which relate to Issue 2(d) of Appendix A of the Order Establishing Procedure (Order No. PSC-03-1066-PCO-TP) in this docket dated September 24, 2003.

RESPONSE: BellSouth directs FPTA to all of the prefiled testimony and discovery responses in this proceeding.

000288

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 29
Page 1 of 1

REQUEST: All documents which BellSouth relies upon in support of any defense asserted in this matter.

RESPONSE: BellSouth directs FPTA to all of the prefiled testimony and discovery responses in this proceeding.

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030300-TP
FPTA's 1st Request for Production
April 13, 2004
Item No. 30
Page 1 of 1

REQUEST: All documents which support, evidence, relate to, or were referred to or identified in BellSouth's answers to Interrogatories served by FPTA in this docket.

RESPONSE: BellSouth incorporates by reference its prior discovery responses.

000290

Respectfully submitted this 3rd day of May 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy White
NANCY B. WHITE (BSS)

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535189

000291

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited review of)	
BellSouth Telecommunications, Inc.'s	)	Docket No. 030300-TP
Intrastate tariffs for pay telephone access)	
Services (PTAS) rate with respect to rates for	)	Filed: May 5, 2004
Payphone line access, usage, and features, by)	
<u>Florida Public Telecommunications Association</u>)	

BELLSOUTH TELECOMMUNICATIONS, INC.'S
RESPONSE TO STAFF'S SECOND REQUEST FOR PRODUCTION OF
DOCUMENTS (NOS. 9-10)

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.340 and 1.280, Florida Rules of Civil Procedure, hereby files the following Responses to the Florida Public Service Commission Staff's Second Request for Production of Documents (Nos. 9-10), dated April 15, 2004.

BellSouth incorporates herein by reference all of its general and specific objections filed on April 23, 2004. Any responses provided by BellSouth in response to this discovery will be provided subject to and without waiving any of BellSouth's previously filed objections.

SPECIFIC RESPONSES

000292

000293

BellSouth Telecommunications, Inc.
FL Dkt No. 030300-TP
Staff's Second Request for Production
April 15, 2004
Item No. 9
Page 1 of 1

REQUEST: For purposes of the following request, please refer to Caldwell Exhibit DCC-1 Proprietary, Bates stamped page 2. Please provide a copy of the FCC's ONA Tariff Order that forms the basis for BellSouth's overhead cost development.

RESPONSE: BellSouth directs staff to its response to FPTA's 1st Request for Production of Documents No. 14, which included the ONA Tariff Order.

000294

BellSouth Telecommunications, Inc.
FL Dkt No. 030300-TP
Staff's Second Request for Production
April 15, 2004
Item No. 10
Page 1 of 1

REQUEST: For purposes of the following request, please refer to Caldwell Exhibit DCC-1 Proprietary, Bates stamped page 91. Referring to the column labeled "2001 Regulated Average Annual Cost," please provide all work papers and supporting documents that yield the values shown herein, including but not limited to the expense amount for each of the 6XXX accounts, and the capital cost factors and the investment amounts used to derive the investment costs for accounts 2111 through 2441.

RESPONSE: Responsive documents are attached.

000235

BellSouth Telecommunications, Inc.
FL Dkt No. 030300-TP
Staff's Second Request for Production
April 15, 2004
Item No. 10
ATTACHMENT

000296

BSTSTAFF2ND000001

The values shown under the "2001 Regulated Average Annual Cost" column of the "Overhead Factor Development" worksheet(Attachment 1) for the expense accounts (6112-6728) were developed from an Excel summary data extract of BellSouth's 2001 ARMIS 43-03 Table I filing (Attachment 2). The amounts shown are 2001 Total Regulated expense amounts found under column (i) of ARMIS 43-03 Table I summarized for the nine study areas that make up the BellSouth region. Since the ARMIS 43-03 Table I expense amounts are expressed in thousands, the amounts extracted were multiplied by 1000 before being populated into the "2001 Regulated Average Annual Cost" column of the "Overhead Factor Development" worksheet.

The values shown under the "2001 Regulated Average Annual Cost" column of the "Overhead Factor Development" worksheet for the asset accounts (2111-2441) were also developed from the same Excel summary data extract of BellSouth's 2001 ARMIS 43-03 Table I filing. The amounts shown are 2001 Total Regulated investment amounts found under column (i) of ARMIS 43-03 Table I summarized for the nine study areas that make up the BellSouth region. Since the ARMIS 43-03 Table I investment amounts are expressed in thousands, the amounts extracted were first multiplied by 1000 and then multiplied by the appropriate Capital Cost Factor found on the "Capital Cost Factors" worksheet before being populated into the "2001 Regulated Average Annual Cost" column of the "Overhead Factor Development" worksheet. This procedure, for the asset accounts, effectively converts average investment amounts into annual capital costs (includes components for depreciation, cost of money, cost of income taxes, and cost of ad valorem taxes).

The values shown under the "Test Period Average Investment" column of the "Capital Cost Factors" worksheet were extracted from the "INVDVF01" worksheet (Attachment 3) associated with BellSouth's 12/10/01 UNE filing in Georgia. These amounts represent BellSouth's projected average investment levels for the 2002-2004 study period associated with BellSouth's 12/10/01 UNE filing.

The values shown under the "Test Period Average Annual Cost" column of the "Capital Cost Factors" worksheet were extracted from the "Account Report" worksheet of the "S&CFB0633" workbook (Attachment 4) associated with BellSouth's 12/10/01 UNE filing in Georgia. These amounts represent BellSouth's projected average annual capital cost levels for the 2002-2004 study period associated with BellSouth's 12/10/01 UNE filing.

The values shown under the "Capital Costs Factor#" column of the "Capital Cost Factors" worksheet were developed by dividing the "Test Period Average Annual Cost" amount by the related "Test Period Average Investment" amount for each asset account.

The 2002-2004 study period average investment and average annual cost amounts associated with BellSouth's 12/10/01 UNE filing in Georgia represented BellSouth's most current view of projected costs at the time that development work started on the Overhead Factor to be used in PTAS filings across the BellSouth region (circa May 2002).

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**Final Account Analysis Associated with the
(6.33%) Common Cost Factor Calculation**

Account	Description	Test Period Average Investment	Test Period Average Annual Cost	Capital Costs Factor#
2111	Land	\$ 329,557,000	\$ 56,696,337	0.172038
2112	Motor Vehicles	\$ 783,763,000	\$ 137,678,319	0.175663
2114	Tools & Other Work Equipment	\$ 380,835,000	\$ 85,979,965	0.225767
2121	Buildings	\$ 6,366,444,000	\$ 1,012,228,222	0.158994
2122	Furniture	\$ 20,320,000	\$ 2,987,638	0.147029
2123	Office Equipment	\$ 156,506,000	\$ 30,904,620	0.197466
2124	General Purpose Computer	\$ 668,174,000	\$ 201,179,203	0.301088
2211	Analog Elect Sw	\$ 715,583,000	\$ 419,214,960	0.585837
2212	Digital Elect Sw/377C	\$ 10,322,574,000	\$ 1,857,208,084	0.179917
2220	Operator Systems	\$ 104,105,000	\$ 21,573,361	0.207227
2231	Radio Systems	\$ 44,069,000	\$ 9,807,530	0.222549
2232	Circuit Equipment	\$ 15,802,353,000	\$ 3,221,264,700	0.203847
2341	Large PBX	\$ 63,712,000	\$ 17,050,152	0.267613
2362	Other Terminal Equipment	\$ 472,637,000	\$ 126,483,753	0.267613
2411	Poles/1C	\$ 2,483,275,000	\$ 387,641,294	0.156101
2421	Aer Ca/12C, 22C	\$ 8,015,988,000	\$ 1,419,183,654	0.177044
2422	Und Ca/5C	\$ 4,660,577,000	\$ 816,218,329	0.175132
2423	Bur Ca/45C	\$ 17,120,524,000	\$ 2,947,097,229	0.172138
2424	Sub Ca/6C	\$ 34,242,000	\$ 5,890,538	0.172027
2426	Intrabldg Ca/52C	\$ 301,462,000	\$ 48,960,763	0.162411
2441	Conduit/4C	\$ 3,977,029,000	\$ 555,078,821	0.139571
Total Investment Related Costs		\$ 72,823,729,000	\$ 13,380,327,472	0.183736

Capital Costs Factor includes Depreciation, Return, Income Taxes, & Ad Valorem Taxes

43-03: Table I. Regulated Data

Year	Row #	Row Title	REGULATED AMOUNTS (\$000)									
			FL	GA	NC	SC	AL	KY	LA	MS	TN	BST
2001	6112	Motor Vehicles	1,506	1,177	461	303	366	270	433	374	557	5,447
2001	6113	Aircraft	885	640	405	203	226	185	498	245	393	3,680
2001	6114	Tools and other work equipment	277	848	710	113	67	123	137	80	24	2,379
2001	6121	Land And Building	60,327	42,483	30,294	15,599	24,894	11,707	22,589	17,348	31,779	257,018
2001	6122	Furniture And Artwork	3,616	12,606	742	402	981	394	1,176	266	651	20,834
2001	6123	Office Equipment	4,031	4,053	1,544	893	1,698	657	1,352	839	1,453	16,520
2001	6124	Gen Purpose Computers	28,544	46,861	18,652	10,835	17,471	8,691	14,538	10,027	18,809	174,428
2001	6211	Analog Electronic	12,766	11,566	822	345	3,300	590	4,036	551	1,720	35,696
2001	6212	Digital Electronic	53,885	42,063	29,666	17,827	17,604	13,018	24,964	14,034	25,329	238,390
2001	6220	Operator Systems	3,184	2,660	1,779	979	669	615	1,187	1,160	1,981	14,214
2001	6231	Radio Systems	20	32	100	16	26	19	36	-	39	288
2001	6232	Circuit Equipment	54,367	43,528	23,593	13,846	15,102	8,167	16,304	12,523	21,282	208,712
2001	6341	Large PBX	3,584	2,298	1,449	1,196	2,051	731	1,455	962	1,294	15,020
2001	6362	Other Terminal Equipment	25,196	18,573	7,991	3,323	4,992	2,814	4,950	2,361	7,894	78,094
2001	6411	Poles	10,646	17,673	9,581	3,240	11,508	3,053	3,777	11,572	9,861	80,911
2001	6421	Aerial Cable	49,485	50,819	20,467	8,856	28,779	21,323	24,912	26,253	41,329	272,223
2001	6422	Underground Cable	22,359	10,366	4,773	3,084	3,497	1,916	5,503	2,550	6,146	60,194
2001	6423	Buried Cable	173,500	99,343	61,921	37,846	36,720	17,406	64,964	33,141	43,194	568,035
2001	6424	Submarine Cable	31	1	-	1	8	-	3	-	-	44
2001	6426	Intrabuilding Network Cable	809	250	56	19	64	42	73	28	148	1,489
2001	6441	Conduit Systems	2,940	1,777	504	431	582	48	596	208	406	7,492
2001	6512	Provisioning	1,354	(480)	1,413	209	1,328	481	1,378	446	653	6,782
2001	6531	Power	19,117	13,873	7,001	3,795	4,987	2,352	6,028	3,746	7,425	68,324
2001	6532	Network Administration	11,350	10,497	4,465	3,265	3,346	2,026	4,121	2,288	6,721	48,079
2001	6533	Testing	58,880	45,945	26,863	16,084	20,710	12,992	22,193	15,215	25,648	244,530
2001	6534	Plant Operations Administration	91,860	82,566	30,836	16,819	21,655	12,515	25,142	16,659	31,104	329,156
2001	6535	Engineering	40,268	26,992	10,553	9,200	12,858	8,728	13,482	7,558	14,079	143,718
2001	6611	Product Management	37,661	43,737	16,354	8,959	13,837	6,529	11,542	6,921	16,236	161,776
2001	6612	Sales	102,700	100,714	44,624	26,324	34,700	16,613	32,463	17,735	44,424	420,297
2001	6613	Product Advertising	4,637	3,026	1,657	792	983	575	1,182	662	1,247	14,761
2001	6621	Call Completion	12,898	7,687	3,957	3,272	3,211	1,654	3,252	2,411	4,270	42,612
2001	6622	Number Services	29,804	18,479	7,912	5,278	5,444	3,043	9,741	4,780	12,939	97,420
2001	6623	Customer Services	300,324	238,889	97,660	56,789	101,897	44,181	108,893	50,406	115,886	1,114,925
2001	6711	Executive	12,204	10,238	5,217	3,124	4,041	2,724	4,578	2,788	5,073	49,987
2001	6712	Planning	26,515	18,365	9,306	5,459	7,043	4,434	7,928	4,931	9,478	93,459
2001	6721	Accounting & Finance	19,113	14,947	7,625	4,372	5,824	3,687	6,458	4,125	8,260	74,411
2001	6722	External Relations	23,383	18,304	10,231	7,212	8,199	5,385	9,388	5,696	10,117	97,915
2001	6723	Human Resource	20,570	20,799	9,725	5,532	8,272	4,574	8,051	4,825	9,957	92,305
2001	6724	Information Management	93,594	91,041	46,111	26,370	35,373	21,711	38,328	24,010	47,304	423,842
2001	6725	Legal	12,536	7,800	3,635	2,651	3,082	2,183	4,434	2,192	4,260	42,773
2001	6726	Procurement	4,222	3,167	1,616	912	1,554	768	1,354	850	1,642	16,085
2001	6727	Research & Development	3,246	2,910	1,215	898	934	577	1,050	638	1,256	12,524
2001	6728	Other General & Administrative	120,985	33,578	13,945	32,789	(48,991)	24,025	50,181	3,907	40,826	271,245

43-03: Table I. Regulated Data

Year	Row #	Row Title	REGULATED AMOUNTS (\$000)									
			FL	GA	NC	SC	AL	KY	LA	MS	TN	BST
2001	2111	Land	47,396	74,040	22,059	10,045	12,584	11,709	15,895	5,085	13,265	212,078
2001	2112	Motor Vehicles	157,640	134,111	61,250	35,088	56,615	37,192	64,715	44,205	75,373	666,189
2001	2114	Tools and other work equipment	84,188	82,792	50,913	32,480	40,301	19,519	31,566	22,798	37,277	401,834
2001	2121	Buildings	721,473	874,141	298,835	151,336	383,021	185,663	278,741	163,233	276,176	3,332,619
2001	2122	Furniture	1,181	3,245	633	253	1,245	231	338	117	608	7,851
2001	2123	Office Equipment	32,972	41,507	13,909	6,370	26,257	5,910	12,432	7,368	14,409	161,134
2001	2124	Gen Purpose Computers	183,892	322,399	222,412	41,820	336,590	34,976	49,804	130,398	102,221	1,424,512
2001	2211	Analog Electronic Switching	214,906	213,022	-	-	76,640	2,298	145,036	15	31,408	683,325
2001	2212	Digital Electronic Switching	2,096,813	1,571,396	1,072,700	630,060	838,372	496,518	831,556	546,221	1,056,730	9,140,366
2001	2220	Operator Systems	31,774	22,248	17,835	2,854	6,397	4,549	8,251	14,469	14,153	122,530
2001	2231	Radio Systems	1,475	2,971	5,305	1,212	16,502	6,480	10,248	60	1,800	46,053
2001	2232	Circuit Equipment	3,753,910	3,108,769	1,584,237	898,948	1,125,695	726,430	1,199,823	813,995	1,648,352	14,840,159
2001	2341	Large PBX	23,482	12,868	3,717	2,947	8,219	9,198	7,835	8,580	8,290	85,116
2001	2362	Other Terminal	88,459	58,269	22,907	20,221	15,592	10,509	19,494	9,387	21,482	266,320
2001	2310	Information O/T	111,941	71,137	26,624	23,168	23,811	19,707	27,329	17,947	29,772	351,436
2001	2411	Poles	156,875	143,756	78,635	31,409	145,074	121,402	101,415	94,475	154,172	1,027,213
2001	2421	Aerial Cable	924,274	1,196,099	539,988	188,400	575,475	483,509	552,890	503,743	800,338	5,764,718
2001	2422	Underground Cable	1,052,823	611,973	307,111	196,727	253,081	161,640	363,747	105,454	305,843	3,358,390
2001	2423	Buried Cable	3,103,158	2,122,985	1,513,535	1,171,185	960,421	490,480	1,196,695	911,351	1,030,555	12,500,365
2001	2424	Submarine Cable	8,885	345	541	633	1,429	162	7,092	1,240	1,202	21,529
2001	2426	Intrabuilding Network	48,893	44,195	17,847	12,028	11,897	6,727	25,597	7,780	15,032	189,976
2001	2441	Conduit Systems	772,648	472,384	206,717	136,492	146,441	121,320	277,160	66,322	213,829	2,413,293

BELLSOUTH TELECOMMUNICATIONS, INC.

INVESTMENT DEVELOPMENT FACTOR CALCULATION

ACCT #	Account Description/FRC	2000 INVESTMENT AMOUNT	2002-2004 PROJECTED INVESTMENT	2002-2004 INVESTMENT DEVELOPMENT FACTOR
1220	Material & Supplies	192,046,985	192,046,985	1.000000
2002	Prop Held For Future Use	-	-	0.000000
2003	Tel Plant Under Construction	-	-	0.000000
2005	Tel Plant Adjustment	-	-	0.000000
2111	Land	165,240,070	329,557,000	1.994413
2112	Motor Vehicles	532,394,443	783,763,000	1.472147
2113	Aircraft	-	-	0.000000
2114	Special Purpose vehicles	411,852,706	380,835,000	0.924687
2115	Garage Work Equipment	-	-	0.000000
2116	Other Work Equipment	-	-	0.000000
2121	Buildings	2,898,049,742	6,366,444,000	2.196803
2122	Furniture	18,735,816	20,320,000	1.084554
2123	Office Equipment - Co Comm	106,254,425	114,214,000	1.074911
2123	Office Equipment	39,040,479	42,292,000	1.083286
2124	General Purpose Computer	1,603,464,522	668,174,000	0.416706
2211	Analog Elect Sw	923,758,967	715,583,000	0.774643
2212	Digital Elect Sw/377C	8,281,032,956	10,322,574,000	1.246532
2215	Electromechanical Sw	-	-	0.000000
2220	Operator Systems	127,711,402	104,105,000	0.815158
2231	Radio Systems	52,859,981	44,069,000	0.833693
2232	Circuit Equipment	453,166,171	434,344,000	0.958465
2232	Circuit Equipment/157C	92,702,191	62,799,000	0.677427
2232	Circuit Equipment/257C	6,810,073,448	8,540,050,000	1.254032
2232	Circuit Equipment/357C	5,142,217,001	6,765,160,000	1.315612
2232	Circuit Equipment	-	-	0.000000
2311	Station Apparatus	-	-	0.000000
2341	Large PBX	66,419,267	63,712,000	0.959240
2362	Other Terminal Equipment	371,303,855	472,637,000	1.272912
2411	Poles/1C	987,404,458	2,483,275,000	2.514952
2421	Aer Ca/12C, 22C	5,001,378,086	7,578,077,000	1.515198
2421	Aer Ca/812C, 822C	460,354,525	437,911,000	0.951247
2422	Und Ca/5C	2,441,876,844	3,766,339,000	1.542395
2422	Und Ca/85C	783,543,829	894,238,000	1.141274
2423	Bur Ca/45C	10,560,057,253	15,558,895,000	1.473372
2423	Bur Ca/845C	1,042,505,558	1,561,629,000	1.497957
2424	Sub Ca/6C	17,412,420	27,195,000	1.561816
2424	Sub Ca/86C	4,524,254	7,047,000	1.557605
2426	Intrabldg Ca/52C	185,691,731	298,383,000	1.606873
2426	Intrabldg Ca/852C	2,889,772	3,079,000	1.065482
2441	Conduit/4C	2,328,359,914	3,977,029,000	1.708082
2681	Capital Leases	26,896,647	26,896,647	1.000000
2682	Leasehold Improvements	125,329,956	125,329,956	1.000000
2690	Intangibles	277,948,137	912,128,000	3.281648
TOTAL		52,534,497,810	74,080,130,588	

**Final Account Analysis Associated with the
(6.33%) Common Cost Factor Calculation**

Created On: 10/12/2001 1:03:06 AM

Account	Description	Test Period Average Annual Cost	Wholesale Network Cost	Wholesale Shared Cost	Wholesale Common Cost	Total Retail Cost	Total Other Wholesale
6112	Motor vehicle	\$ 4,789,731	\$ -	\$ 4,618,994	\$ 27,930	\$ 101,948	\$ 40,858
6113	Aircraft	\$ 4,897,869	\$ -	\$ -	\$ 4,338,197	\$ 559,672	\$ -
6114	Special Purpose Vehicle	\$ 2,335,702	\$ -	\$ 2,335,702	\$ -	\$ -	\$ -
6121	Land & Building	\$ 282,045,916	\$ -	\$ 36,973,779	\$ 40,650,422	\$ 39,416,745	\$ 165,004,971
6122	Furniture & Artworks	\$ 9,278,935	\$ -	\$ 2,532,075	\$ 1,622,456	\$ 3,400,280	\$ 1,724,125
6123	Office Equipment	\$ 18,771,188	\$ -	\$ 10,023,955	\$ 2,185,209	\$ 4,359,076	\$ 2,202,948
6124	General Purpose Computer	\$ 205,045,753	\$ -	\$ 55,078,642	\$ 36,047,927	\$ 75,589,735	\$ 38,329,449
6211	Analog Electronic	\$ 38,346,200	\$ 30,852,421	\$ -	\$ -	\$ -	\$ 7,493,779
6212	Digital Electronic	\$ 248,281,733	\$ 177,934,348	\$ -	\$ -	\$ -	\$ 70,347,385
6220	Operator Systems	\$ 14,621,503	\$ 14,621,503	\$ -	\$ -	\$ -	\$ -
6231	Radio Systems	\$ 775,638	\$ 775,638	\$ -	\$ -	\$ -	\$ -
6232	Circuit Equipment	\$ 206,537,762	\$ 178,135,805	\$ -	\$ -	\$ -	\$ 28,401,957
6341	Large PBX	\$ 16,012,563	\$ 16,012,563	\$ -	\$ -	\$ -	\$ -
6362	Other Terminal Equip	\$ 94,139,617	\$ 94,139,617	\$ -	\$ -	\$ -	\$ -
6411	Poles	\$ 99,679,167	\$ 99,679,167	\$ -	\$ -	\$ -	\$ -
6421	Aerial Cable	\$ 296,933,099	\$ 223,087,040	\$ -	\$ -	\$ -	\$ 73,846,059
6422	Undergrnd Cable	\$ 61,852,661	\$ 61,032,838	\$ -	\$ -	\$ -	\$ 819,823
6423	Buried Cable	\$ 610,859,865	\$ 415,310,934	\$ -	\$ -	\$ -	\$ 195,548,931
6424	Submarine Cable	\$ 64,251	\$ 64,251	\$ -	\$ -	\$ -	\$ -
6426	Intrabldg Network Cable	\$ 2,117,611	\$ 454,020	\$ -	\$ -	\$ -	\$ 1,663,591
6441	Conduit Systems	\$ 7,337,129	\$ 7,337,129	\$ -	\$ -	\$ -	\$ -
6512	Provisioning	\$ 6,151,102	\$ -	\$ 720,389	\$ 3,544,306	\$ 1,385,085	\$ 501,322
6531	Power	\$ 60,084,572	\$ -	\$ -	\$ -	\$ -	\$ 60,084,572
6532	Network Administration	\$ 51,258,865	\$ -	\$ 16,062,544	\$ -	\$ -	\$ 35,196,321
6533	Testing	\$ 214,912,529	\$ -	\$ -	\$ -	\$ -	\$ 214,912,529
6534	Plant Operations Adm	\$ 289,019,092	\$ -	\$ 289,019,092	\$ -	\$ -	\$ -
6535	Engineering	\$ 191,943,905	\$ -	\$ 191,943,905	\$ -	\$ -	\$ -
6611	Product Management	\$ 154,579,969	\$ -	\$ -	\$ 13,345,432	\$ 141,234,537	\$ -
6612	Sales	\$ 399,621,547	\$ -	\$ -	\$ 44,193,670	\$ 355,427,877	\$ -
6613	Product Advertising	\$ 56,086,381	\$ -	\$ -	\$ 400,219	\$ 55,686,162	\$ -
6621	Call Completion Services	\$ 42,528,440	\$ -	\$ -	\$ -	\$ -	\$ 42,528,440
6622	Number Services	\$ 98,356,988	\$ -	\$ -	\$ -	\$ -	\$ 98,356,988
6623	Customer Services	\$ 1,185,419,902	\$ -	\$ -	\$ 130,633,561	\$ 1,004,335,902	\$ 50,450,439
6711	Executive	\$ 57,911,721	\$ -	\$ 5,708,763	\$ 43,065,491	\$ 8,835,903	\$ 301,566
6712	Planning	\$ 82,735,408	\$ -	\$ -	\$ 73,281,361	\$ 9,454,047	\$ -

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BSSTAFF2ND000007

**Final Account Analysis Associated with the
(6.33%) Common Cost Factor Calculation**
Created On: 10/12/2001 1:03:06 AM

Account	Description	Test Period Average Annual Cost	Wholesale Network Cost	Wholesale Shared Cost	Wholesale Common Cost	Total Retail Cost	Total Other Wholesale
6721	Accounting & Finance	\$ 62,724,568	\$ -	\$ 7,050,240	\$ 49,312,509	\$ 6,361,820	\$ -
6722	External Relations	\$ 95,055,168	\$ -	\$ -	\$ 61,819,134	\$ 33,236,035	\$ -
6723	Human Resources	\$ 97,806,432	\$ -	\$ 62,047,251	\$ 9,260,544	\$ 17,822,478	\$ 8,876,159
6724	Information Management	\$ 391,764,800	\$ -	\$ 105,234,431	\$ 68,873,941	\$ 144,423,364	\$ 73,233,064
6725	Legal	\$ 34,463,101	\$ -	\$ -	\$ 30,525,056	\$ 3,938,045	\$ -
6726	Procurement	\$ 14,543,820	\$ -	\$ -	\$ 12,881,920	\$ 1,661,900	\$ -
6727	Research & Development	\$ 14,681,939	\$ -	\$ -	\$ 4,561,114	\$ 588,431	\$ 9,532,394
6728	Other General & Admin	\$ 175,138,385	\$ -	\$ -	\$ 155,125,592	\$ 20,012,793	\$ -
6790	Prov for Uncoll Notes Receivable	\$ 7,665	\$ -	\$ -	\$ -	\$ -	\$ 7,665
Total Expense Related Costs		\$ 6,001,520,192	\$ 1,319,437,274	\$ 789,349,762	\$ 785,695,991	\$ 1,927,631,835	\$ 1,179,405,335


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BSTSTAFF2ND000009

Respectfully submitted this 5th day of May 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.


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535447

000005

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited review of)
BellSouth Telecommunications, Inc.'s)
Intrastate tariffs for pay telephone access)
Services (PTAS) rate with respect to rates for)
Payphone line access, usage, and features, by)
Florida Public Telecommunications Association)

Docket No. 030300-TP

Filed: April 23, 2004

BELLSOUTH TELECOMMUNICATIONS, INC.'S
RESPONSE TO STAFF'S SECOND SET OF INTERROGATORIES (NOS. 23-28)

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.340 and 1.280, Florida Rules of Civil Procedure, hereby files the following Responses to the Florida Public Service Commission Staff Second Set of Interrogatories (Nos. 23-28), dated April 7, 2004.

BellSouth incorporates herein by reference all of its general and specific objections filed on April 19, 2004. Any responses provided by BellSouth in response to this discovery will be provided subject to and without waiving any of BellSouth's previously filed objections.

SPECIFIC RESPONSES

000006

REQUEST: For purposes of the following request, please refer to the direct testimony of BellSouth witness Caldwell, page 5, lines 6-8.

- a. Please explain what is meant by the factors used in the PTAS study are "consistent with" those in the cost studies submitted in Docket No. 030869-TL.
- b. Are the factors used in the PTAS cost study "consistent with" those used in the cost studies filed in Docket No. 990649-TP?
- c. If the response to (b) is negative, please explain how the factors in the two proceedings differ.
- d. Are the factors used in the PTAS cost study identical to those approved by this Commission for use in the cost studies in Docket No. 990649-TP (or 990649A-TP, if applicable)?
- e. If the response to (d) is negative, please identify which factors differ, the value previously approved by this Commission and the value used in the PTAS study, and the reason for the difference(s).

- RESPONSE:
- a. The factors, with the exception of the overhead cost factor, are identical to those filed in Docket No. 030869-TL. The overhead cost factor was not applicable in Docket No. 030869-TL. Furthermore, in Docket No. 030869-TL, BellSouth calculated the Customer Operations Cost Factor which was intended to reflect costs associated with the direct costs required to support retail services, e.g. billing, collections, and product management. These costs are part of the overhead factor BellSouth developed in this proceeding.
 - b. Yes. The underlying methodology is consistent; however, as explained below in the response to Item No. 23(c), the vintage of the data used to determine the factors differs.

RESPONSE: (Continued)

- c. The factors utilized in UNE Docket No. 990649-TP were developed utilizing a 1998 base year and a 2000-2002 study period. Since the PTAS cost study filing was made at a time that was later than the last year of the UNE study period, it was felt that the PTAS filing should utilize the most current view of factors available.
- d. No, they reflect updated information. Additionally, the Network Computer Support Fact (NCSF) was not applicable since these costs were captured as part of the shared and common cost development in Docket No. 990649-TP. Furthermore, the overhead methodology was defined by the FCC in its ONA proceeding.
- e. See the response to Item No. 23c.

RESPONSE PROVIDED BY:

Bernard Shell
Charles V. Lee

REQUEST: For purposes of the following request, please refer to the direct testimony of BellSouth witness Caldwell, page 7, lines 15-20. Please briefly describe each of the options for developing overhead factors in the *Wisconsin Order*, and explain why BellSouth opted for the particular approach it chose, as opposed to one of the other options.

RESPONSE: The Wisconsin Order outlined three basic methodologies that could be used to determine the overhead loading factors associated with payphone services: (1) the UNE overhead factor methodology, (2) the methodology outlined in the FCC's Physical Collocation Tariff Order, and (3) the FCC's ONA Tariff Order methodology.

BellSouth rejected the UNE approach because the FCC's First Report and order recognized: "common costs [associated with unbundled elements] should be smaller than the common costs associated with the long-run incremental cost of a service." (First Report and Order, ¶ 695). More importantly, the UNE shared and common costs do not reflect any costs associated with retail services. The FCC has stated that independent public payphone providers are not "telecommunications carriers" entitled to wholesale rates, rather they are provided service at retail rates. (First Report and Order, ¶ 876). Thus, the UNE overhead factor would understate the extent of the costs associated with payphone service.

The methodology described for Physical Collocation Tariff Order is based upon comparing costs of competing services. (Physical Collocation Tariff Order, 12 FCC Rcd 18730, ¶¶ 308-309). This approach was not appropriate for payphone services since BellSouth does not offer any service that "competes" with PTAS.

Because neither the UNE approach nor the methodology described in the Physical Collocation Tariff Order were appropriate as outlined above, BellSouth utilized the ONA methodology as the only viable alternative.

RESPONSE PROVIDED BY: Bernard Shell

REQUEST: For purposes of the following request, please refer to Caldwell Exhibit DCC-1 Proprietary, bates stamped page 19, column G. Please explain for what kinds of expenses this factor is intended to recover, and which to investment categories it does (and does not apply).

RESPONSE: The NCSF is designed to recover general-purpose computer costs supporting the loop, port, switch, trunk, and all related combinations of such elements. The NCSF loading will be applied to all Account 22xx Central Office and Account 24xx Cable & Wire investment in TSLRIC cost studies. In developing this factor, Account 2124 General Purpose Computer investment, Account 2690 Software Right-to-Use - Computer costs, Account 6124 General Purpose Computer expense, and Account 6724 Information Management expense associated with the operational support of the network (loop, port, switch, trunk, and combinations thereof) were identified and projected for the period under study. These network-related costs were converted to an annual cost basis and divided by the projected average network investment associated with Accounts 22xx and 24xx to produce the NCSF. The BellSouth Cost Calculator will apply the NCSF to the network investments associated with the loop, port, switch, and trunk as required. In the context of the referenced Exhibit, the NCSF would be applied to network-related FRCs 12C, 1C, 22C, 257C, 377C, 45C, 4C, 52C, 5C, 812C, 822C, 845C, & 85C, but would not be applied to Land & Building or Software-related FRCs 10C, 20C, 560C, 660C, or 860C.

RESPONSE PROVIDED BY:

Charles V. Lee
Bernard Shell

REQUEST: For purposes of the following request, please refer to Caldwell Exhibit DCC-1 Proprietary, bates stamped page 91.

- a. Please explain the use and purpose for the entries in the column labeled "Shared & Common Primary Attribute."
- b. For each of the entries in the column labeled "FCC ONA Methodology Assignment," please identify specifically where in the ONA Tariff Order it is indicated to classify this item in the manner indicated.
- c. Referring to the column labeled "2001 Regulated Average Annual Cost," please explain in what sense these values represent "average costs."

RESPONSE:

- a. The entries under the column labeled "Shared & Common Primary Attribute" were for information purposes only and do not affect the development of the Overhead Cost factor. The entries were intended to provide a comparison of how the referenced expense or asset account would generally be treated in a UNE cost study based on TELRIC principles.
- b. The FCC released its order in CC Docket No. 92-91 on December 15, 1993. Attachment C of this order detailed the process used by the Common Carrier Bureau to evaluate the direct and overhead costs. Attachment C states: "The direct costs for the local switching element in ARMIS include, at a minimum, the plant specific expenses, depreciation, return, and taxes associated with central office equipment, information/origination termination equipment, and cable and wire facilities. Overhead costs include the plant specific expense associated with general support facilities, and the two categories of expense reported in ARMIS as Customer Operations - Marketing and Corporate Operations expenses. The only other categories of expenses in ARMIS are the Plant Non-specific and Customer Operations-services categories. These categories in ARMIS contain both direct and overhead expenses." See Attachment No. 1 for BellSouth's application of the FCC's ONA methodology.

RESPONSE: (Continued)

- c. The term "average" has relevance only with the asset-related accounts. As such the values across from asset-related accounts represent the annual capital costs associated with an average of Beginning-Of-Year 2001 and End-Of-Year 2001 investment amounts (i.e., annual capital cost factors multiplied by average 2001 investment amounts). The values across from expense-related accounts represent expenditures for calendar year 2001.

RESPONSE PROVIDED BY:

Bernard Shell
Charles V. Lee

FCC ONA Method For Identifying Overhead Costs

Direct Costs

Plant Specific Expenses associated with 22xx, 23xx, & 24xx (62xx, 63xx, & 64xx)
Depreciation associated with 22xx, 23xx, & 24xx
Return associated with 22xx, 23xx, & 24xx
Taxes associated with 22xx, 23xx, & 24xx

Overhead Costs

Plant Specific Expenses associated with 21xx (61xx)
Depreciation associated with 21xx
Return associated with 21xx
Taxes associated with 21xx
Customer Operations-Marketing Expenses 661x
Corporate Operations Expenses 67xx

Expenses That Contain Elements Of Both Direct & Overhead Costs
(treated as 100% direct for purposes of establishing lower limit of overhead factor)
(treated as 100% overhead for purposes of establishing upper limit of overhead factor)

Plant Non-Specific Expenses 65xx
Customer Operations-Services 662x

REQUEST: For purposes of the following request, please refer to Caldwell Exhibit DCC-1 Proprietary, bates stamped page 93.

- a. Please identify the vintage and sources of the data shown on this page.
- b. Please identify for what purpose these factors are used.

RESPONSE:

- a. The data on this page was developed from what, at the time, was BellSouth's most current view of regional Shared & Common cost factors. The data was developed during the summer of 2001 from a base period of year 2000 and a study period of 2002-2004. This view of BellSouth's Shared & Common cost factors was filed in Georgia Docket No. 14631-U, October 1, 2001. It is important to recognize that the development of the overhead cost factor was originally intended for potential use in all BellSouth states; and therefore, all of the underlying calculations were based on regional totals and factors.
- b. The capital cost factors shown in the last column were multiplied by their corresponding average 2001 investment amounts in order to develop 2001 capital costs associated with each asset account.

RESPONSE PROVIDED BY: Charles V. Lee

REQUEST: For purposes of the following request, please refer to the direct testimony of BellSouth witness Blake, page 9, lines 1-2. Please explain why and when the decision was made to file a revised payphone tariff.

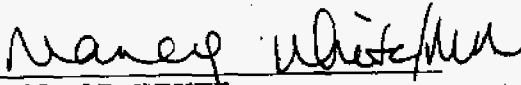
RESPONSE: Subject to, and without waiving BellSouth's previously filed objections, BellSouth states as follows. The FCC expressly recognized that "[a]lthough the administrative record for this matter shows disparate applications of the new services test in state proceedings, we believe that this Order will assist states in *applying* the new services test to BOCs' intrastate payphone line rates . . ." Wisconsin Order, ¶ 2 (emphasis supplied). The FCC commended states for "diligently apply[ing]" the new services test. Wisconsin Order, ¶ 44. Thereafter, the FCC explained "[a]t whatever point in time a state reviews a BOC's payphone line rates in compliance with the new service test, it must apply an offset for the SLC that is then in effect." Wisconsin Order, ¶ 61 (emphasis supplied). The foregoing language in the *Wisconsin Order* demonstrates unequivocally that the FCC intended its Order to be prospective only and that its clarifications were to be effectuated by states only in connection with a review of a BOC's rates, meaning that BellSouth had no affirmative obligation to reduce its rates by the amount of the SLC. Accordingly, BellSouth could have awaited the outcome of this proceeding and made offsets, if any, consistent with this Commission's ultimate order.

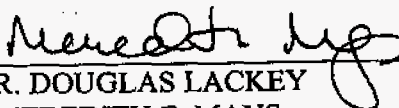
Notwithstanding the foregoing, BellSouth elected to revise its payphone tariff at the conclusion of unsuccessful settlement negotiations between the parties. BellSouth elected to revise its tariff consistent with its intentions as expressed during the parties' negotiations.

RESPONSE PROVIDED BY: Kathy Blake
Meredith Mays

Respectfully submitted this 23rd day of April 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.


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534795

CONFIDENTIAL

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET

NO. 030300-TP

EXHIBIT NO.

2

COMPANY/ BST-

WITNESS:

Confidential Stip.

DATE: 05/12/04

EXHIBIT NO. _____

DOCKET NO.: 030300-TP

WITNESS: BST- CONF-STIP

PARTY: BELL SOUTH

DESCRIPTION:

1. BellSouth's Response to the Florida Public Telecommunications Association's First Set of Interrogatories (No. 9) and First Request for Production of Documents (Nos. 2 and 9), Document Nos. 05116-04 and 05266-04.

PROFFERING PARTY: STAFF

I.D. # BST-CONF-STIP

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET
NO. 030300-TP EXHIBIT NO. 2
COMPANY/AST-
WITNESS: Conf-Stip
DATE 05-12-04

EXHIBIT NO. _____

DOCKET NO.: 030300-TP

WITNESS: FPTA- STIP-1

PARTY: FPTA

DESCRIPTION:

1. Florida Public Telecommunications Association Inc.'s Responses to Staff's First Set of Interrogatories (Nos. 1-25) and First Request for Production of Documents (Nos. 1-9), p.1
2. Florida Public Telecommunications Association Inc.'s Supplemental Responses to Staff's First Set of Interrogatories (Nos. 1-25) and First Request for Production of Documents (Nos. 1-9), p.45
3. Florida Public Telecommunications Association Inc.'s Responses to BellSouth Telecommunications Inc.'s First Set of Interrogatories (Nos. 1-36) and First Request for Production of Documents (Nos. 1-2), p.204
4. Florida Public Telecommunications Association Inc.'s Responses to BellSouth Telecommunications Inc.'s Second Set of Interrogatories (Nos. 37-45) and Second Request for Production of Documents (Nos. 9-10), p.289
5. Florida Public Telecommunications Association Inc.'s Responses to Staff's Second Set of Interrogatories (Nos. 26-40) and Second Request for Production of Documents (Nos. 10-16), p.303

PROFFERING PARTY: STAFF

I.D. #FPTA STIP-1

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET
NO. 030300-TP EXHIBIT NO. 3
COMPANY/ FPTA-
WITNESS: STIP-1
DATE 05/12/04

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Florida Public)
Telecommunications Association)
for Expedited Review of BellSouth)
Telecommunications, Inc.'s Tariffs)
with respect Rates for Payphone)
Line Access, Usage, and Features.)

Docket No.: DN 030300-TD

April 5, 2004

FLORIDA PUBLIC TELECOMMUNICATIONS ASSOCIATION, INC.
RESPONSES TO STAFF'S FIRST SET OF INTERROGATORIES (NOS 1-25)
AND
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (NOS 1-9)

Florida Public Telecommunications Association, Inc. ("FPTA"), pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.340 and 1.280, Florida Rules of Civil Procedure, hereby files the following Responses to the Florida Public Service Commission Staff First Set of Interrogatories (Nos. 1-25) and First Request for Production of Documents (nos. 1-9), dated March 5, 2004.

FPTA incorporates herein by reference all of its general and specific objections filed on March 5, 2004. Any responses provided by FPTA in response to this discovery are provided subject to and without waiving any of FPTA's previously filed objections.

000001

- Request:
- (a) If the Commission were to order the refund that FPTA has proposed, what is the total amount that would be refunded?
 - (b) How was that amount determined?
 - (c) If unknown, how would this Commission determine such a refund?
 - (d) What is the actual refund per year, since April 15, 1997?
 - (e) How would those refunds be implemented, collected, and distributed?
 - (f) If the Commission were to order refunds, what would happen to the refund amounts intended for payphone providers that may no longer exist?

- Response:
- (a) A precise total dollar amount of the refund cannot be computed at this time. Additional discovery and data gathering will be required to derive this total dollar figure. Notwithstanding, the amount of the actual refund for each FPTA member line in service will, under FPTA's proposal, equal the sum of: (i) the total amount of the EUCL or SLC charge collected by BellSouth on that line since April 15, 1997; and (ii) the difference between the actual PTAS rate charged by BellSouth for the line since January 19, 1999 and the "new services test" compliant rate that BellSouth should have charged during that period, plus interest consistent with this Commission's rules and past practices.
 - (b) FPTA incorporates its response to (a) above.

(c) FPTA incorporates its response to (a) above. The Commission will, however, be able to determine the amount of the refund by the conclusion of the hearing process, through utilization of discovery and other record information. Additionally, once this Commission determines the correct cost-based rate(s) that BellSouth should have been charging since April 15, 1997, the number of payphone lines in place during the applicable periods and the applicable interest rates for those periods, the amount of the refund can then be calculated and processed by BellSouth, as it has already has done in several other of its jurisdictions.

(d) FPTA incorporates its response to (a) above.

(e) A refund may be implemented in one of several ways. Notwithstanding, FPTA would direct the Commission's attention to the most recent new services test settlement affected in the State of North Carolina. In that docket, BellSouth and the North Carolina Payphone Association agreed upon a procedure in which BellSouth provided refunds to payphone service providers back to April of 1997 in connection with a new services test proceeding. The FPTA would assist in the facilitation of such refunds to Florida payphone service providers, if such a procedure were adopted here.

(f) FPTA would attempt to locate those payphone providers and, if located, would facilitate delivery of the refunds to those persons. If those persons could not be located, this Commission could determine the appropriate disposition of those refunds, consistent with applicable law and Commission precedent.

Response provided by: Don J. Wood
Bruce W. Renard

000003

Request: (a) Does this Commission have the authority to order the refunds addressed in Issue 2(d)?

(b) Please identify all statutes, rules, or FCC orders that specifically grant this Commission the authority to order the refunds that FPTA has requested in this docket?

Response: (a) This Commission has the fundamental administrative authority to order the refunds addressed in Issue 2(d). This Commission has the clear ability to determine that there were mistakes and/or errors in its prior order and has a duty to correct such errors. Once the FCC clarified its prior order, the rectification of clear error in the prior tariffed rates was both proper and necessary to do equity in these circumstances.

(b) This Commission is acting under Section 276 of the Telecommunications Act of 1996 and the FCC's delegation of authority to implement the new services test as set forth in the *Wisconsin Order*. Section 276(c) of the Telecommunications Act of 1996 specifically provides that "To the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements." Additionally, under Florida law, this Commission is acting under (i) Sections 364.01 and 364.03, Florida Statutes and (ii) its inherent power to modify its prior orders by the reason of the nature of the agency and the functions it is empowered to perform.

Response provided by: David S. Tobin, Esq.

Request: Please refer to page 8, lines 5-7 of witness Renard's Direct Testimony. In that testimony, witness Renard asserts that the rates BellSouth charges payphone providers are "unlawful."

(a) During the past seven (7) years, did the FPTA, or any of its members ever come to this Commission and ask it to review BellSouth's allegedly "unlawful" rates?

(b) If yes, when were such requests made?

(c) If yes, were the requests made by FPTA, or were the request(s) made by a member on their own volition?

(d) If yes, what FPSC docket number(s) correspond to the request(s)?

(e) If yes, what was the outcome?

(f) If not, why?

Responses: (a) No. Except for the petition filed in the present case, the FPTA has not asked this Commission to review BellSouth's unlawful rates during the last seven years. The FPTA did not come to this Commission for several reasons. First, the payphone industry has consistently been under significant economic pressure and the FPTA could not afford to present the question of BellSouth's unlawful rates to this Commission until the FCC's determination of those issues, particularly given the unlimited resources available to BellSouth to combat these types of proceedings. Attached to these responses as Exhibit A is a timeline showing the applicable federal decisions affecting the issues before this Commission in this proceeding. As Staff will recognize, the Court of Appeals for the District of Columbia did not finally affirm the FCC's *Wisconsin Order*, the primary basis for the FPTA's petition in this docket, until July of 2003; numerous months after the filing of the FPTA's petition in this docket.

(b) The FPTA incorporates its answer to request (a) above.

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
Staff's 1st Set of Interrogatories
Item No. 3
Page 2 of 2

- (c) The FPTA incorporates its answer to request (a) above.
- (d) The FPTA incorporates its answer to request (a) above.
- (e) The FPTA incorporates its answer to request (a) above.
- (f) The FPTA incorporates its answer to request (a) above.

Response provided by: Bruce W. Renard

000006

Request: Please refer to page 7, lines 7-10, of witness Wood's Direct Testimony. On that page witness Wood references a letter dated April 10, 1997 in which the RBOC Payphone Coalition counsel, Michael Kellogg, promised "... to issue a refund back to April 15, 1997 in the event its PTAS rates did not conform to the new services test." Refer also to text from the actual letter which appears below (Document No. 07443-03):

Once the new state tariffs go into effect, to the extent that the new tariff rates are lower than the existing ones, we will undertake to reimburse or provide a credit to those purchasing the services back to April 15, 1997. (I should note that the filed-rate doctrine precludes either the state or federal government from ordering such a retroactive rate adjustment. However, we can and do voluntarily undertake to provide one, consistent with state regulatory requirements, in this unique circumstance. Moreover, we will not seek additional reimbursement to the extent that tariff rates are raised as a result of applying the "new services" test.)

(a) When did the BellSouth tariff(s) which were addressed by this Commission in Docket No. 970281-TL go into effect?

(b) Were those tariffed rates higher or lower than the existing tariffed rates?

(c) Why does the FPTA believe that Mr. Kellogg and the RBOC Payphone Coalition intended that offer to extend beyond the Commission's initial finding that the new services test (NST) had been met?

(d) Based on Order Nos. PSC-98-1088-FOF-TL and PSC-99-0493-FOF-TL in Docket No. 970281-TL, did this Commission find that BellSouth met the NST at that time?

(e) Has FPTA provided any new information that would lead this Commission to come to a different conclusion regarding BellSouth meeting the NST in this docket?

(f) Given Mr. Kellogg's letter, and this Commission's finding in Order No. PSC-98-1088-FOF-TL that "[e]xisting incumbent local exchange company tariffs for smart and dumb line payphones services are cost-based, consistent with Section 276 of the Telecommunications Act of 1996, and nondiscriminatory," why should refunds be ordered back to April 15, 1997 if BellSouth met the NST and the letter only provided for refunds "in the event its PTAS rates did not conform to the new services test?"

Response:

(a) The FPTA does not have the information necessary to provide a response. The FPTA reserves the right to supplement this response upon obtaining discovery from BellSouth.

(b) The FPTA does not have the information necessary to provide a response. The FPTA reserves the right to supplement this response upon obtaining discovery from BellSouth.

(c) The FPTA can only speculate as to Mr. Kellogg's precise intent. Moreover, there is no reference in the letter to the actual circumstances which have in fact unfolded, to wit: the original tariff approval was incorrect based upon the later clarification provided by the FCC, which clarification was affirmed on appeal by the second highest court in the land. Mr. Kellogg's letter does, however, specifically provide that "to the extent that the new tariff rates are lower than the existing ones, we will undertake to reimburse or provide a credit to those purchasing the services back to April 15, 1997." There can be no doubt that the rates included in the tariff were not in compliance with, and were higher than, the rates required by new services test as enunciated by the Wisconsin order. If nothing else, the tariffed rate included what amounted to a double charge for the EUCL element and such inclusion is plainly at odds with the new services test mandates as clarified by the Wisconsin order. This is confirmed by BellSouth's recent "unilateral" action to reduce PTAS rates by this amount in the advent of filing testimony in this docket. The fact that the original error only became clear and subject to some degree of legal finality of late, should not be held as a bar against the refund relief now requested by FPTA, nor be allowed to unjustly enrich BellSouth for the applicable period.

(d) This Commission found, that BellSouth met the new services test at the time it issued Order No. PSC-98-1088-FOF-TL. That order was issued, however, without the benefit of the clarification provided by the FCC's *Wisconsin Order*. As a result, the 1998 Florida Order has been rendered in direct conflict with the requirements of the new services test, as detailed in the FCC's *Wisconsin Order*, and must therefore now, in the context of the current evidentiary hearing process, be corrected "ab initio."

(e) The FPTA has provided significant new information in the form of FCC clarification with federal court confirmation on the precise issues at issue in this docket. These new developments in the relevant federal administrative and judicial forums provide a clear basis for this Commission to review and reconsider its earlier approval of the initial BellSouth tariffs and to now order the rate adjustments, including refunds that would have been ordered from the outset, had the Wisconsin Order's clarifications been in hand.

(f) The spirit of Mr. Kellogg's letter, on behalf of the RBOCs, was to assure the provision of refunds back to April 15, 1997, should it later be determined by the state regulatory body that the BOC's "implementation" tariffs were not in compliance with new services test requirements. The fact that it took an inordinate amount of time to clarify and confirm what those requirements were, in the face of the BOC's resistance to full implementation and pending court challenges, does not and should not alter that spirit and commitment. This Commission has now been provided with clear, albeit subsequent guidance from the FCC in its *Wisconsin Order*, none of which was available to this Commission when it previously considered BellSouth's PTAS tariff. Based upon those orders, there can be no doubt that BellSouth did not meet the requirements of the new services test when this Commission first considered the issue. With this new information before it, this Commission has a duty to correct its prior ruling by ordering BellSouth to disgorge the unlawful amounts it has charged and collected.

Response provided by: Bruce W. Renard
Don J. Wood

Request: If BellSouth's rates became noncompliant "immediately after the August 11, 1998 order was issued" as referenced in witness Wood's Direct Testimony (p.8, lines 3-5), why wasn't this brought before the Commission at that time?

Response: The FPTA adopts its response to Staff Interrogatory 3(a) above.

Response provided by: Bruce W. Renard
Don J. Wood

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
Staff's 1st Set of Interrogatories
Item No. 6
Page 1 of 1

Request: Why was FPTA's Petition protesting Order No. PSC-98-1088-FOF-TP withdrawn on December 31, 1998?

Response: The FPTA and BellSouth attempted to negotiate a settlement for quite some time. However, the FPTA is not aware of any formal written settlement agreement entered into between the parties. Notwithstanding, the FPTA did not have the resources to continue to initiate full-blown hearings on the subject in 1998.

Response provided by: Bruce W. Renard

000011

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
Staff's 1st Set of Interrogatories
Item No. 7
Page 1 of 1

Request: On p. 9-10 of his direct testimony, witness Wood cites four specific areas of inquiry.

(a) Didn't this Commission address those very areas in Order No. PSC-98-1088-FOF-TP?

(b) If not, which of the four areas of inquiry were omitted?

Response: (a) To the best of FPTA's knowledge, Order No. PSC-98-1088-FOF-TP did not specifically address any of the four specific areas of inquiry cited by Mr. Wood. Moreover, even if the Commission had considered those areas of inquiry, it could only have done so without the clear and binding legal guidance provided by the FCC in its *Wisconsin Order* which was not available to this Commission at that time.

(b) The FPTA incorporates its response in 7(a) above.

Response provided by:

Don J. Wood

000012

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
Staff's 1st Set of Interrogatories
Item No. 8
Page 1 of 1

Request: Please refer to pp.21-22 of witness Wood's direct testimony where he addresses the actions of several other state commissions in regards to the application of the FCC's four part test. This Commission found in Order Nos. PSC-98-1088-FOF-TL and PSC-99-0493-FOF-TL that BellSouth's tariffed rates met the NST, were cost-based, nondiscriminatory, and consistent with section 276 of the Act. How is what this Commission found different than the decisions of those Commissions?

Response: The FPTA is still in the process of gathering the information necessary to provide Staff with its response but intends to supplement these responses as soon as reasonably practicable.

Response provided by: Don J. Wood
David S. Tobin

Request: In witness Wood's Direct Testimony, p.36 lines 20-21, he states "the same adjustment to reflect the SLC must be made to intrastate rates here in Florida."

(a) Didn't BellSouth already make the requested adjustment when it filed its revised tariff in October 2003?

(b) If yes, does this eliminate the need for Issue 1(a)?

(c) If not, explain why.

Response: (a) BellSouth made the requested adjustment to its tariff in October of 2003, immediately prior to filing its testimony in this docket. FPTA believes that BellSouth only made that tariff revision on the eve of filing testimony in this case because it did not want to have to admit on the stand that it continued to double charge for the EUCL element three years and seven months after the FCC's Common Carrier Bureau order.

(b) Yes. However, it does not eliminate issues 1(b) and 1(c).

(c) The FPTA incorporates its response to request (b) immediately above.

Response provided by:

Don J. Wood

Request: In witness Renard's rebuttal testimony (p.2, lines 15-17), he states, "[t]o the extent that the *PAA Order* is shown to be in conflict with the clarification provided in *Second Wisconsin Order*, this Commission is simply fulfilling its administrative and equitable obligations to correct that conflict."

(a) Wouldn't this Commission's obligation be to "correct that conflict" on a going forward or prospective basis alone?

(b) If not, why?

Response: (a) No. This Commission's obligation is to correct the earlier order and give effect to the order as corrected.

(b) This Commission has the authority and the power to modify its prior orders where there are mistakes of fact and law embodied in those orders, and, in fact, has a duty to correct such errors. If this Commission allows BellSouth to retain the unlawful amounts it has collected from payphone service providers since April 15, 1997, it will do so to the detriment of the public interest and the payphone industry in the State of Florida. Moreover, such a result would serve an injustice in this particular instance where BellSouth has (i) known for years that its PTAS rates are unlawful, but has continued to charge those rates and collect those unlawful amounts; and (ii) participated in each step of the proceedings at issue in this docket, first in the FCC's Common Carrier Bureau, then before the FCC itself considering and affirming the Common Carrier's Bureau's decision, and ultimately appealing the issues to the DC Circuit Court of Appeals, all of which decisions form the basis for the FPTA's petition filed in this docket.

Response provided by: Bruce W. Renard
David S. Tobin

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
Staff's 1st Set of Interrogatories
Item No. 11
Page 1 of 1

Request: Refer to witness Renard's Rebuttal Testimony, p.2, lines 21-23. Identify where BellSouth's legal obligation "to voluntarily comply with the requirements of those Payphone Orders" may be found.

Response: In paragraph 2 of the FCC's *Wisconsin Order*, the FCC affirmed "the Bureau's conclusion that Section 276 requires BOCs to set their intrastate payphone line rates in compliance with the Commission's cost-based, forward-looking "new services test." (emphasis added) The FCC thereby required BellSouth to set its rates compliant with the new services test and clarified those requirements at that time. The FCC did not require third parties, such as the FPTA or Staff, to police BellSouth's PTAS rates to ensure those rates are compliant with the new services test—but placed this obligation squarely on the BOCs. BellSouth should not be able to sit by and collect excessive payphone access line rates that are plainly at odds with federally preemptive new services test requirements and then be allowed to keep such excess amounts, especially when BellSouth has tried to thwart and challenge those requirements at every turn. There is no sound legal or regulatory doctrine that would support such a result.

Response provided by: Bruce W. Renard

Request: Suppose the Commission were to order a refund as a result of this docket.

- (a) What would your position be if the FCC came back in 9 months with additional "clarification" that made those hypothetical refunds invalid or unlawful?
- (b) Would the FPTA and its members be in a position to return those refunds to BellSouth?
- (c) Why or why not?
- (d) Would your answer change if the clarification were 3 years later?
- (e) What about seven years later?

Response: (a) The FCC's *Wisconsin Orders* do not implement new law. Rather, in those decisions the FCC made clear that it was merely confirming the FCC's "long standing policy." *Wisconsin Order* at paragraphs 24 and 43. Common Carrier's *Wisconsin Order* at paragraph 10. Additionally, the *Wisconsin Order* was appealed to the DC Circuit Court of Appeals by the BOCs, including BellSouth, which court of appeals affirmed the applicable portions of the *Wisconsin Order* that are at issue in this docket and that appeal was not considered by the United States Supreme Court. Accordingly, the FCC will not be providing any additional "clarification" that would conflict with the current federal law on this subject. Moreover, other aspects of Section 276 of the Telecommunications Act of 1996 involving dial around compensation have the subject of years of FCC and judicial review. In those proceedings, the FCC has required payphone service providers to refund significant amounts collected from interexchange carriers based upon clarifications made years later. There is no justifiable reason that this proceeding should be treated differently.

- (b) The FPTA incorporates is response in (a) above.
- (c) The FPTA incorporates is response in (a) above.
- (d) The FPTA incorporates is response in (a) above.
- (e) The FPTA incorporates is response in (a) above.

Response provided by:

Bruce W. Renard
Don J. Wood
David S. Tobin

000018

Request: (a) Would you agree that this industry and the regulations that govern it are constantly in flux?

(b) If not, why?

Response: (a) To some extent yes.. However, while there are changes in regulations over time, the circumstance in the current case is not analogous to the "run of the mill" regulatory circumstances. In the present case, there was landmark federal legislation constituting the first revision to the federal communications act in over 60 years. This was followed by the expedited passage of complex and extensive new rules by the FCC to implement this new provision. A letter commitment was made by the BOCs to have implementing tariffs be effective back to April 15, 1997. Next, there were numerous state regulatory proceedings across the nation and then a petition for clarification filed with the FCC when the BOCs resisted true implementation of the new services test requirements in the state filings. When the FCC's then Common Carrier Bureau issued its order finding that the new services test was in fact applicable to payphones, the BOCs challenged that decision to the full FCC. When the FCC affirmed the Common Carrier's decision, the BOCs again challenged the FCC's authority to require that the BOCs intrastate payphone rates comply with the new services test. The federal appeals court, more than three years after the initial decision affirmed the FCC's application of the new services test to the BOCs, giving the process some finality and demonstrating that the earlier rates were clearly excessive. This is not an example of typical "regulatory flux" but rather a matter in which the FCC has consistently applied "long standing policy" that was not available to this Commission when it made its earlier determination.

(b) The FPTA incorporates its response to Staff Interrogatory 12(a). Additionally, in 1997 and 1998 when this Commission considered whether BellSouth's PTAS rates were compliant with the new services test in the earlier docket, it did so shortly after the adoption of the Telecommunications Act of 1996. At that time, all of the RBOCs, including BellSouth, strenuously objected to the application of the new services test to PTAS rates. Since that time, the FCC has consistently held that the new services test in fact applies to PTAS rates and has provided significant guidance on the application of the new services test to PTAS rates. From the time of the enactment of the Telecommunications Act of 1996 until the present, the federal law relevant to the issue in this docket

has not been in flux. Rather, the applicable "law" has been subject to administrative and judicial review and merely clarified. Today, this Commission has clear and definitive guidance on the proper implementation of the new services test under Telecommunications Act of 1996 and the FCC's *Payphone Orders*, and it should now give full and proper effect to these requirements.

Response provided by: Bruce W. Renard
 Don J. Wood

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
Staff's 1st Set of Interrogatories
Item No. 14
Page 1 of 1

Request: Did the FCC's "clarifications" come after the FPSC issued Order Nos. PSC-98-1088-FOF-TP and PSC-99-0493-FOF-TL?

Response: Yes. Please see Exhibit A, attached hereto.

Response provided by: Bruce W. Renard
David S. Tobin

000021

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
Staff's 1st Set of Interrogatories
Item No. 15
Page 1 of 1

Request: Do you believe that Commission's are limited to basing decisions on the best available information they have at a given point and time?

Response: Yes, in the normal course. However, this Commission has the authority and the power to modify its prior orders where there are mistakes of fact and/or law and it has a duty to correct such errors.

Response provided by: Bruce W. Renard
David S. Tobin

000022

Request: Witness Renard states on p.10 of his rebuttal testimony, "[t]hose Florida citizens and visitors rely on payphones as their primary access to our nation's communications networks." What supports witness Renard's contention that payphones continue to constitute "primary access" for those citizens and visitors?

Response: In its *Wisconsin Order*, the FCC specifically found that "[P]ayphones are an important part of the nation's telecommunications system. They are critical not only for emergency communications, but also for those Americans who cannot afford their own telephone services." *Wisconsin Order* at paragraph 3.

On January 30, 2004, the FCC issued its Telephone Subscribership Report providing that in July of 2003 only 95.2% of Florida households had telephone service; meaning that 4.8% of all Florida Households were without telephone service. Additionally, the FCC's February 26, 2004 Telephone Penetration Report found that that the percentage of households with telephone service in March of 2003 was significantly dependent on the total household income. The following chart shows that dependence:

<u>Household income</u>	<u>Percentage of households With telephone service in March 2003</u>
\$9,999 or less	89.8%
\$10,000 - \$19,999	94.4%
\$20,000 - \$29,999	96.4%
\$30,000 - \$29,999	98.9%
\$40,000 or more	98.9%

Based upon those reports, it can be concluded that the poorest of Florida households are those most likely to not have telephone service. It can be reasonably assumed, as well, that those Floridians cannot afford cellular or wireless services. For those who have neither a home phone nor a wireless phone, payphones provide a crucial "lifeline" service. This is true both for important day-to-day calls and for emergency communications. Those citizens rely on payphones as the primary means to meet their communication needs.

Payphone service is "on demand dial tone/per use" wireline, high-quality service available twenty-four hours a day, seven days a week. Users are not required to make an initial investment in equipment, await activation of the service or pay recurring monthly charges. Any member of the public can place a call anywhere at any time. Users have the option of paying for calls with coins or by use of calling cards, prepaid cards or other access code arrangements. Emergency 911 calls are free of charge across Florida's payphone base - once again 24/7. Users can also place calls to a wide range of 8XX numbers (both carrier and subscriber access) at no charge to the caller.

The State of Florida estimates that more than 59.3 million people visited Florida during 2003. Many of those visitors do not own wireless telephones and those that do may not have cellular service available for a myriad of reasons, i.e., dead battery, bad coverage or service, no service, technological compatibility such as international wireless users, etc. Or, they may not wish to pay long distance or "roaming charges" for calls made while visiting Florida. In those instances, these communications users continue to rely on public payphones for convenience, for emergencies and even for basic service. Particularly in some special cases, such as "911" emergency calls, payphones are critical for ensuring public safety for these individuals. Given the top prominence of tourism in Florida's economy, the continued need for widespread deployment of payphones in the state is especially critical.

Response provided by: Bruce W. Renard

000024

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
Staff's 1st Set of Interrogatories
Item No. 17
Page 1 of 1

Request: Given the widespread availability of wireless service in Florida, do you agree that for many citizens and visitors, payphone accessibility is less of an issue today than it was in the past?

Response: On a very superficial level yes, but in reality no. The FPTA incorporates its response to request number 16 above. Additionally, the FCC found that "despite evidence that payphones are losing market share to wireless services, the basic pay telephone remains a vital telecommunications link for many Americans." *Wisconsin Order* at paragraph 3. Widespread availability of wireless service in Florida has decreased payphone usage significantly and has significantly impacted the payphone business in Florida and elsewhere. However, payphones continue to serve a very valuable function in Florida. Additionally, payphones serve an extremely critical role in times of crisis and emergency. After the horrific attacks of September 11, 2001, it was only payphones that provided those throughout lower Manhattan with the ability to place calls to loved ones. Additionally, during the recent severe power blackout in the northeastern U.S. on August 14, 2003, wireless phones were mostly useless, and many land-lines were out of service. It was once again the "tried and true" payphone that provided the ability to make calls for millions of affected citizens whose home phones were out and whose cell phone networks were quickly rendered inoperable via overcapacity of traffic requirements.

Response provided by: Bruce W. Renard

000025

Request: Based on witness Renard's rebuttal testimony at p.10, lines 18-20 that "[a] lower rate for calls from payphones will in turn make payphone calling more competitive with its current real-world competitor - wireless calling."

(a) Would most consumers consider wireless service and payphone service direct competitors?

(b) Does FPTA consider payphones to be a "real-world" competitor to wireless service?

(c) What supports this belief?

Response: (a) Both payphones and wireless service provide consumers with the ability to place telephone calls when away from their home or office. Therefore, payphones and wireless calling are inherently competitive. For lower income citizens, the consumer decision of "wireless versus payphone" is very real indeed. Even for wireless telephone users, payphone "exit interviews" have indicated that payphones become a "substitute" for wireless service when wireless service is not available for a myriad of reasons, i.e., dead battery, bad coverage or service, no service, technological compatibility such as international wireless users, etc. Or, those may not wish to pay long distance or "roaming charges" for calls made when away from their home, office or temporary residence.

(b) Yes.

(c) The FPTA incorporates its response to request (a) above and to Staff Interrogatory request 17. With the consolidation now taking place in the wireless marketplace, this commission should be aware of the "real world" potential for wireless rates to begin to rise over time substantially above the "fire sale" rate plans seen of late. This evolution may well financially "disenfranchise" a number of wireless subscribers over time and these users will once again have to rely on payphones for their public communications needs.

Response provided by: Bruce W. Renard
Don J. Wood

Request: Explain the extent to which you believe that BellSouth's 1FB basic business line rates are not cost-based? Be specific.

Response: The FPTA cannot provide this Commission at this time with an exact calculation of the extent that BellSouth's 1FB basic business line rates are not "cost based." FPTA reserves the right to supplement its response to this request after completion of discovery. However, in paragraph 55 of the *Wisconsin Order* the FCC stated: "the LEC coalition claims that BOCS are free to apply to payphone line service rates whatever markup over direct costs is incorporated in their business line rates, even though business line rates may include subsidies for other BOC services." (emphasis added) The LEC Coalition thus admitted in its reply to the FCC in the *Wisconsin Order* proceedings that business line rates may include subsidies. Moreover, FPTA believes that BellSouth has acknowledged on prior occasions that its business line rates subsidize its residential rates.

Response provided by: Don J. Wood

- Request:
- (a) Did the FPTA, or any of its members file informal complaints with the FCC in In the Matter of Informal Complaint Filed by Independent Payphone Service Providers Against Various Local Exchange Carriers Seeking Refunds of End User Common Line Charges (FCC File No. 89-170)?
 - (b) If so, please provide the date of filing, and the outcome.
 - (c) If so, were any of these informal complaints converted to formal complaints?
 - (d) On what date were those complaints converted?
 - (e) If not, why did the FPTA and its members not pursue these matters with the FCC?
 - (f) Is that a more appropriate venue for the issues being addressed in this docket?

- Response:
- (a) The FPTA is not a party to the informal complaints filed with the FCC in In the Matter of Informal Complaint Filed by Independent Payphone Service Providers Against Various Local Exchange Carriers Seeking Refunds of End User Common Line Charges (FCC File No. 89-170). While certain FPTA members were party to those informal proceedings, the FPTA is not privy to information concerning those proceedings.
 - (b) The FPTA was not a party to those proceedings and, therefore, cannot provide the information requested. It is FPTA's understanding that BellSouth was a party to those proceedings and may be in a better position to provide Staff with the information requested.
 - (c) The FPTA incorporates its response to (b) above.
 - (d) The FPTA incorporates its response to (b) above.
 - (e) The FPTA incorporates its response to (b) above.

(f) That proceeding is not a more appropriate venue for the issues being addressed. To the best of FPTA's knowledge, the proceeding only addressed the EUCL charged and collected prior to April 15, 1997. In this proceeding, the FPTA is requesting that this Commission require BellSouth to refund EUCL or SLC amounts collected after that time. Thus there is a clear distinction between the two matters.

Response provided by: Bruce W. Renard

Request: Refer to page 6, lines 12-17 of witness Wood's Rebuttal Testimony. Witness Wood states, "... in the Second *Wisconsin Order* (§14) the FCC reiterated its 1996 finding that 'even if LEC payphone tariffs were filed at the state level, they should nevertheless comply with section 276 as implemented by the Commission and, as such, should be cost-based, nondiscriminatory, and consistent with both section 276 and our Computer III tariffing guidelines.'"

(a) Didn't this Commission use the same standards in making its decision in Docket No. 970281-TL, Order Nos. PSC-98-1088-FOF-TL and PSC-99-0493-FOF-TL?

(b) If not, what standards or guidelines did this Commission follow?

Response: (a) The FPTA is not aware of the standards or guidelines used by this Commission in making its decision in Docket No. 970281-TL, Order Nos. PSC-98-1088-FOF-TL and PSC-99-0493-FOF-TL because those standards and/or guidelines are not included in the Orders. However, the standards and guidelines set forth in any FCC orders as clarified subsequent to 1998 were not followed by this Commission because those clarified standards and guidelines, as set forth in those orders, were not yet known or available to this Commission at that time.

(b) The FPTA incorporates its response to Request (a) above.

Response provided by:

Don J. Wood

Request: On pp. 14-15 of his rebuttal testimony, witness Wood uses the following "simple analogy" to "put BellSouth's position into perspective."

Assume that after reviewing the records of a deposit, I notice that the bank has accidentally credited a deposit twice, so that my account balance is overstated. I could not seriously argue that I do not know that the account is overstated. I would have two options: I could notify the bank immediately (at which time an adjustment would be made), or I could wait until someone else, in this case the bank, notices the error (at which time an adjustment would be made, including the accrued interest on the overstated amount). At that day of reckoning, I could not argue that even though I knew that the account was overstated I was nevertheless entitled to keep the money because the bank had not taken it from me right away.

(a) Using the analogy above, would a bank or any other business entity wait an extended period of time before making "adjustments" to an account?

(b) Would most "adjustments" take place prior to the end of that business entity's accounting period?

(c) Can you foresee any problems that might arise when trying to recover information after an extended period of time?

(d) If so, what are they?

(e) If so, would the same problems exist in this docket if the Commission were to order refunds?

(f) Are there typically safeguards in place to prevent this type of delayed notice and recovery from occurring in business settings?

(g) If so, what are they?

(h) Are you aware of any general contract provisions that would address such problems?

(i) Would those provisions typically be included in agreements between an ILEC and payphone service providers?

(j) Are there any statute of limitations, state or federal, which may apply to the current docket in regards to FPTA's requested refunds?

Response: (a) FPTA cannot provide a definitive response requested because FPTA is not a bank or any other business entity in that situation. However, if there was an intervening administrative or legal proceeding for clarification as to the erroneous entry, the bank would be prudent to wait the necessary time to receive such clarification before making an adjusting entry. Perhaps a better analogy would be the erroneous application of a bank fee that was challenged as to its legality and later struck down. Refunds would certainly be expected in such case.

(b) FPTA incorporates its response in (a) above.

(c) FPTA incorporates its response in (a) above.

(d) FPTA incorporates its response in (a) above.

(e) FPTA incorporates its response in (a) above.

(f) FPTA incorporates its response in (a) above.

(g) FPTA incorporates its response in (a) above.

(h) FPTA incorporates its response in (a) above.

Response provided by:

Don J. Wood

Request: (a) Are you aware of any other state commissions in the BellSouth operating territory that have required a refund similar to what the FPTA is asking this Commission to order in this docket?

(b) If so, which state commissions have ordered such refunds.

(c) If so, what amounts were refunded by each state?

(d) If so, how did those state commissions determine the amount of the refunds?

Response: (a) Yes.

(b) FPTA is gathering the information necessary to provide Staff with its response and will provide Staff with a supplement to these responses.

(c) FPTA incorporates its response to Staff Interrogatory (b) above.

(d) FPTA incorporates its response to Staff Interrogatory (b) above.

Response provided by: Don J. Wood

Bruce W. Renard

000037

Request: FCC Division Orders DA 99-1854 (¶7) and DA 00-923 (¶2) appear to limit the operative statute of limitations to the following,

. . . the period of time for which damages may be recovered at two years prior to the filing of a complaint, irrespective of whether the complaint is a formal or informal complaint. In this instance, the period for recovery will be no longer than two years prior to the filing of the informal complaints, as provided by both the statute and section 1.718 of the Commission's rules.

Does this have any impact on the issues contained in this docket? Please explain your response.

Response: No. BellSouth has waived any applicable statute of limitations in this matter. Moreover, the issues that are the subject of this docket have been under administrative and judicial review during the applicable time periods which would have tolled the running of any applicable limitations periods.

Response provided by: Bruce W. Renard
David S. Tobin

Request: (a) Are BellSouth and FPTA continuing to negotiate at this time?

(b) If so, what (if any) progress has been made on resolving some of the outstanding issues here?

(c) If not, when will the parties meet again to discuss the outstanding issues?

Response: (a) No.

(b) FPTA incorporates its response to (a) above.

(c) FPTA remains ready, willing and able to continue to discuss and attempt to resolve, in good faith, all of the outstanding issues in this proceeding.

Response provided by: Bruce W. Renard
David S. Tobin

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
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Request: Provide all documents used in determining the refund amount in staff interrogatory 1

Response: There are no documents responsive to this Request.

000036

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
Staff's 1st Request for Production
Item No. 2
Page 1 of 1

Request: Provide all documents listed in response to staff interrogatory 11 which identify BellSouth's legal obligation "to voluntarily comply with the requirements of those Payphone Orders." If too voluminous, please provide a citation containing the page and line number where BellSouth's obligation may be found.

Response: In the Matter of the Wisconsin Public Service Commission: Order Directing Filings, 15 FCC Red (March 2, 2002)

January 31, 2002 *In the Matter of the Wisconsin Public Service Commission: Order Directing Filings, FCC Memorandum Opinion and Order Bureau*, 17 FCC Red 2051 (January 31, 2002)

New England Public Comm. Council, Inc. v. FCC, 334 F.3d 69 (D.C. Cir. 2003)

000037

Request: Referring to staff interrogatory 16, provide all documents which support witness Renard's contention that payphones continue to constitute "primary access" for those citizens and visitors.

Response: The following FCC documents responsive to this request are being provided: (i) Telephone Penetration By Income By State (Data Through March 2003), Released: February 2004; (ii) Telephone Subscribership in the United States (Data Through July 2003), Released: January 2004; and (iii) Study on Telephone Trends, Released: August 2003. Additionally, a white paper entitled "Closing the Demographic Dividing in our National Telephone Service: Expanding Services for the Underserved Through Payphones is also being provided. An additional white paper titled "The Importance of Payphones in Providing Access to Social Services: A Case Study in Chicago is being provided. Letters from various community service organizations urging the FCC to implement the new services test to ensure the continued widespread availability of payphones are also being provided.

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
Staff's 1st Request for Production
Item No. 4
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Request: Provide any documents used as a basis for your position in staff interrogatory 17.

Response: FPTA incorporates the documents provided in response to Staff's Request for Production 3. Additionally, a letter dated March 15, 2004 from Chairman Michael K. Powell to the Honorable Chris John of the United States House of Representatives is being provided. Additionally, FPTA is providing certain news articles in response to Staff's Request for Production number 3.

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
Staff's 1st Request for Production
Item No. 5
Page 1 of 1

Request: Provide any documents used as a basis for your position in staff interrogatory 18(c).

Response: There are no documents responsive to this Request.

000040

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
Staff's 1st Request for Production
Item No. 6
Page 1 of 1

Request: Referring to staff interrogatory 19, provide all documents that support belief that BellSouth's IFB basic business line rates may not be cost-based.

Response: January 31, 2002 *In the Matter of the Wisconsin Public Service Commission: Order Directing Filings, FCC Memorandum Opinion and Order Bureau*, 17 FCC Rcd 2051 (January 31, 2002). Additionally, FPTA reserves the right to supplement this response upon completion of discovery in this docket.

000041.

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
Staff's 1st Request for Production
Item No. 7
Page 1 of 1

Request: Provide all documents which support your affirmative responses to staff interrogatory 20(a)-(d).

Response: There are no documents responsive to this Request.

000042

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
Staff's 1st Request for Production
Item No. 8
Page 1 of 1

Request: For each state commission identified in response to staff interrogatory 23(b), provide a copy of each commission's order.

Response: FPTA is gathering the information necessary to provide Staff with the documents requested and will provide Staff with copies.

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
Staff's 1st Request for Production
Item No. 9
Page 1 of 1

Request: Provide any additional documents used to support your responses to any staff interrogatory.

Response: There are no documents responsive to this Request except those that may relate to settlement negotiations for which FPTA objects to this request.

000044

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Florida Public)
Telecommunications Association)
for Expedited Review of BellSouth)
Telecommunications, Inc.'s Tariffs)
with respect Rates for Payphone)
Line Access, Usage, and Features.)

Docket No.: DN 030300-TD

April 16, 2004

FLORIDA PUBLIC TELECOMMUNICATIONS ASSOCIATION, INC.'S
SUPPLEMENTAL RESPONSES TO STAFF'S
FIRST SET OF INTERROGATORIES (NOS 1-25)
AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (NOS 1-9)

Florida Public Telecommunications Association, Inc. ("FPTA"), pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.340 and 1.280, Florida Rules of Civil Procedure, hereby files the following Supplemental Responses to the Staff of the Florida Public Service Commission's First Set of Interrogatories (Nos. 1-25), dated March 5, 2004.

FPTA incorporates herein by reference all of its general and specific objections filed on March 5, 2004. Any responses provided by FPTA in response to this discovery are provided subject to and without waiving any of FPTA's previously filed objections.

000045

Request: Please refer to pp.21-22 of witness Wood's direct testimony where he addresses the actions of several other state commissions in regards to the application of the FCC's four-part test. This Commission found in Order Nos. PSC-98-1088-FOF-TL and PSC-99-0493-FOF-TL that BellSouth's tariffed rates met the NST, were cost-based, nondiscriminatory, and consistent with section 276 of the Act. How is what this Commission found different than the decisions of those Commissions?

Response: In Order Nos. PSC-98-1088-FOF-TL and PSC-99-0493-FOF-TL, this Commission correctly stated the FCC's four-part test to determine the tariffs for an LEC's PTAS rates. See Order No. PSC-98-1088-FOF-TL at page 2. The state regulators cited by Mr. Wood also state this four-part test in their respective orders. However, although this Commission correctly stated the four-part test, there is no information regarding how the Commission applied the critical fourth component - whether the rate was compliant with the new services test. This Commission's prior Orders regarding BellSouth's PTAS rates did not address, in either an express or implied manner, the actual methodology utilized to calculate the proper amount of overhead loading. In addition, the Commission did not address BellSouth's inclusion of SLC/EUCL charges in its PTAS rates at that time.

Order No. PSC-98-1088-FOF-TL correctly states that PTAS rates must be consistent with the new services test and summarizes the *Computer III* guidelines, i.e., "the rates for the services not recover more than a reasonable portion of the carrier's overhead costs. ..." See Order No. PSC-98-1088-FOF-TL, at page 4. What the Order is silent on is precisely how that "reasonable portion of the carrier's overhead costs" was determined, as well as the determination that the amount itself was reasonable.

It is clear that BellSouth currently does not, and in the past has not, computed its overhead loadings in compliance with the methodologies outlined in the *Wisconsin Orders*, to-wit: the methodology outlined by the FCC in the *ONA Tariff Order*; the methodology set forth in the *Physical Collocation Tariff Order*; or, the UNE overhead loading factors. FPTA asserts that, if this Commission had the benefit of the *Wisconsin Orders'* clarification at the time it issued prior Orders, then it would have found BellSouth's PTAS rates to be non-compliant.

Additionally, this Commission did not address in Order Nos. PSC-98-1088-FOF-TL and PSC-99-0493-FOF-TL BellSouth's inclusion of SLC or EUCL charges in its PTAS rates. It is beyond dispute that inclusion of SLC and EUCL for PTAS was improper and permitted a double-recovery of costs. Yet, this Commission's Orders found that BellSouth's PTAS rates, which included EUCL, were compliant with the new services test.

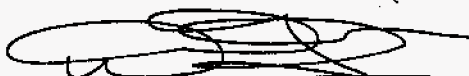
- Request:
- (a) Are you aware of any other state commissions in the BellSouth operating territory that have required a refund similar to what the FPTA is asking this Commission to order in this docket?
 - (b) If so, which state commissions have ordered such refunds.
 - (c) If so, what amounts were refunded by each state?
 - (d) If so, how did those state commissions determine the amount of the refunds?

- Response:
- (a) Yes.
 - (b) The South Carolina Public Service Commission (Docket No. 97-124-C – Order No. 1999-285) and the Tennessee Regulatory Authority (Docket No. 00409) have ordered refunds. The Kentucky Public Service Commission (Administrative Case No. 361), consistent with the request of the Kentucky Payphone Association, ordered “credits or refunds back to April 15, 1997.”
 - (c) The amount ordered to be refunded by the South Carolina PSC equaled the “difference between the rates adopted herein and those rates PSPs actually paid, including any SLC and PICC, from April 15, 1997, until the date BellSouth places its new rates into effect” (p. 29-30 of the Order cited in part (b) above). According to the TRA Order (p.28 of the Order cited in part (b) above), “the Directors voted unanimously to require the LECs to pay as reimbursement any overpayment since April 15, 1997 adjusted to account for both inflation and the time value of money.” In a footnote, the TRA defined “overpayments” as “the cumulative difference between the existing tariffed rates and the rates established in this proceeding.” The Kentucky PSC ordered refunds or credits equal to the difference between the cost-based rates that it adopted and BellSouth’s “existing tariffed rates.” FPTA does not know the total amount ultimately refunded in each state.

In North Carolina and Louisiana, refunds were made pursuant to an agreement between the parties, making a Commission decision unnecessary. In Georgia, the parties entered into an agreement that did not include refunds. Requests for refunds are currently pending before the Alabama Public Service Commission and Mississippi Public Service Commission, but the matter has not yet been resolved in those states.

(d) See FPTA's response to part (c) and attached Orders.

Respectfully submitted this 20th day of April, 2004



David S. Tobin, Esq.
Tobin & Reyes, P.A.
7251 West Palmetto Park Road
Suite 205
Boca Raton, Florida 33433
(561) 620-0656
(561) 620-0657 (fax)

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NC-1012
Edward L. Rankin, III
General Counsel - North Carolina

BellSouth Telecommunications, Inc.
1521 BellSouth Plaza
P. O. Box 30188
Charlotte, North Carolina 28230
Telephone: 704-417-8833
Facsimile: 704-417-9389

December 11, 2002

OFFICIAL COPY

FILED

DEC 11 2002

Clerk's Office
N.C. Utilities Commission

Mrs. Geneva Thigpen
Chief Clerk
North Carolina Utilities Commission
Raleigh, North Carolina

RE: Docket No. P-100, Sub 84b

Dear Mrs. Thigpen:

(ST)
7-Comm
Rankin
Long
toover
Se. ms
Kite
Kelly
Machal
Jigfall
Exec. Dir.
-PS Legal
-PS accts.
-PS Ec/Res
-PS Comm

Attached is the original and 31 copies of the negotiated settlement agreement between BellSouth and the North Carolina Payphone Association for the above referenced docket. The appropriate tariff revisions were filed with the Public Staff on December 4, 2002. The Public Staff has reviewed the attached agreement and has advised BellSouth to report to the Commission it has no objection to the settlement agreement.

Commission approval of this agreement will be appreciated. Please stamp one copy of the transmittal letter as "Filed" and return to my office in the usual manner. Thank for your assistance in this matter.

Yours truly,

Edward L. Rankin, III
Edward L. Rankin, III

Attachment

CC: Mr. Nat Carpenter, Director, Public Staff

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PROPOSED SETTLEMENT AGREEMENT

This Proposed Settlement Agreement is entered into this the 4th day of December 2002 (the "Effective Date") between the North Carolina Payphone Association, Inc. ("NCPA") and BellSouth Telecommunications, Inc. ("BellSouth").

WHEREAS, there is currently pending a regulatory proceeding styled *In the Matter of Petition of the North Carolina Payphone Association for Review of Local Exchange Company Tariffs for Basic Payphone Services*, Docket No. P-100, Sub 84b, before the North Carolina Utilities Commission ("NCUC") (the "Regulatory Proceeding"); and

WHEREAS, NCPA and BellSouth desire to reach a negotiated settlement of the Regulatory Proceeding as between them in order to achieve certain objectives;

NOW, FOR AND IN CONSIDERATION of the mutual undertakings and covenants recited herein, NCPA and BellSouth hereby covenant and contract as follows:

1. Going-Forward Tariffed Rates. Contemporaneously with the filing of this Proposed Settlement Agreement, BellSouth shall file revised tariffs ("Revised Tariffs") seeking approval of the following rates for Access Line Service for Payphone Service Provider Telephones under Section A.7 of BellSouth's General Subscriber Service Tariff (the "Agreed Upon Rates") and bearing the effective date of no later than December 22, 2002:

(a) The rate for lines and trunks that are offered to customer-provided pay telephones for coin, coinless, and inmate telephones and that do not offer central office coin control and processing functionality (the "dumb line rate") shall be set at a rate, to become effective immediately upon the approval of the NCUC, so that the total of the dumb line rate and the federal Subscriber Line Charge (also referred to as the End User Common Line Charge) does not exceed \$22.28 per month. The dumb line rate shall be inclusive of the line port, local usage, blocking, and screening, and no additional charge(s) shall be assessed for these features and functions. NCPA and BellSouth acknowledge and agree that this dumb line rate complies with the federal new services test as interpreted and applied by the Federal Communications Commission and the North Carolina Court of Appeals.

(b) The rate for lines and trunks that are offered to customer-provided pay telephones for coin, coinless, and inmate telephones and that offer central office coin control and processing functionality (the "SmartLine rate") shall be set at a rate, to become effective immediately upon the approval of the NCUC, so that the total of the smart line rate and the federal Subscriber Line Charge (or End User Common Line Charge) does not exceed \$33.00 per month. The SmartLine rate shall be inclusive of the line port, local usage, blocking, and screening, and no additional charge(s) shall be assessed for these features and functions. NCPA and BellSouth acknowledge and agree that this SmartLine rate complies with the federal new services test as interpreted and applied by the Federal Communications Commission and the North Carolina Court of Appeals.

2. Refunds. BellSouth and NCPA propose and support approval of the payment of refunds in the following manner:

(a) Refunds Based on Documentation Submitted by Payphone Service Providers ("PSPs"). Each PSP shall have until 45 calendar days after the entry of the NCUC's order approving this Proposed Settlement Agreement to submit to BellSouth documentation setting forth the amount of refund the PSP contends it is owed. Such documentation must set forth, for

each month between April 1997 and the month in which the Revised Tariffs become effective, the following information:

- (1) the number of SmartLines and dumb lines that the PSP had in service, along with the ANI with the customer code for each line;
- (2) the amount the PSP actually paid BellSouth for those SmartLines and/or dumb lines (i.e., if the PSP were on a reward plan, it would submit the net amount paid under the reward plan instead of the full tariffed rate for the lines);
- (3) the amount the PSP would have paid for that number of lines at the going-forward rate (i.e. \$22.28 per dumb line and \$33.00 per SmartLine set forth pursuant to (1) above);
- (4) the difference between these two amounts (i.e. (2) above - (3) above); and
- (5) 5% simple interest on the difference calculated as follows: The result from (4) above multiplied by the number of months until the effective date of the Revised Tariff multiplied by (.05/12) (i.e. if the month in question is 6/02 and the effective date of the tariff is 12/02, the number of months until the effective date of the Revised Tariff is 6).

No later than the 75th day after the entry of the NCUC's order approving this Proposed Settlement Agreement, BellSouth shall inform each PSP that submits such documentation of any disputes it may have regarding the amount of refund claimed, and the NCUC shall retain jurisdiction to resolve any such disputes that BellSouth and any PSP cannot resolve among themselves. No later than the 120th day after the entry of the NCUC's order approving this Proposed Settlement Agreement, BellSouth shall mail the payment of the undisputed portion of any refund that is claimed by any PSP and that is supported by the documentation set forth above. PSPs that submit such documentation are not entitled to any refund pursuant to section 2(b) below.

(b) If a PSP does not submit documentation pursuant to subsection 2(a) above, BellSouth will pay the PSP refunds in the amount of \$16.96 (inclusive of interest) per each payphone access line in service at the end of each month in the refund period.

3. NCPA Withdrawal of Claims. Upon approval of this Proposed Settlement Agreement by the NCUC and upon receipt of the refunds described herein by the participating members of the NCPA (a list of whom is attached hereto as Attachment 1), NCPA agrees that it will not make any further claim in the pending Regulatory Proceeding against BellSouth for rate reductions and/or refunds for payphone access line services.

4. No Admissions. Neither any provision of this Statement taken individually, nor this Statement taken as a whole, is to be construed as an admission of liability or otherwise by BellSouth or NCPA or any other person, nor is it to be construed as an admission of any allegation or argument made by any person in the Regulatory Proceeding.

1. Agreement Contingent Upon NCUC Approval. No provision of this Proposed Settlement Agreement is binding upon either BellSouth or the NCPA unless and until it is approved by the NCUC.

By signing this Agreement, the parties acknowledge they have read this agreement and enter into it voluntarily.

THE NORTH CAROLINA PAYPHONE
ASSOCIATION, INC.

By: 
Vincent Townsend
President

BELLSOUTH TELECOMMUNICATIONS, INC.

By: _____
Name: _____
Title: _____ President

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By signing this Agreement, the parties acknowledge they have read this agreement and enter into it voluntarily.

THE NORTH CAROLINA PAYPHONE
ASSOCIATION, INC.

By: _____
Vincent Townsend
President

BELLSOUTH TELECOMMUNICATIONS, INC.

By: *[Signature]*
Name: Dan Funderburg
Title: President - PCS

Attachment 1 to Proposed Settlement Agreement

NCPA PARTICIPATING MEMBERS

Blayco Pay Phone
- CTS Communication
Cattel Inc. of North Carolina
Capetel
Cherokee Payphone Inc.
Coin Phone Management Company
Coin Telephone Service
Com-Tech Systems*
Daniel Payphones, Inc.
Davel**
ETS Payphones
Edwards Equipment Co. Inc.
Equity Pay Telephone Co., Inc.
Fortson Distributing Company
Glass, Robert J.
Graham Payphone Enterprises
JGS Communications
JGS Payphones
M&B Communications
Mullinax, Alex
North South Telecom
Pay Com Inc.
Pay Tel Communications, Inc.
Payphone Partners Inc.
Payphone Services, Inc.
PhoneTel Technologies, Inc.
Piedmont Communication Inc.
Piedmont Payphone Co.
Poltis Payphones
RH Pay Phones
Scott Communications***
Southeast Communications, Inc.
Southeastern Telecom
Southeastern Telephone Services****
Telecom, Inc.
Triangle Telephone

*Includes payphones formerly owned by V-Tech

** Includes payphones formerly owned by Teleleasing, Inc., Communications Central, Inc., and Peoples Telephone Company.

***Includes payphones formerly owned by General Communication.

****Includes payphones formerly owned by SCL Communications and Diamond Communications.

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gvt

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE TARIFF FILING)
BY BELL ATLANTIC-DELAWARE, INC. TO)
MAKE REVISIONS TO P.S.C.-DEL.-NO.)
1 TO RE-PRICE THE RATES FOR LINE)
SIDE ANSWER SUPERVISION AND THE)
INCOMING BLOCKING, OUTGOING)
BLOCKING, AND INCOMING/OUTGOING)
SCREENING COCOT LINE OPTIONS)
(FILED MAY 19, 1997))

PSC DOCKET NO. 97-0137
CONSOLIDATED

FINDINGS, OPINION & ORDER NO. 4522

AND NOW, co-wit, this 4th day of November, 1997, the
Commission finds and orders as follows:

I. BACKGROUND

1. In February, 1996, the United States Congress enacted the
Telecommunications Act of 1996 ("the Act") which decreed, among
other things, that a Bell Operating Company ("BOC"), such as Bell
Atlantic-Delaware, Inc. ("BA-Del"), that provides payphone service
may not subsidize its payphone service from its exchange service
and exchange access operations and may not prefer or discriminate
in favor of its own payphone service. 47 U.S.C. § 276(a).

2. The Act also required the Federal Communications
Commission ("FCC") to promulgate regulations that would, among
other things, implement the foregoing provisions. 47 U.S.C.

§ 276(b)(1)(B), (C). Pursuant thereto, the FCC issued orders promulgating regulations governing payphone service. Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996. CC Docket No. 96-136, Report and Order, FCC 96-388 (rel. Sept. 20, 1996); Order on Reconsideration, FCC 96-439 (rel. Nov. 8, 1996).

3. Under the FCC orders, payphones of local exchange companies ("LECs") are to be classified as unregulated customer premises equipment. The FCC also directed that any basic network services or unbundled features which a LEC provides to its own payphone services or to the payphone services of other carriers must also be similarly available to independent payphone service providers ("PSPs") on a non-discriminatory, tariffed basis, with specific tariffs to be filed in the governing state, as well as in the federal jurisdiction. According to the FCC orders, the terms, rates, and conditions for such services and unbundled features must be: (1) cost-based; (2) consistent with the requirements set forth in 47 U.S.C. § 276; and (3) non-discriminatory.

4. In addition, the FCC orders require each LEC to remove from the regulated exchange service and exchange access service rates any charges that recover the cost of payphone equipment. Moreover, the FCC orders require each state to determine which

intrastate elements must be removed to eliminate any intrastate subsidies to payphones. Tariffs setting forth the new services and features and reflecting the removal of subsidies were to become effective on April 15, 1997.

5. Pursuant to the FCC orders, on January 15 and 31, 1997, BA-Del filed with this Commission two applications to revise its present tariffs relating to payphone services. One application (designated PSC Docket No. 97-001T) proposed rates and conditions for the new payphone access lines and features. The other filing (designated PSC Docket No. 97-005T) deleted the then current tariff provisions relating to regulated "Public and Semi-Public" dial tone services.

6. By Order No. 4455, dated March 18, 1997, the Commission conditionally allowed Bell's proposed tariff revisions to become effective.¹ In Order No. 4455, the Commission expressly indicated that it was not approving the tariff provisions but was allowing

The Commission's decision to grant conditional approval of the BA-Del tariff revisions was prompted in part by: (a) a letter, untimely filed on March 17, 1997, from the American Public Communications Council, a national trade group representing independent PSAs, objecting on various grounds to the FCC tariffs; and (b) some uncertainty by Staff concerning the interplay between deadlines under state law for action on tariff filings and the requirements imposed by 47 U.S.C. § 276 and the FCC's orders.

Staff additional time within which to investigate the BA-Del proposals and, thereafter, conduct further proceedings. The Commission's Order also required Bell to make corrections, including refunds, if the Commission later determined that the proposed payphone tariff revisions were inconsistent with state law and governing federal law and regulations. Staff was required to complete its review of this matter by April 15, 1997.

7. On May 19, 1997, BA-Del filed an application (designated PSC Docket No. 97-013T) seeking to revise and amend the rates for certain unbundled payphone line features which had been set forth in the tariff revisions filed in PSC Docket No. 97-001T. In the meantime, Staff reported to the Commission that it had not completed its investigation by the April 15, 1997 deadline and that Staff believed that the Commission should order hearings on the three payphone filings to determine if the rates, terms, and conditions for the new basic services and unbundled features for the provision of payphone service are cost-based and non-discriminatory. Staff also asserted that such hearings would also allow the Commission to determine whether or not all subsidies for payphone costs had been removed from intrastate exchange services and exchange access services.

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8. In view of the foregoing, as well as of the belated objections by the American Public Communications Council, the Commission issued, on June 17, 1997, Order No. 4526 which: (a) consolidated the three Bell tariff filings into PSC Docket No. 97-0137; and (b) designated a Hearing Examiner to compile an evidentiary record and report to the Commission his findings and recommendations based thereon concerning: (1) whether the BA-Del filings comply with the requirements of 47 U.S.C. § 276 and any implementing PCC rules and orders; and (2) whether Bell has removed all subsidies for payphone costs from its regulated intrastate exchange service and exchange access rates. Order No. 4526 also directed the Hearing Examiner to endeavor to file his report in a manner that would allow the Commission to take final action in these matters by October 7, 1997.

9. The Hearing Examiner granted leave to intervene in this proceeding to the Diamond State Payphone Coalition ("DSPC" or "Coalition") and AT&T Communications of Delaware ("AT&T"), under the authority granted him by Order 4526. As AT&T's intervention petition was late-filed, after the remaining parties had submitted pre-filed testimony, the Hearing Examiner limited AT&T's participation to the cross-examination of witnesses and the filing of a post-hearing brief.

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BA-Del submitted the prefiled direct and rebuttal testimony of two witnesses. DSPC and the Commission's Staff ("Staff") each submitted the prefiled testimony of one witness.

10. The Hearing Examiner conducted a duly publicized evidentiary hearing concerning this matter in Wilmington on the morning of September 4, 1997. The parties and the PSC staff presented their respective witnesses to authenticate their pre-filed testimony. The Public Advocate did not participate in this proceeding. Although time was allotted for public comment at the hearing, no member of the public appeared or otherwise participated in this proceeding. At the conclusion of the hearing, the record consisted of 12 exhibits and a 212-page verbatim transcript.

11. On October 1, 1997, the Hearing Examiner submitted his findings and recommendations (the "Hearing Examiner's Report") based on the evidence in the record and post-hearing briefs of the parties. BA-Del, DSPC and AT&T all filed exceptions to the Hearing Examiner's Report. The Commission heard the arguments of the parties and deliberated thereon at its regular public session held October 7, 1997 in Dover, Delaware.

II. DISCUSSION

A. The Proposed Tariffs

12. Pursuant to § 276 of the Act, the Commission must determine that the payphone service intrastate tariffs now under review are non-discriminatory and consistent with the new services test. The new services test, codified in federal regulations at 47 CFR § 61.49(g) (2) and (h), prescribes that the tariffs must be: (a) based on a projection of costs for a representative 12-month period; (b) supported by demand estimates for the same period to show the effect that the tariffs will have on traffic and revenue for the same service, as well as other services; and (c) accompanied by data sufficient to establish that the tariff charges recover the cost of the services and will not recover more than a reasonable portion of the carrier's overhead costs. In addition to the foregoing, the Commission must "ensure that payphone costs for unregulated equipment and subsidies [are] removed from the intrastate local exchange service and exchange access service rates." (Bureau Waiver Order, CC D.C., 95-128, DA 97-678 (April 4, 1997) at §30.)

13. BA-Del proposes four types of payphone network access lines: (1) stationer controlled coin line ("SCCL"); (2) network-controlled coin lines ("NCCL"); (3) network-controlled

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non-coin line ("NCCL"); and (4) network-controlled inmate lines ("NCIL"). The proposed rates for these lines, excluding usage rates,² are as follows:

SCCL	22.68
NCCL (one-way)	31.27
NCCL (two-way)	28.27
NCNL (one-way)	23.27
NCNL (two-way)	30.27
NCIL (one-way)	30.00
NCIL (two-way)	28.00

In addition, BA-Del's proposed tariff proposes rates for four optional payphone features for use with the SCCL service: Line Side Answer Supervision - \$1.50; Incoming Blocking - \$1.50; Outgoing Blocking - \$1.50; and Inward-Outward Screening - \$3.00. (Ex. 7 at Schedule 1.)

14. BA-Del's Position. BA-Del presented cost studies which it asserted quantified the costs BA-Del incurs to provide payphone features and network access lines to PSPs. BA-Del also presented an analysis which purportedly demonstrated that there is no cross subsidy from other regulated exchange and exchange access services to BA-Del's provision of payphone services.

² BA-Del proposes to offer flat rate usage to network controlled lines at \$8.81 per line per month.

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15. BA-Del claimed in testimony that it conducted a subsidy analysis to determine whether the payphone revenues that BA-Del receives from its own payphone operations recover intrastate costs incurred by BA-Del to operate and maintain its payphones, or whether these costs were subsidized by revenues from rates and charges for non-payphone services. According to BA-Del, the results of the subsidy analysis indicate that BA-Del's payphone service provides a positive net income and is, therefore, not cross subsidized by any other service.

16. BA-Del's tariff filings propose rate reductions for the optional payphone features but propose no changes to the other previously tariffed payphone access lines, i.e., NCCL and NCNL services (for which tariffs were filed in January, 1997), and SCCL and NCIL services (for which tariffs were filed and approved prior to 1997). According to BA-Del, these tariffs are all "consistent with the federal new services cost and require no revisions."

17. BA-Del asserted that the tariffs meet the new services test because: a) BA-Del proposes no revisions in its payphone access lines; b), the costing methodology used to calculate the proposed rates is consistent with the methodology ordinarily used by BA-Del to support FCC tariffs under federal guidelines; and c) BA-Del has demonstrated that the current tariff rates for payphone

access lines provide a just and reasonable contribution to overhead.

18. Staff's Position. Staff's witness explained that the FCC's orders required LECs to file, in both the interstate and intrastate jurisdictions, tariffs for those unbundled features and functions which the LECs provide to others, and take themselves, for payphone operations. In addition, the FCC required that the individual states determine that these tariffs are: (a) cost based; (b) consistent with § 276 of the Act, i.e., free from subsidy; (c) non-discriminatory; and (d) consistent with the new services test.

19. Applying the foregoing standards to BA-Del's proposed access line rates, Staff concluded that these rates are not cost based and recover more than a reasonable level of contribution to overhead costs. According to Staff, the rates proposed by the BA-Del tariff are the same rates established by the Commission as the business dial tone line ("BDTL") rate in FSC Docket No. 92-47, BA-Del's last rate case. Staff contends that in that docket, the Commission expressly designated BDTL as a "residual rate." Thus,

In support of this assertion, Staff cites FCC Order No. 3713, dated November 30, 1993, where the Commission held that "BDTL rates should be set at that level which, when combined with the other rates approved in this order, will allow the company to

According to Staff, it would be inappropriate to presume that the BDTL rate accurately reflects the cost of providing access lines. In view of the foregoing, Staff suggested that the Commission set a rate for the new service, to be designated "pay telephone access line," that is implicitly created under the Act.

20. Based on an analysis of BA-Del's most recent loop cost study Staff concurred with BA-Del's then claimed direct cost of [BEGIN PROPRIETARY] \$13.30 [END PROPRIETARY] for SCCL access lines, including billing and white page listing. Staff testified that the difference between this cost and BA-Del's proposed rate of \$22.20 is an unreasonable level of contribution for the service. Staff recommended as reasonable a per unit contribution level of [BEGIN PROPRIETARY] 20¢ [END PROPRIETARY] for station-controlled network access lines. According to Staff this level of contribution is reasonable because it compares favorably with the level of contribution the Commission deemed reasonable in BA-Del's SCAT proceeding (PSC Docket No. 96-324). Thus, Staff recommended a rate of \$16.63 as appropriate for SCCL service.

recover the company's revenue requirement as we have found it in this proceeding."

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21. Staff further recommended that a \$16.63 rate be set for the remaining access line rates, except that the rate for the NCCL services would have a rate of \$26.17 to reflect the \$8.84 flat rate for usage. Staff acknowledged that the proposed \$16.63 rate would result in a slight variation in the level of contribution for each service because the costs for each service vary slightly; however, Staff asserted that these variations are de minimis.

22. Turning to the question of BA-Del's proposed rates for payphone features, Staff proposed the following rates:

Feature	BA-Del Rate	Staff Rate
Inward call block	\$1.50	\$1.00
Outward call block	\$1.50	\$1.00
Line-side answer supervision	\$1.50	\$1.00
Inward/outward screening	\$3.00	\$2.00

23. Staff testified that the Commission has "traditionally allowed the pricing of vertical services at levels that earn greater than a reasonable level of contribution." Staff explained that in those cases, the rationale for the Commission's forbearance was to promote universal service. Staff asserted that it would be inappropriate to conclude that BA-Del should be required to provide a service or feature with very low direct cost at little or no charge. Staff explained that even though there may be very little cost attributable to one particular service, there are shared costs

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and common overhead which must be recovered from the service. Moreover, since it is rare that vertical services and features generate the same level of revenue as do access lines, it is necessary to perform contribution analyses at the aggregate level, rather than on a per unit basis. Staff, therefore, estimated the monthly cost of BA-Del's provisioning of SCCLs in Delaware in order to determine the aggregate contribution level of the features and functions now under review. (Id.) Based thereon, Staff concluded that even with a 50% take of the features in question, the aggregate contribution level for BA-Del would be approximately [BEGIN PROPRIETARY] 204 [END PROPRIETARY]. Staff contends that its recommended rates for features are reasonable because, on balance, they will allow payphone service offerings as a whole to earn a minimum contribution level of [BEGIN PROPRIETARY] 204 [END PROPRIETARY].

24. As to usage rates, Staff noted that BA-Del proposed to charge network-controlled line subscribers a flat usage rate, but proposed to offer station-controlled line subscribers service at a measured usage rate. Staff viewed this disparity as "discriminatory". Staff explained that, historically, BA-Del denied PSPs interconnection to its network's coin line functions. In order to compete in the payphone market, PSPs had to purchase

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so-called "smart" (or station-controlled) phones which internally incorporated network-like functions. These "smart" phones cost more than the "dumb" phones that BA-Del traditionally deployed. Staff argued that in light of BA-Del's assertion that it lacked the technical ability to meter usage on network-controlled lines at this time, BA-Del should be required to offer an \$8.84 flat usage rate package for station-controlled lines.

25. DSFC's Position. DSFC's witness testified that, typically, PSPs purchase dial tone line, touch tone, inward-outward screening, and a local usage package from BA-Del. He asserted that on average, payphones do not earn sufficient revenues from local call charges to cover their costs of providing the service and that this revenue deficiency is recovered through long distance and operator surcharges. According to DSFC, these surcharges make PSP payphones less attractive to end users and location owners; and although the Telecommunications Act affords PSPs the option of increasing local call rates, DSFC testified that they prefer not to do so "in order to keep the local call charge as affordable and convenient as possible."

26. Thus, DSFC recommended that the Commission order BA-Del to price all payphone rates "at their direct cost plus a 10% mark-up to allow for contribution to overhead (including the

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federal line cost charge)." In addition, it recommended that for services which BA-Del admits incur no cost to provide, the Commission should allow no charge in rates for such services. DSPC asserted that such action by the Commission will alleviate the need to increase local coin charges when the rates are deregulated.

27. DSPC argued the Commission should also reject BA-Del's proposed usage rate of \$8.84 for NCCJ service because that rate by far exceeds the cost of providing the service. DSPC asserted that BA-Del's cost data indicated that the usage cost per coin call is [BEGIN PROPRIETARY] \$0.0031 [END PROPRIETARY], assuming an average call length of 3.29 minutes; and the cost per minute for BA-Del is [BEGIN PROPRIETARY] \$0.0026 [END PROPRIETARY]. DSPC suggested that the Commission require that the usage rate reflect the direct cost per call or per minute plus a 10% mark-up.

28. In sum, DSPC's recommended rates for payphone services are as follows:

Service	Cost	Contribution Factor	Price
	[BEGIN PROPRIETARY]		
Station Controlled Line	\$14.16/month	1.10	\$15.50
Incoming Blocking	\$00.0101/month	1.10	\$0.011

service and on the testimony of a renowned economist in the field of utility regulation, Dr. William J. Baumol. Thus, the Hearing Examiner recommended that the level of contribution produced by the access line rate should be [BEGIN PROPRIETARY] 204 [END PROPRIETARY].

31. The Hearing Examiner disagreed with BA-Del's contention that there is no evidence that the current [BDTL] rate is "unreasonable," regardless of how it was first established. The Hearing Examiner observed that the BDTL was set at a time when BA-Del was regulated under the rate base/rate of return regimen, and the Commission's own words make it clear that the rate was set to allow BA-Del to recover its revenue requirement as the Commission found appropriate in that docket. Moreover, the Hearing Examiner pointed out the Act defines a "just and reasonable" rate as one that recovers the cost of providing the service plus a reasonable margin to cover shared and common costs. (47 U.S.C. § 252 (d)(1)). Since the rates set in Docket No. 92-47 were rolled into the price caps established by the TIA without further Commission review as to the appropriateness of cost bases or the levels of contribution, the Hearing Examiner concluded that BA-Del's claim of "reasonableness" for a rate that was initially set residually, is not convincing.

32. The Hearing Examiner recommended that the Commission designate the rates set herein as "pay telephone access line" rates. He reasoned that such a distinction should allay BA-Pel's concerns about the disparity between rates for PSFs and other ADTL users.

33. In sum, the Hearing Examiner recommended for the Commission's approval the following rates for access lines:

Service	Rate
SCCL	\$26.17 (including usage at \$8.84/month)
NCCL (one or two-way)	26.17 (including usage at \$8.84/month)
NCNL (one or two-way)	16.63
NCIL (one or two-way)	16.63

34. The Commission finds the Hearing Examiner's reasoning to be persuasive and adopts his recommended rates, except that, as discussed below, due to the change in circumstances since issuance of the Hearing Examiner's Report, the Commission finds it unnecessary to include a flat usage rate for SCCL. The SCCL rate the Commission approves, therefore, is \$16.63. The Commission further adopts the Hearing Examiner's suggestion that these rates be tariffed as a new service designated as "pay telephone access line" (S-0).

35. The Hearing Examiner concurred with Staff's assessment that the usage charges are discriminatorily applied. Accordingly,

he recommended that the Commission set a flat monthly usage rate of \$8.84 for SCCL service at least until such time as BA-Del demonstrates that a measured rate is applied to NCCL services.

36. In exceptions, BA-Del stated that "since the issuance of the Report and effective October 1, 1987, the NCCL has been provided on a measured basis only." BA-Del asserted that the potential "discrimination" which concerned Staff no longer posed a problem since BA-Del is now capable of providing, and does provide, both NCCL and SCCL only on a measured basis. Thus, BA-Del argued, there is no need to require it to provide flat-rated SCCL, even temporarily.

37. Staff took no exceptions to the Hearing Examiner's Report, but at deliberations, Staff accepted BA-Del's representation that it now provides NCCL only on a measured basis, and concurred that, therefore, it was not necessary for the Commission to require BA-Del to provide flat-rated service to SCCL.

DSPC, in its exceptions, however, took a different approach, arguing that the Commission should require BA-Del to offer flat-rated usage to SCCL on a permanent basis, and that, moreover, the \$8.84/month rate recommended by the Hearing Examiner is not "cost-based." Implicit in the Hearing Examiner's recommendation that BA-Del be required to offer flat-rated usage to

all lines until such time as it is able to provide measured usage to all lines is the conclusion that BA-Del's measured usage rate is appropriate. That measured usage rate (\$0.03 for the first 3 minutes and \$0.005 for each additional minute) is the same as BA-Del's tariffed usage rate for both business and residential service. In its prefiled testimony, Staff testified that it is appropriate to match payphone usage rates to existing tariffed usage rates.

38. Accordingly, the Commission concurs with BA-Del and Staff, that due to the circumstance of BA-Del now offering only measured usage to NCCU, it is no longer necessary to require it to provide flat-rated usage to SCCU. The Commission understands this conclusion to be consistent with the Hearing Examiner's intentions. The Commission further concludes that, as Staff testified, it is appropriate to apply the existing tariffed usage rate to payphone services.

39. Turning to features and functions, the Hearing Examiner found the Staff approach "eminently reasonable" and recommended its adoption to the Commission. He observed that it allows BA-Del some pricing flexibility, but not carte blanche to set prices. Such freedom would be inappropriate, the Hearing Examiner suggested, because the functions and features are currently monopoly inputs.

At the same time, the Hearing Examiner reasoned, the Staff approach does not place inflexible pricing constraints as he concluded the DSPC recommendation would. The Hearing Examiner found persuasive Staff's argument that just because there is no direct cost for providing a service does not necessarily mean that there are no shared costs that should be allocated to or returns to be earned from such service.

40. Notwithstanding the foregoing, however, the Hearing Examiner differed with Staff's recommended price for inward/outward screening. In light of DSPC's contention that although the direct cost for this feature is [BEGIN PROPRIETARY] zero [END PROPRIETARY], it is the highest priced feature, and it also happens to be the most crucially necessary service feature offered to PSFs by BA-Del. For these reasons the Hearing Examiner recommended a further reduction of this rate to \$1.50 rather than the \$2.00 rate that Staff has recommended.

41. Thus, the Hearing Examiner recommended that the Commission approve the following rates as just and reasonable for payphone features and functions:

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Feature	Rate
Inward call block	\$1.00
Outward call block	\$1.00
Line-side answer supervision	\$1.00
Inward/outward screening	\$1.50

Again, the Commission accepts the Hearing Examiner's recommendation as reasonable and appropriate based on the evidence (S-0).

B. Removal of Subsidies.

42. AT&T's Position. AT&T filed no testimony in this proceeding but submitted a brief contending that BA-Del had not shown conclusively that its payphone services are not subsidized. According to AT&T, in previous proceedings before this Commission, BA-Del has claimed that its payphone services were subsidized but in the instant docket, BA-Del has failed to "present a plausible explanation as to why the landscape is so different today."

43. AT&T contends that because there is ample evidence that peak rates in Delaware were established, in part, to subsidize local coin phone service (which, AT&T asserts, BA-Del has repeatedly described as a "below cost service"). Therefore, the Commission cannot find, based upon the record in this proceeding,

that all historical subsidies have been removed from BA-Del's intrastate rates.'

44. In addition, AT&T argues, BA-Del should not be permitted to collect per call compensation under § 276 until the investigation of intrastate rates is complete. Otherwise, it claims, Delaware consumers may be "paying twice" for payphone services, once by way of implicit subsidies still remaining in intrastate rates and a second time in pass-through expenses for per call compensation.

45. Hearing Examiner's Recommendations and Commission's Findings. The Hearing Examiner concluded that there is no convincing record support for AT&T's contention. The Hearing Examiner found that BA-Del presented evidence, through its subsidy analysis, that intrastate payphone costs, prior to the April 15, 1997 deregulation, were recovered from intrastate payphone revenues; thus, as of April 15, 1997, there would appear not to be any implicit subsidy to payphone services from the rates and

There has been some reference by the parties to a possible requirement that BA-Del obtain "certification from the Commission that BA-Del is in compliance with the applicable Orders. However, there is no such requirement. In its most recent order in this docket, the FCC expressly noted that its prior orders do not require the LEC to obtain a certification of compliance from either the FCC or the state. Second Report and Order, CC D.C. 96-128, FCC 97-371 (10/9/97).

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charges for non-payphone services. The Hearing Examiner further reasoned that the Act and the FCC's orders appear to focus on: (a) ensuring that payphone services no longer receive subsidy; and (b) ensuring that any express charge for payphone equipment be removed as components of local exchange and exchange access rates. This means, he concluded, that no subsidies may flow to payphone services from other services. Thus, if the payphone rates are set to recover direct costs plus a reasonable level of contribution, the Hearing Examiner observed, then such rates are not being subsidized.

16. Section 276 of the Act requires that a BOC providing payphone service (such as BA-Del):

(1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and

(2) shall not prefer or discriminate in favor of its payphone service.

Section 276 further requires that:

the intrastate and interstate carrier access charge payphone service elements and payments in effect on such date of enactment, and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues,

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be "discontinued." The Commission finds the Hearing Examiner's analysis of these standards to be persuasive, and agrees with his conclusion that, with the offering of the subsidy analysis and the tariffs which the Commission herein approves, BA-Del will be in compliance with the above standards.

47. The Commission emphasizes, however, that by so finding, it expressly does not reach the question of whether the rates for BA-Del's exchange services or exchange access services (or, indeed, any of its tarified rates) are set at levels allowing them to recover "subsidy" toward services that may be provided below cost. The interpretation of § 276 urged by the Hearing Examiner, with which the Commission agrees, does not require it to find that "historic" subsidies have been eliminated. Instead, as the Commission reads the Act and the implementing orders, payphone service rates may not be set so that subsidy flows to them from exchange service or exchange access, a standard which requires the Commission only to find, as it does, that the payphone service rates approved herein are set to recover the direct costs of providing the service, plus a reasonable level of contribution to overhead. The Commission expressly does not find that amounts once intended as a subsidy (including, but not limited to amounts

intended to support payphones are not part of other BA-Del rates.

(5-0).

B. Refund

48. As previously noted, by Order 4455 (March 19, 1997) the Commission conditionally allowed BA-Del's proposed tariff revisions to become effective, but required BA-Del to make corrections to those tariffs, and to make refunds, if the Commission later determined that the proposed tariffs did not fully comply with governing state and federal laws and regulations. Order 4526 (June 17, 1997) imposed the same conditions on BA-Del's subsequently filed May 19 proposed tariff revisions.

49. By this Order, the Commission finds rates and charges other than those in the proposed tariffs to be consistent with governing laws and regulations. Accordingly, the Commission requires BA-Del, consistent with Orders 4455 and 4526, to refund to its customers the difference between the rates and charges imposed since the conditionally effective dates and those approved herein.

NOW, THEREFORE, IT IS HEREBY ORDERED:

A. That BA-Del shall file tariffs for services designated "pay telephone access line rates" and that the rates for such services shall be:

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Service	Rate
SCCL	\$15.63
NCCL (one or two-way)	25.17 (including usage at \$8.34/month)
NCNL (one or two-way)	15.63
NCIL (one or two-way)	15.63

B. That BA-Del shall file revised tariffs for payphone feature and functions, the rates for which shall be:

Feature	Rate
Inward call block	\$1.00
Outward call block	\$1.00
Line-side answer supervision	\$1.00
Inward/outward screening	\$1.50

C. That BA-Del shall promptly refund to its customers the difference between the rates and charges approved herein and those charged under the tariffs conditionally approved by Orders 4455 and 4526, for the effective period thereof.

D. That the Commission reserves the jurisdiction and authority to enter such other and further Orders in these matters as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Chairman

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PSC Docket No. 97-0137, Order No. 4637 CONF'D.

Vice Chairman

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary

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WALTERS & JOYCE, P.C.
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(303) 322-1404
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FACSIMILE COVER SHEET

TO: Don Wood

FAX: (770) 475-9972

FROM: Craig D. Joyce

DATE: March 27, 1998

TIME: 2:00 P.M.

RE:

MESSAGE: Attached are copies of the Order adopted March 20, 1998 by the FCC in the Matter of North Carolina Utilities Commission and Findings, Opinion and Order No. 4637 issued by the Public Service Commission of the State of Delaware in Docket No. 97-013T.

An original will will X not be forwarded.

The information contained in this communication is confidential, may be attorney-client privileged, confidential and exempt from disclosure under applicable law, and is intended only for the use of the addressee. Unauthorized use, disclosure or copying is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately at (303) 322-1404 or by return fax at (303) 377-5668 and return the fax to us at the above address via U.S. Mail. Thank you.

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ORDER No. 76787

IN THE MATTER OF THE
INQUIRY INTO THE PAYPHONE
TARIFFS OF BELL ATLANTIC-
MARYLAND, INC.

* BEFORE THE
* PUBLIC SERVICE COMMISSION
* OF MARYLAND
*
*
*

CASE NO. 8763

I. INTRODUCTION

Before the Public Service Commission of Maryland ("Commission) in the above-captioned case are appeals from the Proposed Order of Hearing Examiner issued on December 8, 1998 ("Proposed Order").

Since the Hearing Examiner described the procedural background and evidentiary presentations of the parties in the Proposed Order, it is unnecessary to repeat these matters in great detail. However, the procedural history and arguments on appeal are briefly summarized below.

II. BACKGROUND

The Communications Act of 1934, as amended by the Telecommunications Act of 1996¹, ("the Act") brought about a number of changes in the telecommunications industry on both a national and local level. One such change was the deregulation of payphone services as detailed in §276 of the Act. In pertinent part, §276 provides that:

- (a) [A]fter the effective date of the rules prescribed pursuant to subsection (b), any Bell operating company that provides payphone service --
 - (1) shall not subsidize its payphone service directly or indirectly from its telephone exchange

¹ 47 U.S.C. 251 et seq.

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- service operations or its exchange access operations; and
- (2) shall not prefer or discriminate in favor of its payphone service.

Section 276 also grants the Federal Communications Commission ("FCC") jurisdiction over tariffing of payphone services. The FCC, pursuant to its jurisdiction, and in accordance with the mandates of §276, initiated the Payphone Reclassification Proceeding and adopted regulations intended to implement §276.² While the Act vests jurisdiction over payphone tariffing in the FCC, the FCC through the Payphone Reclassification Proceeding delegated to each state the review of intrastate payphone tariffs subject to the criteria enunciated in the Payphone Reclassification Proceeding.

In particular, the FCC required that local exchange carriers ("LECs") tariff, at the intrastate level, basic payphone services that enable independent providers to offer payphone services and any unbundled features the LEC provides to its own payphone service.³ The FCC further directed that these tariffs be: "(1) cost-based; (2) consistent with the requirements of §276 with regard, for example, to the removal of subsidies from exchange and exchange access services; and (3) non-discriminatory . . ."⁴ Additionally, the FCC required reviewing state commissions to utilize the New Services Test ("NST") as described at 47 C.F.R. Section 61.49(g)(2) and in Paragraphs 38-44 of its Open Network Architecture ("ONA") Proceeding.⁵

² *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, FCC 96-254, 11 FCC Rcd 6716, rel. June 6, 1996. ("Payphone Reclassification Order"); *Report and Order*, CC Docket No. 96-128, FCC 96-388, 11 FCC Rcd 20541, rel. September 20, 1996 ("Payphone Order"); *Order on Reconsideration*, FCC 96-439, 11 FCC Rcd 21233, rel. November 8, 1996 ("Payphone Reconsideration Order").

³ *Order on Reconsideration* ¶¶162, 163.

⁴ *Id.* at ¶163.

⁵ *In the Matter of Wisconsin Public Service Commission Order Directing Filings*, CCB/CPD No. 00-1, DA 00-347, rel. March 2, 2000, ¶2. ("Wisconsin Order"); See also, Payphone Order ¶¶147-48.

The NST requires that an incumbent local exchange carrier ("ILEC"):

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. Costs must be determined by the use of an appropriate forward-looking, economic cost methodology that is consistent with the principles the [FCC] set forth in the Local Competition First Report and Order.⁶

In particular, the NST requires that a LEC seeking state commission review of its intrastate payphone service tariffs must include with its tariff filing to the state commission cost support consisting of: 1) a study containing a projection of costs for a representative 12-month period; 2) estimates of the effect of the new service on traffic and revenues, including the traffic and revenues of other services; and 3) supporting workpapers for estimates of costs, traffic and revenues.⁷ The FCC has indicated that summaries of cost study results are not acceptable. Instead, the FCC requires that incumbent LECs submit complete cost studies with full documentation for each proposed rate element.⁸

Furthermore, each tariff filing subject to the NST must also be accompanied by cost data sufficient to establish that such tariffed charges will not recover more than a just and reasonable portion of the carrier's overhead costs.⁹

III. PROCEDURAL HISTORY

This case originated when Bell Atlantic-Maryland, Inc. ("BA-MD") filed a proposed tariff revision, Transmittal No. 1012, on May 19, 1997. BA-MD requested that the

⁶ *Id.* at ¶9.

⁷ Payphone Reconsideration Order, ¶163; See also, *Amendments 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, 6 FCC Rcd 4524, 4531 (1991), ¶¶ 38-44.

⁸ *Id.*

⁹ 47 C.F.R. 61.49(h).

Commission affirm that its proposed rates for Pay Telephone Lines met the NST and were in compliance with the orders of the FCC implementing §276 of the Act.

As part of its filing, BA-MD included a description of the FCC's Orders relating to payphone services, the NST and the contents of its filing. BA-MD indicated in its transmittal filing that it was providing additional documentation to the Commission's Staff that was not included in its official May 19, 1997 filing, nor made part of the official record.

After considering the May 19, 1997 filing, Staff's comments, and comments from AT&T Communications of Maryland, Inc. ("AT&T"), the Office of People's Counsel ("OPC") and the Peoples Telephone Company, Inc. ("Peoples") at the June 18, 1997 Administrative Meeting, the Commission accepted the tariff for filing, set the matter for hearing to consider the issues raised by AT&T, OPC and Peoples and delegated the authority to conduct the proceeding to the Hearing Examiner Division. The parties and intervenors to this proceeding include: BA-MD; AT&T; MCI Telecommunications, Inc. ("MCI"); Sprint Communications Company, L.P. ("Sprint"); Peoples; OPC; and Staff.

BA-MD filed testimony by John A. Pehta, its Director-Economic Costs/Regulatory Support, and by Harold E. West, BA-MD's Director of Regulatory Support. Dr. Marvin H. Kahn, a principal of Exeter Associates, and Bruce W. Renard, General Counsel and Executive Vice President of People's Telephone Company, testified on behalf of Peoples. Harry J. Newett, Manager-Access Management, testified on behalf of AT&T. Ann A. Dean, Assistant Director of the Commission's Telecommunications Division, testified for Staff. A two-day evidentiary hearing was held on January 7 - 8, 1998. By the time of the hearings, the issues regarding rate reductions for line side answer supervisions and call screening had been resolved and were no longer at issue in this proceeding. On December 9, 1998, the

Proposed Order of Hearing Examiner was issued. BA-MD, AT&T and Staff noted timely appeals from the Proposed Order and subsequently filed memoranda in support of appeal on or about January 19, 1999. Reply memoranda were filed by BA-MD, AT&T, OPC and Peoples on or about February 8, 1999.

IV. ISSUES ADDRESSED IN THE PROPOSED ORDER OF HEARING EXAMINER

The issues identified during the pendency of this proceeding are as follows:

- 1) whether the payphone rates proposed by BA-MD are subsidized directly or indirectly by its local telephone exchange or exchange access services;
- 2) whether the payphone rates proposed by BA-MD, including its Station Controlled Coin Line ("SCCL") rate, are in compliance with the New Services Test ("NST");
- 3) whether usage and measured service rates applicable to payphone service providers ("PSPs") are subject to the NST; and
- 4) whether a proceeding to determine if and where public interest payphones are needed in the State should be instituted.

The Hearing Examiner found: 1) that the weight of the evidence indicates that the rates proposed by BA-MD are being implicitly and/or explicitly subsidized by its local telephone exchange service and/or exchange access operations contrary to §276 of the Act; 2) that BA-MD has not eliminated the direct and indirect subsidies for its Maryland intrastate payphone services; 3) that SCCL, usage and measured service charges are subject to the NST; 4) that the proposed payphone rates do not meet the NST; and 5) that it was not necessary to institute a separate proceeding on public interest payphones at this time. The Hearing Examiner directed that a Phase II of this case be instituted to determine the current amount of subsidies contained in BA-MD's intrastate payphone services. BA-MD was further directed to conform its tariff charges for payphone usage and SCCL to the FCC-mandated NST by utilizing the Commission ordered inputs and 12% overhead loading factor

established in Case No. 8731, Phase II, Order No. 74365. Additionally, the Hearing Examiner directed Staff to monitor the need for payphones in public interest locations and report to the Commission on this issue once each calendar year.

V. THE PARTIES POSITIONS ON APPEAL

Only three of the four issues addressed by the Proposed Order were appealed. The Hearing Examiner's findings with respect to public interest payphones were not appealed. That being the case, the Commission hereby affirms and adopts that portion of the Proposed Order as it relates to public interest payphones. Of the remaining three issues, BA-MD and Staff noted appeals with respect to all of them. AT&T noted an appeal with respect to the establishment of a Phase II to determine the amount by which BA-MD's payphone services are subsidized and the origin of the subsidy.

A. Bell Atlantic - Maryland, Inc.

BA-MD argues that its payphone rates are not subsidized and urges the Commission to reject the Proposed Order of Hearing Examiner with respect to the subsidy issue. BA-MD reasons that the Hearing Examiner's findings are arbitrary and capricious, confuse the issues, and ignore evidence adduced during the proceeding.

In support of its appeal, BA-MD essentially reiterates its position and arguments advanced throughout this proceeding, that its intrastate revenues for payphone services exceed the costs of those services. BA-MD indicates that similar proceedings conducted by state commissions in Delaware, Pennsylvania, New York, West Virginia and the District of Columbia have determined that Bell Atlantic's intrastate rates satisfy the NST based upon the same type of evidence as that presented in this proceeding, either a local coin service cost study or cost and revenue analysis. Likewise, BA-MD indicates that it used the same

type of analysis in this proceeding as it did in its proceeding before the FCC with respect to its interstate payphone costs. BA-MD also points to the inability of the Hearing Examiner to identify the origins of the subsidy or the specific amount of the subsidy as evidence that the Hearing Examiner's findings are in error. Additionally, BA-MD, citing Order No. 70324 issued on January 22, 1993 in Case No. 8462, states that the Commission has already determined that its previous local coin rate of \$.025 covered its local coin service cost.¹⁰ For these reasons, BA-MD urges the Commission to reject the Proposed Order and find that its payphone services rates do not contain subsidies and are consistent with the NST.

With respect to its proposed rates for SCCL and other non-usage based payphone services, BA-MD requests that the Commission find that its rates satisfy the NST and reject the Hearing Examiner's finding that its payphone service rates should be modified to reflect the use of the inputs and overhead ordered by the Commission in Case No. 8731, Phase II. In support of this request, BA-MD notes that the Proposed Order's requirements would accord PSPs the same pricing treatment as competitive LECs, a benefit that BA-MD claims is contrary to past rulings of the FCC. According to BA-MD, the FCC has found in prior orders addressing local competition, that PSPs are not eligible for the wholesale rates that competitive local exchange providers are entitled to pursuant to §§251 and 252 of the Act. In particular, BA-MD indicates that the FCC stated that:

the services that incumbent LECs offer to PSP are retail services provided to end users, and should be available at wholesale rates to telecommunications carriers . . . but need not be made available at wholesale rates to independent PSPs that are not telecommunications carriers.¹¹

¹⁰ BA-MD Memorandum on Appeal, pp. 10-11.

¹¹ Payphone Order at n. 508.

BA-MD further contends that the SCCL customer-owned coin-operated telephone ("COCOT") tariff rates are the same rates BA-MD offers for a general business line and that there is no reason to treat PSPs any differently than business customers. To require BA-MD to use a 12% overhead rather than 48% would be to treat PSPs as if they were competitive local exchange carriers ("CLECs"). Overall, BA-MD argues that since its SCCL rates mirror business rates they are reasonable and satisfy the NST.

Finally, on appeal, BA-MD excepts the Hearing Examiner's finding that usage and measured service rates for payphone services are subject to the NST. Throughout this proceeding BA-MD has maintained that local usage rates are generic business usage rates that have been previously approved by this Commission and are therefore not subject to the NST. On appeal BA-MD urges the Commission to defer a decision on this issue pending the release of an FCC ruling on a similar issue that has been requested on behalf of the New Jersey Board of Public Utilities.¹²

B. Staff

As with BA-MD, Staff also appealed the remaining three issues contained in the Proposed Order. Staff argues that the Hearing Examiner erred in holding that Staff's arguments, and those of BA-MD, as they relate to the subsidies were superficial. Staff also contends that the Hearing Examiner's findings with respect to usage and measured service did not take into account the Staff's telephone conversations with FCC personnel as were

¹² On July 29, 1998, Caroline Vachier, Deputy Attorney General of New Jersey submitted the following question to the FCC's Common Carrier Bureau Chief: "Whether it was the commission's intention to require message units to meet the New Services Test for tariffs filed with the state utility commissions." The Common Carrier Bureau responded on October 5, 1999, DA 99-2093.

related by Staff in testimony and during the hearing on this matter. According to Staff, BA-MD has shown that its revenues from payphones exceed its costs by a wide margin. Staff indicates that it reviewed the cost study used by BA-MD and found that the rates proposed were reasonable. Staff asserts that a service is not subsidized if it covers its own direct costs.¹³

Staff also requests that the Commission reject the Hearing Examiner's finding that BA-MD should be required to utilize the Commission ordered inputs from Case No. 8731, Phase II. Staff asserts that it would not be advisable to restrict BA-MD's overhead factor to a firm percentage, but that the Commission should instead allow BA-MD some pricing flexibility via the overhead and inputs. Staff argues that the pricing standards for unbundled network elements are not equivalent to the standards advanced by the FCC payphone regulations and the NST.

In the alternative Staff claims that BA-MD's rates for SCCL are in compliance with the NST because they were developed using a forward-looking methodology, namely a Total Service Long Run Incremental Cost ("TSLRIC") methodology, and contain an overhead loading of 48% which Staff finds to be reasonable. With respect to pricing of usage, Staff argues that BA-MD's intrastate business usage rates and measured service rates were not subject to the NST because these rates were the same rates charged to end users and already existed in BA-MD's tariffs.

C. AT&T Communications of Maryland, Inc.

AT&T does not appear to object to the specific findings of the Hearing Examiner, and in fact urges the Commission to adopt the finding of the Hearing Examiner as it relates

¹³ Staff Memorandum on Appeal at 4.

to subsidies. However, AT&T opposes the establishment of a Phase II to this proceeding to determine the amount and origin of the subsidies. Instead, AT&T requests that the Commission direct BA-MD to decrease its access charges by \$15.1 million immediately. According to AT&T, this amount, in part, is consists of the 10¢ payphone price differential between what BA-MD charged while payphones were subject to regulation (25¢) and the price that BA-MD charged upon deregulation (35¢). AT&T has argued throughout this proceeding that the price increase is evidence that BA-MD rates were subsidized prior to deregulation as in a deregulated environment prices will tend to move towards costs. AT&T estimates that the 10¢ increase will generate approximately \$14 million in payphone revenues for BA-MD. The remaining \$1.1 million of the proposed reduction would result from per call compensation, at 24 cents per call, to which BA-MD will be entitled once it complies with the FCC's orders.

D. Peoples Telecommunication Company, Inc.

Peoples filed a Reply Memorandum supporting the Proposed Order of Hearing Examiner as it relates to the usage and measured service rates and the SCCL rates. Peoples was silent with respect to the other issues raised on appeal. In particular, Peoples supports the requirement that usage and measured service rates for payphone service providers satisfy the NST. Peoples maintains that in order for the SCCL rates to satisfy the NST BA-MD must utilize the Commission inputs from Case Number 8731, Phase II. Peoples responds to BA-MD's arguments that the rates for SCCL and business lines should be the same by noting that unlike ordinary business users, PSPs are telecommunications resellers and as such, the payphone line becomes a critical facility. Additionally, Peoples notes that unlike

business line service, payphone service is subject to the specific mandates of §276 and the Payphone Reclassification Proceeding and must comply with the NST.

E. Office of People's Counsel

OPC states that this case is about fostering competition in Maryland's payphone market, and on reply OPC supports the Proposed Order of Hearing Examiner in its entirety. OPC notes that the public policy decisions advanced by the Hearing Examiner are pro-competitive and consistent with the direction and positions taken by the Commission in the past. OPC posits that the Hearing Examiner's decision was well-reasoned and based upon the law, FCC guidance, the Commission's policy in favor of telecommunications competition and the record presented by the parties in this case.

OPC argues that an indirect subsidy can exist even when direct revenues exceed direct costs. This indirect subsidy can either decrease costs by reducing the costs of inputs, or can increase revenues by pricing elements artificially high. As such, OPC supports the Hearing Examiner's finding that BA-MD had not made the case that an economic definition of subsidy is the correct one under these circumstances. With regard to usage and SCCL rates, OPC reasons that any service essential to the operation of a PSP as a competitor of BA-MD in the payphone industry, should be cost-based and include a reasonable overhead, that is subject to the NST. For these reasons OPC urges the Commission to affirm the Proposed Order of Hearing Examiner.

VI. DISCUSSION AND FINDINGS

As a general matter, §3-111 of the PUC Article specifically provides that "[f]actual information or evidence not made part of the record may not be considered in the determination of a case." As observed by the Commission in the past, a prerequisite for any

evidence to be considered by the Commission for the purposes of an appeal is that a party to the proceeding must have proffered such evidence and made it a part of the official record.¹⁴ Materials contained in briefs and memoranda of appeal are merely argument and are not considered as evidence in rendering a decision.¹⁵

Upon examination and review of the Proposed Order of Hearing Examiner issued in this proceeding, the record established by the parties and the arguments advanced on appeal, we find that the Proposed Order should be and is affirmed subject to the modifications contained herein. The Commission agrees with OPC that in general the Hearing Examiner's Proposed order is based on a full and fair review of the evidence presented at the hearing on this matter. The Hearing Examiner's findings are consistent with the FCC Payphone Reclassification Proceeding and with the requirements of §276 of the Act. However, the Commission does not find that the evidence adduced during this proceeding was sufficient for the Hearing Examiner, or this Commission on review, to make the determination of whether or not BA-MD's payphone service rates are subsidized. To the extent that the Hearing Examiner found that rates are subsidized, we disagree. It should be noted that our disagreement is not a finding that BA-MD payphone services are not subsidized. As we discuss in detail below, the evidence provided was not sufficient to make either finding. Furthermore, upon review of the record in this proceeding, the Commission believes that Case No. 8745 is the proper vehicle for the determination of whether access charges subsidize BA-MD's payphone services, and if so, the amount of the subsidization and any appropriate access charge reductions. The Commission agrees with the implementation of a Phase II proceeding to determine whether BA-MD's payphone service is subsidized by its

¹⁴ Martingham Property Owners Association, Inc. v. Martingham Utilities, Inc., 74 PSC 379 (1983).

¹⁵ Re Potomac Electric Power Company, 74 Md. PSC 329 (1983).

exchange service operations or its exchange access operations. The findings in Case No. 8745 shall be used with regard to the issue of access charge subsidies in the Phase II proceeding. We will discuss in more detail the three issues presented for appeal below.

A. Subsidy

BA-MD and Staff allege that the Hearing Examiner committed reversible error by finding that BA-MD's payphone rates contained subsidies. In particular, both BA-MD and Staff assert that the Hearing Examiner ignored the evidence submitted purporting to establish that BA-MD's payphone service revenues exceed its costs. However, upon review of the record in this proceeding, the Commission finds that the parties did not provide adequate information necessary for the Hearing Examiner to determine whether BA-MD's payphone service rates were or were not subsidized by either explicit or implicit subsidies from BA-MD's local exchange or exchange access services. BA-MD provided limited pre-filed testimony and even more limited cost analysis. Instead of providing the documentation required pursuant to the FCC's Payphone Reclassification Proceeding, BA-MD relied upon a *summary* of an analysis that was performed sometime prior to the institution of this proceeding.¹⁶ The analysis itself was not made a part of the record. The summary provides aggregated numbers, without providing detailed cost documentation, that purport to be costs and revenue of BA-MD payphone services. BA-MD and Staff claim that because the comparison of these aggregate numbers indicates that BA-MD's revenues exceed costs, that its services are not subsidized. According to BA-MD witness Pehta, this type of an analysis is "an accounting tops down analysis looking at the total books of BA-MD for year 1996

¹⁶ See Exhibit 5 at 5.

and through the ARMIS cost allocation process coming up with payphone revenues and expenses associated with intrastate payphone.”¹⁷

The Commission agrees with OPC, that it is conceivable that an indirect subsidy can exist even when direct revenues exceed direct costs, where costs are either decreased because the subsidy acts to reduce the costs of inputs, or where revenues are increased because elements are priced artificially high. The Hearing Examiner observed, and we agree, that the mere profitability of a service does not show either the source of the revenue nor that subsidies are not part of the revenue stream. If a subsidy is already embedded in the revenue values for BA-MD’s payphone services then it is conceivable that the revenue figures exceed the cost figures because of the subsidy. The top-down methodology used by BA-MD in its proceeding to determine the direct costs for its payphone services may have grossly underestimated the actual cost. Only a positive showing that intrastate payphone subsidies have been eliminated would satisfy the requirements of §276. It would seem that a more accurate way to make the requisite §276 showing would be by starting at zero, adding the cost associated with each individual component or input of BA-MD’s payphone service and ending with the total direct cost of the service. The Commission finds that a bottom-up approach similar to that used by the FCC in computing the costs for dial around or compensable calls would more accurately depict the direct cost of BA-MD’s payphone services.¹⁸ The bottom-up methodology utilized by the FCC calculates costs by “building-up” from a starting point of zero using costs, instead of “building-down” from a starting point that may already be subsidized.¹⁹ The bottom-up approach would insure that the costs

¹⁷ Transcript, p. 132.

¹⁸ *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Third Report and Order*, CC Docket No. 96-128, FCC 99-7, 14 FCC Rcd 2545, rel. February 4, 1999.

¹⁹ 3rd Payphone Order, ¶13.

reviewed by the Commission are direct costs, as opposed to cost that may contain legacies of the past, implicit subsidies. Additionally, the Commission notes that the bottom-up methodology utilized by the FCC withstood the review of the United States Court of Appeals for the District of Columbia.²⁰

BA-MD argues on appeal that the Commission already determined in Case No. 8462 that its payphone service rates were sufficient to cover its payphone service costs. However, while the Commission noted that a 1984 cost study presented in Case No. 7842 purported to show that BA-MD's local coin rate covered its local coin service costs, the Commission also recognized that in 1993 the same cost study might be somewhat dated and therefore inaccurate. Today it is even more probable that the costs of BA-MD's coin phone service have changed from what it was in 1984, making the reliance on that data inappropriate. As such, the Commission declines to accept BA-MD's argument that it should be bound by costs submitted in 1984.

In contrast to BA-MD's and Staff's reliance on the subsidy summary, the other parties to this proceeding presented persuasive arguments that at some point prior to the enactment of §276, BA-MD's payphone services, being a part of its local exchange service, were subsidized by local exchange access charges. BA-MD was not able to identify with any degree of specificity which of its local exchange services were or are being subsidized by local exchange access charges.²¹

Contrary to the requirements enunciated by the FCC in its Payphone Reclassification Proceeding, BA-MD did not make part of the record the detailed cost studies or

²⁰ American Public Communications Council v. FCC, 215 F.3d 51 (D.C. Cir 2000).

²¹ Transcript at pp. 188 and 220.

documentation to support its claims. BA-MD and Staff on appeal, brief and during the hearing made frequent references to cost support, however neither party ever filed such support with the Commission nor introduced it into evidence during the evidentiary hearings.

The FCC requires that BA-MD provide the Commission with very detailed and specific information in order for the Commission to make the determination that BA-MD's rates are in compliance with §276 and the FCC's orders. Based upon the evidence and testimony provided, BA-MD has not met this burden, nor has it complied with the requirements of the FCC's orders. Because BA-MD did not file the requisite cost studies, documentation and justifications, the Commission is unable to find that BA-MD tariffs are in compliance with §276 of the Act. While the Hearing Examiner may have incorrectly concluded that BA-MD's payphone services are being subsidized by BA-MD's exchange and exchange access operations, the Hearing Examiner correctly found that the record in this proceeding was insufficient for the Commission to confirm whether or not BA-MD's rates contained subsidies contrary to §276. As such the Hearing Examiner's decision to institute a Phase II to this proceeding was appropriate. Based upon the guidance provided in this Order, BA-MD should file and make part of the record in Phase II the necessary "bottom-up" cost studies and documentation so that the Commission may make a reasoned finding as to whether its rates contain subsidies.²² For these reasons we affirm this portion of the Hearing Examiner's decision.

²² The Commission notes, however, that Case No. 8745 will address the issue of any access charge subsidization.

B. Usage and Measured Service Rates

Section 276 of the Act requires the FCC, and by delegation the state commissions, to issue regulations designed "to promote competition among payphone service providers and provide the widespread deployment of payphone services to the benefit of the general public" Through the Payphone Reclassification Proceeding, the FCC required all local exchange companies to tariff for and make available to independent payphone providers payphone features and options on an unbundled basis. As indicated above, these tariffs must be cost-based, nondiscriminatory and when the service is new or unbundled must also be consistent with the NST detailed in 47 C.F.R. 61.49. An issue to this proceeding initially raised by Peoples is whether usage-based rate elements for PSPs are required to be priced in accordance with the FCC's Payphone Reclassification Proceeding.

As noted above, the Hearing Examiner found that usage and measured service rates for payphone services were subject to the requirements of the NST. The Hearing Examiner further indicated that if necessary, BA-MD will unbundle usage and provide it to PSPs apart from ordinary business usage. BA-MD and Staff object to this finding and state that the FCC has indicated that general services which are incidental to the provision of payphone services are not required to meet the requirements of the NST. BA-MD requested that the Commission defer this issue until such time as the FCC responds to a similar issue presented by the New Jersey Board of Public Utilities.²³

We agree with the Hearing Examiner's findings and require that usage and measured service rates be priced in accordance with the requirements of the NST. As an initial point, we recognize that the primary goal of §276 is to encourage and promote competition within

²³ DA 99-2093, Common Carrier Bureau, October 5, 1999.

the payphone industry. To permit BA-MD to price a necessary payphone element contrary to the mandates of the FCC's Payphone Reclassification Proceeding would be contrary to the purposes of the Act. Our finding is supported by the formal interpretation of §276 provided by the Common Carrier Bureau of the FCC to the Office of the New Jersey Attorney General. The Common Carrier Bureau addressed the proposed question of whether it was the FCC's intention to require message units to meet the New Services Test for the tariff filed with the state utility commission. The Common Carrier Bureau indicated that:

[t]he Commission 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 material as prescribed in 47 C.F.R. §61.49(g), and must satisfy the price cap new services test.²⁴

BA-MD on appeal specifically requested that the Commission withhold deciding this issue until the above response was issued. The Commission has done as requested. The Common Carrier Bureau's interpretation of the FCC's Payphone Order is consistent with the Hearing Examiner's findings in the Proposed Order. As such, the Hearing Examiner's findings that usage and measured service rates are to be subject to the NST are affirmed.

C. Station Controlled Coin Line ("SCCL") Charges

SCCL is designed for use with station-implemented or "smart" telephones. The issue on appeal is whether BA-MD's SCCL rates satisfy the NST. BA-MD argued on brief and Staff maintains on appeal that BA-MD's tariffs are consistent with the NST because they were developed using TSLRIC, a forward-looking cost methodology, that BA-MD has

²⁴ Id. (emphasis added).

used to design SCCL tariffs for federal and other state filings. According to BA-MD, its TSLRIC methodology is fully supported and should be accepted. However, BA-MD admits that the inputs used have not been approved by the Commission, but insists such inputs are forward looking, even though they contain an overhead loading factor of 48%.

BA-MD and Staff appeal the Hearing Examiner's Proposed Order directing the use of cost components approved by the Commission in Order 74365, Case No. 8731, Phase II, including a 12% overhead factor, to calculate the TSLRIC costs used to set SCCL rates. The issue is not unique to Maryland and has previously been addressed by the FCC. In its Wisconsin Order²⁵, the FCC indicated that in order for an ILEC to satisfy the NST, its costs must be "determined by the appropriate forward-looking, economic cost methodology that is consistent with the principles the Commission set forth in the Local Competition First Report and Order."²⁶ The FCC further indicated that "[c]ost study inputs and assumptions used to justify payphone line rates should . . . be consistent with the cost inputs used in computing rates for other services offered to competitors."²⁷

The Hearing Examiner's Proposed Order does not criticize BA-MD's use of a TSLRIC methodology. Instead, the Proposed Order directs the use of Maryland specific inputs developed by this Commission specifically for BA-MD services available to competitors in Maryland. The inputs developed by the Commission in Case No. 8731, Phase II include a 12% overhead loading factor. The FCC does not bar an ILEC from seeking to utilize an overhead loading greater than that authorized by the state commission for other competitive services, but requires the ILEC to justify the methodology used to

²⁵ *In the Matter of Wisconsin Public Service Commission Order Directing Filings*, CCB/CPD No. 00-1, DA 00-347, rel. March 2, 2000, ¶2. ("Wisconsin Order").

²⁶ Wisconsin Order, ¶9.

²⁷ *Id.* at ¶10.

determine such overhead costs.²⁸ In the instant case, BA-MD did not provide any justification as to the methodology used to determine its proposed overhead costs. In fact, as we noted above, BA-MD did not provide much in the way of cost support or documentation. Absent a credible justification, the FCC provides that "LECs may not recover a greater share of overheads in rates for the service under review than they recover in rates for comparable services."²⁹ The FCC also found that unbundled network elements are comparable services to payphone line services.³⁰

The Commission's Order in Case No. 8731, Phase II was issued in accordance with the Local Competition First Report and Order. It provided those inputs that BA-MD was to utilize in developing the costs for unbundled network elements in accordance with the Act. Because BA-MD did not justify the methodology it used to determine its requested overhead costs, the Hearing Examiner correctly required the use of the Commission authorized inputs and overhead. One of the enumerated purposes of §276 is to promote competition in the payphone industry. The inputs ordered by the Commission in Case No. 8731, Phase II were developed to address a similar goal with respect to local exchange services. The Commission finds that the inputs from Case No. 8731, Phase II are appropriate for use in this proceeding and affirms the Proposed Order of Hearing Examiner with respect to this issue.

Additionally, the Commission would note that the inputs we determined in Case No. 8731, Phase II are required to be utilized by BA-MD in setting *all* payphone service rates

²⁸ Id.

²⁹ Id. at ¶11.

³⁰ Id.

subject to the NST, including usage and measured services for payphone service. As such, when BA-MD makes its compliance filing each rate should be supported by the required cost studies and documentation showing not only the aggregate cost for each service, but the costs for each component or element of that service.

D. Access Charges

AT&T requests that the Commission reverse the Hearing Examiner's findings as they relate to the institution of a second fact-finding proceeding and instead reduce access charges by an amount it calculated as a probable subsidy. For the same reason that the Hearing Examiner was unable to find that BA-MD's rates were not subsidized, the Hearing Examiner properly did not assign an amount to the potential subsidy. The record in this proceeding is insufficient to make such a finding. As was noted by various parties, access charges have been used to subsidize a broad array of BA-MD services. The Commission finds that because of the expansiveness of this issue it would not be appropriate to contemplate a reduction of access charges in such a limited proceeding or in a piecemeal fashion. That being the case, the Commission believes that the issue of whether BA-MD's access charges subsidize BA-MD payphone services, as well as the overall issue of access charge reductions should be merged into Case No. 8745, *In the Matter of the Provision of Universal Service to Telecommunication Consumers*.

On October 7, 1998, AT&T filed a complaint against BA-MD concerning switched access rates. AT&T requested that the Commission order a \$66 million dollar reduction in switched access rates. By letter dated January 15, 1999, the Commission found that the issue of BA-MD's access rates should be merged into the Commission's consideration of Universal Service issues docketed as Case No. 8745. By letter dated October 24, 2000, the

Commission directed the parties to use an existing or updated revenue-cost study and determine the costs for terminating toll traffic expressed as the cost per minute of usage and any revenue short falls in rural areas. In particular, the utilized cost studies were:

1. To use the Commission ordered cost model inputs;
2. Reflect the most current Commission determined UNE costs;
3. Report a basic service analysis of revenues and cost using the Federal Communications Commission's definition of basic service, and include dial-tone line and local usage;
4. Report a "total service" analysis and include revenues and cost for basic service, yellow pages, intraLATA toll, vertical services and toll access revenues at a cost-base level; and
5. Report results on a wire center basis and UNE rate zone basis.

Because the issue of access charges is intertwined with the issue of whether BA-MD's payphone services are subsidized, the Commission recognizes that Phase II of this proceeding will be dependent upon the conclusion of Case No. 8745. During the hearings in this proceeding BA-MD indicated that it used the same loop costs for its payphone service cost analysis as is used for its residential and business lines.³¹ In BA-MD's words, a loop is a loop. Since Case No. 8745 is intended to determine whether there are any subsidies contained in BA-MD's loop costs, those findings will have direct bearing on the final decision in this proceeding. However, pending a determination in Case No. 8745 as to whether access charges are used to subsidize BA-MD payphone services, i.e., the loop, BA-MD will have ample opportunity to provide sufficient cost documentation and to implement the bottom-up methodology utilized by the FCC. For these reasons, the appeals of BA-MD, Staff and AT&T as they relate to the issue of access charge reductions are denied and the Hearing Examiner's implementation of a Phase II is affirmed as modified herein.

VII. CONCLUSION

WHEREFORE, for the foregoing reasons, the Proposed Order of Hearing Examiner is modified and affirmed in accordance with the findings and conclusions set forth herein.

IT IS, THEREFORE, this 27th day of February, in the year Two Thousand and One, by the Public Service Commission of Maryland,

ORDERED: (1) That the Proposed Order of Hearing Examiner, as modified herein, is affirmed;

(2) That a Phase II of this case shall be instituted in which BA-MD shall present:

a) Maryland-specific direct payphone cost based upon the bottom up methodology utilized by the FCC in its Payphone Reclassification Proceeding;

b) Maryland-specific payphone revenue studies;

c) Cost studies and documentation supporting BA-MD's tariff charges for payphone usage, common carrier line charges and SCCL charges in accordance with the New Services Test and the requirements contained in this Order; and

d) The amount of any subsidy contained in BA-MD rates, incorporating the findings from Case No. 8745, with respect to the amount by which BA-MD loop may be subsidized by access charges; and

³¹ Transcript at 68-79. (Payphone expenses include the costs of loops. . . those loop costs are equivalent to the average loop costs of "bus" "res" "dial tone" lines).

(3) That the original finding by the Hearing Examiner that Staff is to monitor the need for payphones in public interest locations and report to the Commission on this issue once each calendar year stands.

/s/ CATHERINE I. RILEY

/s/ CLAUDE M. LIGON

/s/ SUSANNE BROGAN

/s/ J. JOSEPH CURRAN, III

Commissioners

LOUISIANA PUBLIC SERVICE COMMISSION
EX PARTE

Docket No. U-22632 BellSouth Telecommunications, ex parte. Consideration of payphone tariff filed by BellSouth Telecommunications, Inc. on May 19, 1997 and determination whether the new tariff meets the provisions of the Telecommunications Act of 1996 and Associated FCC Orders.

(Decided at Business and Executive Session held July 25, 2001)

OVERVIEW:

This proceeding was initiated on May 19, 1997 upon BellSouth Telecommunications, Inc.'s ("BellSouth") filing of a new payphone tariff and cost studies. Notice of the proceeding was published in the Commission's Official Bulletin on June 13, 1997. In the filing, BellSouth included an existing tariff for Access Line Service and SmartLine Service along with cost information for each service in order that a determination could be made as to whether these services met the "new services" test requirement articulated by the FCC. BellSouth believed its existing tariffed rates for these services did satisfy the "new services" test, and therefore no adjustments were necessary. The Louisiana Public Payphone Association ("LPPA") sought a determination of whether the test was satisfied. The purpose of this docket was to make such a determination. On September 7, 2000, the Commission retained a consultant, William Barta, Henderson Ridge Consulting, Inc., to assist the Commission Staff with this proceeding. Numerous status conferences were held, legal issues have been briefed by the parties and ruled upon by the administrative law judge, and several procedural schedules and hearing dates have been established and vacated as the parties attempted to negotiate a settlement of the disputed issues.

On July 6, 2001 the parties filed a Joint Stipulation, together with a request that a Stipulation Hearing be scheduled. The request was granted and a Stipulation Hearing was scheduled for July 24, 2001.

At the July 24, 2001 Stipulation Hearing, appearances were made by BellSouth, the LPPA, and the Commission Staff. The parties jointly submitted into evidence an Amended Joint Stipulation, after which BellSouth, the LPPA, and the Commission Staff expressed their agreement

and the LPPA presented supportive testimony by David Cotton, President of the LPPA. According to Mr. Cotton, the LPPA has 43 paying members, which represent 80% of the pay telephone lines in Louisiana. The Amended Joint Stipulation provides for the following:

1. BellSouth will file tariffs that, on a going-forward basis, will provide a statewide flat rate of \$25.00 per line per month for PTAS and a statewide flat rate of \$50.00 per line per month for SmartLine. The PTAS rate will apply to access lines serving customer-owned coin-operated telephones ("COCOTs") and to access lines serving correction institution payphones. These rates for PTAS and SmartLine will include Touchtone as well as Central Office Block with Operator Screening ("blocking & screening"). In addition to these rates, BellSouth will charge PTAS and SmartLine subscribers: applicable state and federal charges including, without limitation, the End User Common Line charge and the Primary Interexchange Carrier Charge; and applicable rates for any features other than Touchtone and blocking & screening.
2. BellSouth will provide refunds for the cumulative period from April 15, 1997 through the effective date of the tariffs referenced in Item No. 1 above ("the refund period") in the amount of \$10.50 per PTAS line in service per month and \$4.50 per SmartLine in service per month. These amounts will be inclusive of and will resolve any and all claims of any nature, including claims for refunds, taxes, fees, interest, reimbursements, or any other payments, as a result of the difference in the rates payphone service providers have paid for PTAS and SmartLine service during the refund period and the going-forward rates for PTAS and Smartline services set forth in Item No. 1 above. All refunds are to be paid to the named subscriber of the line at the time the refund is ordered, unless a given subscriber provides documentation that proves that the current named subscriber is not entitled to the refund.
3. Upon Commission approval of this settlement agreement, the LPPA will dismiss its Petition in Docket U-22632. The submission of this settlement agreement to the Commission for its approval will in no way constitute or be construed against any party as an admission as to the factual basis of the allegations contained in any pleadings, testimony, or other materials filed in this docket by any party, but instead shall only constitute a compromise and settlement of a disputed claim. Henceforth, LPPA will not initiate or participate in any manner in any docket or proceeding before this Commission by which it or any other party contends that the conduct of BellSouth with regard to its rates for payphone access lines violates the Orders of the FCC, issued in Docket CC 96-128.
4. The parties agree to undertake those actions necessary to obtain the Louisiana Public Service Commission's approval of the settlement agreement within thirty (30) days. The \$25.00 line charge for PTAS and \$50.00 line charge for Smartline shall go into effect immediately upon the Commission's issuance of the Order approving the settlement. BellSouth shall issue all applicable refund checks within ninety (90)

Pickering & Cotogno shall provide BellSouth a list of any and all payphone providers represented by that firm in this docket, and BellSouth agrees to inform Pickering & Cotogno of the amount of any refund paid to those providers pursuant to this settlement agreement.

5. For the purposes of resolving the disputed claims arising in Docket U-22632, in the State of Louisiana only, LPPA agrees that the rates and charges referenced in Item No. 1 are compliant with any applicable Louisiana statutes, the federal Telecommunications Act of 1996, and the "new services" test, as required by the FCC's Orders in Docket CC 96-128. Notwithstanding the foregoing, these rates are the result of compromise and settlement of a disputed claim, and nothing contained within this agreement may be used as evidence by any person or party in any other proceeding pending or to be pending in any other jurisdiction.

During the Stipulation Hearing, the parties made a further request that this proceeding be left open, following Commission approval of the Amended Joint Stipulation, to provide for this tribunal's oversight of any remaining issues which may arise as BellSouth carries out its refund obligations pursuant to the Stipulation. Specifically, the parties requested the establishment of a filing deadline, October 24, 2001, by which time one of three actions shall be taken: (1) the parties shall jointly file a closing summary of the refunds made by BellSouth, together with a request that this proceeding be declared concluded; or (2) the parties shall jointly file a summary of the refunds made by BellSouth, together with a list of disputed refund issues for which the parties request arbitration by the Administrative Hearings Division; or (3) in the event the parties fail to make either of the two above-described filings by the deadline, the Administrative Law Judge shall declare this proceeding concluded without further action required.

The Commission considered this matter at its July 25, 2001 Business and Executive Session. On Motion of Commissioner Dixon, seconded by Commissioner Blossman, and unanimously adopted, the Commission voted to approved the Joint Stipulation, as amended, including the procedure to be followed prior to October 24, 2001.

IT IS HEREBY ORDERED THAT:

1. BellSouth will file tariffs that, on a going-forward basis, will provide a statewide flat rate of \$25.00 per line per month for PTAS and a statewide flat rate of \$50.00 per line per month for SmartLine. The PTAS rate will apply to access lines serving customer-owned coin-

state and federal charges including, without limitation, the End User Common Line charge and the Primary Interexchange Carrier Charge; and applicable rates for any features other than Touchtone and blocking & screening.

2. BellSouth will provide refunds for the cumulative period from April 15, 1997 through the effective date of the tariffs referenced in Item No. 1 above ("the refund period") in the amount of \$10.50 per PTAS line in service per month and \$4.50 per SmartLine in service per month. These amounts will be inclusive of and will resolve any and all claims of any nature, including claims for refunds, taxes, fees, interest, reimbursements, or any other payments, as a result of the difference in the rates payphone service providers have paid for PTAS and SmartLine service during the refund period and the going-forward rates for PTAS and SmartLine services set forth in Item No. 1 above. All refunds are to be paid to the named subscriber of the line at the time the refund is ordered, unless a given subscriber provides documentation that proves that the current named subscriber is not entitled to the refund.
3. Upon Commission approval of this settlement agreement, the LPPA will dismiss its Petition in Docket U-22632. The submission of this settlement agreement to the Commission for its approval will in no way constitute or be construed against any party as an admission as to the factual basis of the allegations contained in any pleadings, testimony, or other materials filed in this docket by any party, but instead shall only constitute a compromise and settlement of a disputed claim. Henceforth, LPPA will not initiate or participate in any manner in any docket or proceeding before this Commission by which it or any other party contends that the conduct of BellSouth with regard to its rates for payphone access lines violates the Orders of the FCC, issued in Docket CC 96-128.
4. The parties agree to undertake those actions necessary to obtain the Louisiana Public Service Commission's approval of the settlement agreement within thirty (30) days. The \$25.00 line charge for PTAS and \$50.00 line charge for SmartLine shall go into effect immediately upon the Commission's issuance of the Order approving the settlement. BellSouth shall issue all applicable refund checks within ninety (90) days of the Commission's Order approving the settlement, unless BellSouth's union employees, the Communications Workers of America, have a work stoppage. In the event of a work stoppage, BellSouth shall issue the refunds as soon as possible. The law firm of Pickering & Cotogno shall provide BellSouth a list of any and all payphone providers represented by that firm in this docket, and BellSouth agrees to inform Pickering & Cotogno of the amount of any refund paid to those providers pursuant to this settlement agreement.
5. For the purposes of resolving the disputed claims arising in Docket U-22632, in the State of Louisiana only, LPPA agrees that the rates and charges referenced in Item No. 1 are compliant with any applicable Louisiana statutes, the federal Telecommunications Act of 1996, and the "new services" test as required by the FCC's Order in Docket CC

jurisdiction.

6. A filing deadline of October 24, 2001 is established, by which time one of three actions shall be taken: (1) the parties shall jointly file a closing summary of the refunds made by BellSouth, together with a request that this proceeding be declared concluded; or (2) the parties shall jointly file a summary of the refunds made by BellSouth, together with a list of disputed refund issues for which the parties request arbitration by the Administrative Hearings Division; or (3) in the event the parties fail to make either of the two above-described filings by the deadline, this tribunal shall declare this proceeding concluded without further action required.
7. This Order shall be effective immediately.

ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
August 3, 2001

/S/ JAMES M. FIELD

DISTRICT II

CHAIRMAN JAMES M. FIELD

/S/ JACK "JAY" A. BLOSSMAN

DISTRICT I

VICE CHAIRMAN JACK "JAY" A. BLOSSMAN

/S/ DON OWEN

DISTRICT V

COMMISSIONER DON OWEN

/S/ IRMA MUSE DIXON

DISTRICT III

COMMISSIONER IRMA MUSE DIXON

SECRETARY
LAWRENCE C. ST. BLANC

/S/ C. DALE SITTIG

DISTRICT IV

COMMISSIONER C. DALE SITTIG

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PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 22nd day of May, 1998.

CASE NO. 97-0643-T-T

BELL ATLANTIC - WEST VIRGINIA, INC.

Tariff filing to comply with a recently issued FCC Order granting a temporary waiver of the requirement that effective intrastate tariffs for payphone services be in compliance with federal pricing guidelines.

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COMMISSION ORDER

On May 19, 1997, Bell Atlantic - West Virginia, Inc. (BA-WV) filed revised tariff pages with the Commission for approval. BA-WV filed two (2) pages with the Commission: (1) P.S.C.-W.Va.-No. 202-Local Exchange Service Tariff, Section 4A, 2nd Revised Page 2 -- which reduced monthly rates for certain optional features associated with Service for Customer-Provided coin and Credit Card Operated Telephones, specifically Outward Call Screening and Line Side Answer Supervision; and (2) P.S.C.-W.Va.-No. 202-Local Exchange Service Tariff, Section 4D, 2nd Revised Page 3 -- which was a re-filing of BA-WV's existing payphone service rates in order to comply with the Federal Communications Commission's (FCC) requirement that intrastate tariffs for payphone services are consistent with the "new services" guidelines established in FCC orders. The proposed tariff changes were to become effective June 19, 1997.¹

On June 6, 1997, AT&T Communications of West Virginia, Inc. (AT&T) filed a petition for suspension of the proposed tariff revisions and an investigation into reducing BA-WV's intrastate payphone rates to account for subsidies being paid by interexchange carriers (IXCs) pursuant to FCC orders.

On June 11, 1997, Commission Staff (Staff) filed an Initial Joint Staff Memorandum

¹P.S.C.-W.Va.-No. 202-Local Exchange Services Tariff Section 4D, 2nd Revised Page 3, as filed on May 19, 1997, contained a typographical error. BA-WV filed a corrected tariff page with the Commission on May 20, 1997.

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recommending that, due to the objections raised by AT&T, the proposed tariff changes should be suspended in order to allow for further review.

On June 13, 1997, BA-WV filed affidavits of publication certifying that notice of the proposed tariff revisions was published in compliance with Rule 27 of the Commission's Rules of Practice and Procedure, 150 C.S.R. Series 1 (Procedural Rules).

By Order entered June 16, 1997, the Commission suspended BA-WV's proposed tariff revisions until March 16, 1998, or until further order of the Commission.

On December 5, 1997, BA-WV filed a letter with the Commission replacing the P.S.C.-W.Va.-No. 202-Local Exchange Services Tariff, Section 4A, 2nd Revised Page 2 filed on May 19, 1997 with a new version of the tariff page. BA-WV further advised that Staff and AT&T had agreed to separate the rates associated with this tariff page from the issues being contested by AT&T in this proceeding. BA-WV also indicated that the filing did not affect the status of the larger proceeding.

On December 19, 1997, BA-WV filed a letter with the Commission withdrawing P.S.C.-W.Va.-No. 202-Local Exchange Services Tariff, Section 4A, 2nd Revised Page 2, and advising that this removed Outward Call Screening and Line Side Answer Supervision feature options from this proceeding.

On January 26, 1998, Staff filed a Final Joint Staff Memorandum with the Commission, advising that Staff was unable to obtain a resolution of the outstanding differences between BA-WV and AT&T with respect to the tariff filing.² Staff therefore recommended that the Commission set this matter for hearing and noted that extending the suspension period may be advisable.

By Order entered February 20, 1998, the Commission established a procedural schedule in this proceeding and scheduling a hearing on March 2, 1998. Parties were directed to file witness lists with a summary of expected testimony and exhibits with the Commission by February 28, 1998.

CAD and MCI Telecommunications Corp. (MCI) filed petitions to intervene on February 25 and 26, 1998, respectively.

By Order entered February 27, 1998, the Commission granted CAD and MCI leave to intervene and directed them to comply with the procedural schedule established in the Commission's February 20, 1998 order. The Commission also indicated that parties could, and were encouraged to, file pre-filed testimony by 8:30 a.m. on March 2, 1998. In response, both AT&T and BA-WV

²Staff noted that BA-WV had withdrawn P.S.C.-W.Va.-No. 202-Local Exchange Services Tariff, Section 4A, 2nd Revised Page 2, re-filed it in Case No. 97-1687-T-T, and that the re-filed tariff page had been approved by the Commission.

filed pre-filed testimony with the Commission on February 27, 1998. Staff submitted pre-filed testimony on March 2, 1998. Neither CAD nor MCI pre-filed any testimony.

A hearing was held, as scheduled, on March 2, 1998. MCI did not enter an appearance at the hearing. The following witnesses submitted pre-filed testimony and were presented for cross-examination at the hearing: John A. Pehta and Gale Y. Given -- BA-WV; G. Blaine Darrah, III -- AT&T; and David T. Carden -- Staff. During the hearing, AT&T made an oral request for a post-hearing exhibit that would reflect BA-WV's pre-subscribed intraLATA lines, minutes of use (MOU), messages and revenues over time, beginning with the year prior to the implementation of intraLATA equal access. The Commission granted AT&T's request and directed that such exhibit be marked as AT&T Cross Exh. 2 and produced as soon as possible. At the conclusion of the hearing, the Commission granted an extension of time for the parties to file post-hearing briefs until 10:00 a.m. March 6, 1998.

In accordance with the Commission's order, all parties filed post-hearing briefs with the Commission on March 6, 1998. In addition, BA-WV filed material responsive to AT&T's request as AT&T Cross Exh. 2 with the Commission on March 4, 1998.

By Order entered March 13, 1998, the Commission rescinded its June 16, 1997 order suspending the tariff revisions filed by BA-WV until March 16, 1998, on the grounds that BA-WV's withdrawal of its proposed reductions in rates for Outward Call Screening and Line Side Answer Supervision (P.S.C.-W.Va.-No. 202-Local Exchange Service Tariff, Section 4A, 2nd Revised Page 2), removed all proposed rate changes or new changes from this proceeding. Therefore, W. Va. Code §24-2-4a was no longer applicable.

DISCUSSION

I. Regulatory Background.

Ultimately, the issue presented in this proceeding is whether BA-WV's Commission-approved rates for payphone lines, as submitted with its May 19, 1997 petition, comply with 47 U.S.C. §276 and the FCC rules implementing this provision of TA96. Section 276 is fairly straightforward and provides:

After the effective date of the [FCC's rules governing payphones],³ any Bell operating

³Section 276(b) requires the FCC to prescribe regulations that: (1) establish a per call compensation (PCC) plan to ensure that all payphone service providers (PSPs) are fairly compensated for completed intrastate and interstate calls from payphones; (2) discontinue the intrastate and interstate carrier access charge payphone service elements in effect on the date of TA96's enactment, as well as all intrastate and interstate payphone

company that provides payphone service --

(1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and

(2) shall not prefer or discriminate in favor of its payphone service.

47 U.S.C. §276(a)(1)&(2).

In an effort to comply with Congress' directives, the FCC issued a series of orders in its proceeding docketed In the Matter of Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket Nos. 96-128 and 91-35.⁴ The FCC's 9/20/96 PPO deregulated coin rates for payphones and established an interim compensation mechanism that would require interexchange carriers (IXCs), on an apportioned basis, to pay local exchange carriers (LECs) a total of \$45.85 per payphone per month -- based on a default rate of \$0.35 per call. PSPs affiliated with LECs would not be eligible to receive interim compensation until "the first day of the month following their reclassification and transfer of payphone equipment, along with the termination of subsidies." 9/20/96 PPO, ¶125. In addition, the 9/20/96 PPO required incumbent LECs to reduce their interstate subsidies by reducing Carrier Common Line charges (CCLCs) in amounts equal to the payphone costs assigned to the CCLC pursuant to the FCC's costing rules. *Id.*, ¶181. The FCC left it to the States to determine the rate elements that must be removed to eliminate intrastate subsidies. *Id.*, ¶186.

In the 11/8/96 PPO, the FCC clarified various aspects of its earlier order but retained its interim compensation scheme and reaffirmed that intrastate subsidies must be eliminated before incumbent LECs could begin receiving PCC. 11/8/96 PPO, ¶131. More importantly, the FCC adopted rules requiring incumbent LECs to file intrastate tariffs for basic payphone services that are: (1) cost based; (2) consistent with 47 U.S.C. §276 with respect to, for example, the removal of subsidies from exchange and exchange access services; and (3) nondiscriminatory. Furthermore,

subsidies from basic exchange and exchange access revenues, in favor of the PCC plan; (3) prescribe nonstructural safeguards for Bell operating company (BOC) payphone service; (4) give BOC PSPs the same rights as independent providers to negotiate the location provider's selection of, and contracting with, carriers to carry interLATA and intraLATA calls. 47 U.S.C. §276(b)(1)(A)-(E).

"These orders are as follows: "Report and Order," CC Docket Nos. 96-128 & 91-35, FCC 96-388 (Rel. Sept. 20, 1996)(9/20/96 PPO); "Order on Reconsideration," CC Docket Nos. 96-128 & 91-35 (Rel. Nov. 8, 1996)(11/8/96 PPO); "Order," CC Docket No. 96-128, DA 97-678 (Rel. April 4, 1997)(4/4/97 PPO); "Order," CC Docket No. 96-128, DA 97-805 (Rel. April 15, 1997)(4/15/97 PPO); and "Second Report and Order," CC Docket No. 96-128 (Rel. Oct. 9, 1997)(10/9/97 PPO).

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the FCC directed that such tariffs must be consistent with Computer III tariffing guidelines. 11/8/96 PPO, ¶163.⁵ Under Computer III guidelines:

Each tariff filing submitted by a [LEC] . . . that introduces a new service or a restructured unbundled basic service element (BSE) . . . that is or will later be included in a basket [of services] must be accompanied by cost data sufficient to establish that the new service or unbundled BSE will not recover more than a reasonable portion of the carrier's overhead costs.

47 C.F.R. §61.49(f)(2). This is the FCC's "new services" test applicable in this proceeding.

Originally, the FCC required incumbent LECs to file intrastate payphone tariffs with each state, implementing 47 U.S.C. §276 and the FCC's "new services" test, to be effective no later than April 15, 1997. 11/8/96 PPO, ¶186. The FCC subsequently extended the deadline for filing intrastate payphone tariffs to May 19, 1997. 4/15/97 PPO, ¶25. Thereafter, the D.C. Circuit Court of Appeals, vacated the FCC's payphone regulations, in part. Among the rules vacated was the manner in which the amount of PCC is to be calculated. See Illinois Public Telephone Assn. v. FCC, 117 F.3d 555, clarified, 123 F.3d 693 (D.C. Cir. 1997). In its "Second Report and Order," issued in the wake of the D.C. Circuit's decision, the FCC established a PCC rate of \$0.284 per call that would apply to 800 and "dial around" (i.e., access code) calls from payphones for two (2) years. 10/9/97 PPO, ¶117. This rate would be paid by IXCs beginning October 7, 1997 -- provided the LEC had complied with 47 U.S.C. §276. Id., ¶121.

II. Summary Of The Parties' Arguments.

The parties' arguments focus on two (2) main issues: (1) whether BA-WV's proposed rates for payphone lines comply with the FCC's "new services" test; and (2) whether BA-WV's intrastate rates should be reduced to remove (a) other subsidies to BA-WV's payphone service or (b) to offset IXCs' PCC payments to BA-WV.

A. Compliance With The FCC's "New Services" Test.

1. BA-WV's Position.

In its post-hearing brief, BA-WV claims that the tariff rates for basic payphone lines filed with the Commission comply with 47 U.S.C. §276 and the FCC's "new services" test. BA-WV notes that its tariffs provide for five basic types of payphone lines: (1) Network Controlled Coin

⁵Section 276(b)(1)(C) made equivalence with the Computer III guidelines part of the requirement that the FCC's payphone regulations establish nonstructural safeguards for BOCs' payphone service.

Line (NCCL) -- for "dumb" coin sets; (2) Network Controlled Non-Coin Line (NCNL) -- for "dumb" coinless sets; (3) Network Controlled Inmate Line (NCIL) Coinless -- for "dumb" coinless sets used in a prison setting; (4) Network Controlled Inmate (NCIL) Coin -- for "dumb" coin sets used in a prison setting; and (5) Station Controlled Coin Line (SCCL) -- for "smart" coin sets generally used by independent (COPT) providers. BA-WV Br., at 3; BA-WV Exh. 4 (Given), at 5-6. As set forth in its May 19, 1997 tariff filing, BA-WV's current rates for such lines are as follows:

<u>Line Type</u>	<u>Rate</u>
NCCL	\$35.16
NCCL2	\$33.16
NCNL	\$39.00
NCNL2	\$37.00
NCIL1	\$38.00
NCIL2	\$36.00
SCCL	\$24.50
NCILCoin	\$52.00

The Commission previously approved these rates and rates for other payphone features. BA-WV Exh. 4 (Given), at 6-7.⁶

BA-WV claims that its tariff complies with the FCC's requirement that the Company "file tariffs for the basic payphone line for smart and dumb payphones." BA-WV Br., at 3, citing 11/8/96 PPO, ¶163. Moreover, BA-WV asserts that its payphone lines are available under the same terms and conditions to both independent PSPs and the Company's own deregulated payphone business and that it therefore has complied with TA96's prohibition -- set forth in 47 U.S.C. §706 -- against any BOC discriminating in favor of its own payphone service. *Id.* BA-WV further contends that its payphone line rates were based on the Commission's rulings in Case No. 96-1516-T-PC regarding BA-WV's proposed statement of generally available terms and conditions of interconnection (SGAT) and therefore also meet the FCC's requirement that such rates must be cost-based. BA-WV Br., at 4. The cost data filed with the tariffed rates for such payphone lines, BA-WV argues, demonstrates that the rates cover BA-WV's direct cost of the lines and includes a just and reasonable contribution to overhead. *Id.*; see also BA-WV Exh. 4 (Given), Exh. 1. BA-WV therefore urges the Commission to affirm that the tariff rates for basic payphone lines satisfy the

⁶See "Commission Order," Case No. 97-0047-T-T (Feb. 11, 1997)(approving BA-WV's rates for "dumb" lines); "Commission Order," Case No. 97-1687-T-T (Jan. 5, 1998)(approving BA-WV's rates for optional features associated with "dumb" lines); and "Commission Order," Case No. 97-1461-T-PC (Feb. 26, 1998)(approving BA-WV's incentive regulation plan, which included rates for "smart" payphone lines).

FCC's "new services" test.

2. AT&T's Position.

AT&T argued, in its original June 6, 1997 petition for suspension and general investigation, that the cost and forecast information submitted by BA-WV with its tariff rates for payphone lines was not sufficient to comply with the FCC's "new services" test. AT&T Pet. for Suspension, at 5. However, AT&T subsequently abandoned this argument in its post-hearing brief. Instead, AT&T argued that the Commission should approve Staff's proposed rates for BA-WV's payphone lines, claiming that Staff's proposed rates satisfied the FCC's "new services" test. AT&T Br., at 10. However, AT&T urged the Commission to make one modification to Staff's proposed rates -- namely, reducing those rates by the \$7.63 subscriber line charge (SLC) recovered by BA-WV. Id.

AT&T further argued that the Commission should not allow BA-WV to receive PCC from IXC's until its payphone rates have been reduced to Staff's recommended levels and payphone subsidies have been eliminated from BA-WV's other rates. AT&T Br., at 11. Finally, AT&T noted that it will need to adjust its rates to ensure that its customers are not overcharged for service, pointing out that the Company has been collecting a surcharge to cover its expected PCC obligations.⁷ AT&T indicates that it is willing to suspend further collections of the PCC surcharge until PCC payments match amounts collected from its customers. The Company proposes that once these amounts match, the surcharge would be imposed on a going-forward basis. Id.⁸

3. MCI's Position.

MCI did not address whether BA-WV's tariff rates for basic payphone lines satisfy the FCC's "new services" test in its post-hearing brief.

4. Staff's Position.

Staff contends that BA-WV's tariff rates for payphone lines do not satisfy the FCC's "new

⁷AT&T's surcharge was previously approved by the Commission. See "Commission Order," AT&T Communications of WV, Inc., Case No. 97-1542-T-T (Nov. 25, 1997).

⁸While the Commission commends AT&T for voluntarily suspending its collection of the surcharge intended to cover its PCC obligations to BA-WV -- which become due after the Commission approves BA-WV's rates pursuant to the "new services" test -- no order of the Commission is necessary in order for AT&T to take the proffered action. However, the Commission finds AT&T's proposal to be reasonable and appropriate.

services" test. Staff Br., at 6. While it believes the cost information and testimony presented by BA-WV in support of its petition satisfies the FCC's "new services" test, Staff claims that the rates for payphone lines themselves are priced well above cost and therefore are not in compliance with the FCC's mandate. Staff initially recommended, in the pre-filed testimony of D. Todd Carden, a rate of \$27.15 for all payphone lines, except SCCL. For SCCL, Staff recommended a rate of \$24.50, which is the rate cap set forth in BA-WV's Incentive Regulation Plan (IRP), recently approved by the Commission in Case No. 97-1461-T-PC. Staff Br., at 6-7. These rates, Mr. Carden testified, would adequately cover BA-WV's costs of providing payphone lines, including a reasonable allocation for overhead, and would not burden other tariffed items. Id. In its post-hearing brief, however, Staff agreed with AT&T that the aforementioned rates do not include a \$7.63 SLC being assessed at the federal level. Id. at 7-8. This SLC, Staff notes, helps cover BA-WV's cost of providing payphone lines. Accordingly, Staff modified its recommendation and now suggests that BA-WV's tariff rates for payphone lines and features should be reduced from \$27.15 to \$19.52, and apparently suggests that the SCCL rate likewise should be reduced by \$7.63. Id.

5. CAD's Position.

CAD took no position regarding whether BA-WV's tariffed rates satisfied the "new services" test established by the FCC.

B. Reducing BA-WV's Other Rates And Charges To Offset PCC.

1. BA-WV's Position.

BA-WV contends that a service is not subsidized if the direct revenue it generates equals or exceeds the incremental cost that is incurred in providing the service. BA-WV Br., at 4, citing, Tr. at 89 (Given); see also id., Fn. 4. Applying this principle, BA-WV asserts that the 12-month cost study submitted to the Commission demonstrates that BA-WV's payphone business was not subsidized and, in fact, generated [Proprietary] [Proprietary] in revenues. BA-WV Br., at 5, citing, BA-WV Exh. 2 (Pehta), at 3 & Exh. 3. Accordingly, BA-WV urges the Commission to find, as the Delaware commission did, that there does not appear to be any implicit subsidy for payphone service from the rates and charges for non-payphone services. Id., at 9, citing, Order 4637, Docket No. 97-013T (Nov. 5, 1997), at 23.

In response to AT&T's arguments that BA-WV's payphone service was subsidized prior to BA-WV's \$0.10 increase in its payphone coin rate, BA-WV claims that AT&T offered no subsidy analysis of its own nor did its witness offer any criticism of BA-WV's analysis. BA-WV Br., at 5. Instead, BA-WV argues, AT&T engages in "little more than sophistry" in claiming that a subsidy exists. BA-WV first controverts AT&T's claim that, since prices in a competitive market are driven to cost, BA-WV's increase in the payphone local coin rate from \$0.25 to \$0.35 must be taken as evidence that the old rate needed a \$0.10 subsidy per call. Id., citing, AT&T Exh. 1 (Darrah), at 9. Although BA-WV agrees that competition does tend to drive price to cost over time, it argues that

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firms may increase prices in certain situations, such as where prices have been artificially suppressed for regulatory, political or other reasons unrelated to cost. *Id.*, at 6, citing, *Tr.* at 87 (Given). In the case of payphone coin rates, BA-WV points out that such rates were suppressed by the Commission for 12 years. Thus, BA-WV argues that the mere increase in the price of a local coin call provides no evidence that BA-WV's payphone service was not recovering its costs at the \$0.25 coin rate.

Next, BA-WV challenges AT&T's claim that there are payphone-related subsidies embedded in the intrastate CCLC and that this charge therefore must be reduced. BA-WV claims that AT&T's argument -- that since a reduction was made in Bell Atlantic's interstate CCLC and since the interstate and intrastate CCLCs were initially set at the same level (i.e., \$0.0461 per minute), a corresponding reduction should be made at the intrastate level -- is both factually and logically flawed. *BA-WV Br.*, at 6. First, BA-WV points out that the interstate CCLC contained a specific, FCC-prescribed cost element for payphone service; the intrastate CCLC did not. *Id.*, at 6-7 & Fn. 6. The intrastate CCLC, BA-WV contends, has been used over the years to support those local exchange services priced below cost. The portion of BA-WV's payphone service that was funded by the interstate CCLC at the interstate level, the Company claims, was funded directly and entirely by payphone end-users in West Virginia. *Id.*, at 7, citing, *BA-WV Exh. 4* (Given), at 12; *Tr.* at 38-39 (Pehta). BA-WV further points out that cost studies submitted by BA-WV in Case No. 84-747-T-42T showed that, when only indoor payphones were priced at \$0.25, coin service was priced below cost by roughly \$850,000. *BA-WV Br.*, Fn. 7. When rates for outdoor payphones were increased to \$0.25 in 1985, however, payphone revenues increased by \$1.2 million and thus eliminated any subsidies to the Company's payphone service. Any undifferentiated subsidy that payphone service had been receiving until 1985, BA-WV writes, was then used to support local exchange services. *Id.*, citing, *BA-WV Exh. 4* (Given), at 11.

Finally, BA-WV argues that even if a portion of the intrastate CCLC had been intended in 1984 to subsidize intrastate payphone service, that charge has already been reduced far in excess of the amount AT&T now claims is necessary to mirror the reduction in the interstate CCLC. Although both the inter- and intrastate CCLCs were initially set at \$0.0461 per minute, the Company reduced its intrastate CCLC by half -- to \$0.0231 -- in 1985. *BA-WV Br.*, at 8. This reduced BA-WV's annual intrastate CCLC charges to IXCs by more than \$4.4 million. *Id.*, Fn. 8; see also "Commission Order," *Chesapeake & Potomac Telephone Co. of WV*, Case No. 84-747-T-42T (Sept. 6, 1985), at 54-59 and 95-99. In contrast, the interstate CCLC was increased to \$0.0524 in 1985. *BA-WV Br.*, at 8.⁹

⁹BA-WV notes that while there is no basis for reducing access charges in this proceeding, the Company is not arguing that access charges do not generate a subsidy to local exchange service -- they do. Rather, if consideration is to be given to reducing access charges, BA-WV urges the Commission to do so within the context of the ongoing universal service proceeding. *BA-WV Br.*, at 9.

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The remainder of BA-WV's post-hearing brief addresses CAD's cross-examination, which suggested that BA-WV will realize a financial windfall from its payphone coin rate increase and PCC payments to the Company. BA-WV makes several arguments: first, that CAD's suggestion that deregulated earnings should be "imputed" to BA-WV's regulated earnings is improper and asymmetrical; second, that the earnings CAD suggests should be so "imputed" are not "known and measurable" and therefore do not meet the requirements of the Commission's Procedural Rule 42; third, that CAD's calculation of a windfall does not even rise to the level of an informed guess; and fourth, CAD's imputation proposal violates the Commission's long-established principle that adjustments to a utility's rates may be made only after assessing the utility's operations as a whole. BA-WV Br., at 10-15.

2. AT&T's Position.

In its June 6, 1997 petition for suspension, AT&T argued that BA-WV should be required to reduce its intrastate rates to offset the PCC payments it will receive from IXC's and further that such reductions should be effectuated through a decrease in BA-WV's intrastate CCLC. AT&T Pet. for Suspension, at 6-7. In both pre-filed testimony and its post-hearing brief, AT&T reiterated its arguments that BA-WV's intrastate rates should be reduced, but specified that such reductions should amount to [Proprietary] [Proprietary]. This figure has two components: first, [Proprietary] [Proprietary] which represents BA-WV's earnings from its increase -- from \$0.25 to \$0.35 -- in payphone coin rates, which occurred after the FCC deregulated payphone coin rates; and second, [Proprietary] [Proprietary] which AT&T estimates will be the PCC amount BA-WV will receive annually. AT&T Br., at 1; AT&T Exh. 1 (Darrah), at 2.¹⁰

In support of its arguments, AT&T first points out that 47 U.S.C. §276 prohibits BOCs from subsidizing their payphone service, directly or indirectly, from telephone exchange service operations or exchange access operations. AT&T Br., at 4; see also 47 U.S.C. §276(a)(1). AT&T argues that the credible evidence supports a finding that BA-WV's payphone service was subsidized before BA-WV raised its local coin rate to \$0.35. AT&T Br., at 2. AT&T bases this argument on several propositions. First, BA-WV concedes that the payphone market is competitive and that in a competitive market, prices move towards cost. Id., at 2, citing, Tr. at 42-46, 87 (Given). Assuming that raising the coin rate to \$0.35 moved the rate to cost, BA-WV's prior \$0.25 rate must have been subsidized \$0.10 per call. The only other explanation, AT&T asserts, is that BA-WV is taking advantage of deregulation to gouge consumers. Id., at 2-3. Second, BA-WV's "subsidy analysis" understates costs because it examines only jurisdictionally-separated intrastate costs. With deregulation, AT&T argues, such separations rules no longer apply and BA-WV's payphone revenues will need to recover their total payphone costs. Such costs are higher than BA-WV's revenues from its former \$0.25 coin rate -- again indicating that the former rate was subsidized. Id.,

¹⁰AT&T's witness originally estimated that BA-WV would receive [Proprietary] [Proprietary] in annual PCC payments from IXC's. See AT&T Exh. 1 (Darrah), at 2.

at 3 & Fn. 6. Third, BA-WV's subsidy analysis was too narrowly focused because it only examines BA-WV's direct incremental payphone costs and does not consider "complex cross subsidies." According to AT&T, "complex cross subsidies" occur when rates set below "total service long-run incremental cost" (TSLRIC) or incorporating inefficiently small markups above TSLRIC, are subsidized by rates for other services set with correspondingly inefficiently large markups above TSLRIC. AT&T Br., at 4 & Fn. 7. Even a service generating a positive return and covering a portion of a company's other costs can still be subsidized if the service has an inefficiently small markup above TSLRIC. Id., at 4.

Since BA-WV's \$0.10 coin rate increase and the PCC revenues BA-WV will receive from IXCs bring its payphone operations to cost and eliminate the need for cross-subsidies, AT&T argues that those subsidies must be removed from BA-WV's "basic exchange" or "exchange access" operations. Id., at 5. Finally, AT&T claims that there is no merit to BA-WV's "argument" that it needs to keep its payphone subsidies to offset other losses because these losses are speculative and may be offset by additional revenue from new sources. Id., at 5-7.

3. MCI's Position

MCI also argues that BA-WV's intrastate rates must be reduced by [Proprietary] [Proprietary]. MCI Br., at 4-6. MCI claims that the following undisputed facts contradict BA-WV's claim, based on its cost study, that its payphone service was not subsidized prior to deregulation: (1) the FCC has found that the cost of a payphone call is \$0.35; (2) BA-WV has now raised the cost of a payphone call to \$0.35; and (3) BA-WV's competitors cannot cover the cost of a payphone call by charging the same \$0.25 payphone rate charged by BA-WV prior to deregulation. MCI Br., at 6-7. MCI notes that the FCC originally set the PCC rate based on a \$0.35 payphone rate. The FCC noted that this was the rate charged for coin calls in four of the five states which had deregulated payphone service at that time. Id., at 7, citing, 9/20/96 PPO, ¶72. MCI points out that the FCC concluded that "deregulated local coin rates are the best available surrogates for payphone costs and are superior to the cost surrogate data provided by the commenters." Id., at 8, citing, 9/20/96 PPO, ¶70. Taken together, MCI claims, this evidence establishes that the \$0.25 rate charged by BA-WV for payphone calls before deregulation was a subsidized service. Id., at 7. MCI urges the Commission to do what the FCC did -- namely find that the deregulated payphone rate provides powerful evidence of what the cost of a payphone call is, determine that the regulated \$0.25 rate was subsidized, and remove this subsidy pursuant to 47 U.S.C. §276. MCI Br., at 8.

4. Staff's Position

Staff contends that BA-WV's payphone service is not being subsidized by its regulated exchange and exchange access operations and therefore no offsetting reduction in BA-WV's intrastate rates is warranted. As an initial matter, Staff accepts BA-WV's evidence as demonstrating that the Company's pre-deregulation coin rates covered its intrastate payphone costs. Staff Br., at 3, citing, BA-WV Exh. 3 (Given), at 4-5. Furthermore, Staff agrees with BA-WV that the fact that

the Company made a filing with the FCC in order to remove an explicit payphone cost element from its interstate CCLC is irrelevant because no such cost element was present in the intrastate jurisdiction. Id., citing, BA-WV Exh. 3 (Given), at 5. Based on its review of the cost study submitted by BA-WV, Staff concludes that no subsidy existed because BA-WV's pre-deregulation payphone revenues exceeded costs by nearly \$1 million. As Staff puts it, a basic test of subsidization is whether a particular service covers its own direct costs -- if it does, there is no subsidy. Id., at 4, citing, BA-WV Exh. 2 (Pehta), Exh. 3.

With respect to the potential windfall BA-WV may receive in its intrastate payphone revenues due to PCC payments by IXC's, Staff does not believe such a revenue gain must be offset by rate reductions at this time. Staff cites several reasons in support of its conclusion. First, such rate reductions would be premature since the amount of PCC BA-WV may receive is unknown until IXC's begin making such payments. Moreover, increased competition in the payphone market in the State will have some impact on the level of BA-WV's revenues. Staff Br., at 5, citing, BA-WV Exh. 3 (Given), at 8-9. Second, it would be contrary to the Commission's generally accepted ratemaking principles to merely focus on expected revenue gains in one area of BA-WV's total telecommunications operations without also considering revenue and expense changes which may be occurring elsewhere within the Company. Such myopic ratemaking, Staff notes, was held to be improper in VEPCO v. Public Service Commission, 248 S.E.2d 322 (W. Va. 1978). Id., at 5. Finally, even if there was a subsidy to BA-WV's payphone operations, Staff claims that there is no reason to assume that a decrease in rates should be applied to BA-WV's access rate element. Id., citing, BA-WV Exh. 3 (Given), at 11.

5. CAD's Position.

CAD urges the Commission to withhold certifying that BA-WV has removed all subsidies, service elements and payments related to payphones from its intrastate rates, in accordance with 47 U.S.C. §276, until the Company reduces its intrastate CCLC by at least \$500,000. CAD Br., at 1. CAD claims that the \$500,000 will offset PCC that BA-WV can be expected to receive from IXC's and notes that the rate reduction should be interim, subject to true-up after 12 months since the amount of PCC BA-WV actually receives is uncertain at this time. Id. In addition, CAD recommends that the Commission should also require IXC's to pass through the access charge reduction to their customers. Id.

CAD argues that TA96 explicitly prescribes a "teeter totter" effect in requiring PCC by IXC's, coupled with the elimination or reduction of interstate and intrastate access charges. CAD Br., at 4. Moreover, CAD writes, this correlation was made clear by the fact that an incumbent LEC cannot receive PCC payments until it complies with the FCC's requirements for implementing 47 U.S.C. §276. Id., at 5. CAD notes that 47 U.S.C. §276 requires the FCC to adopt regulations which were, among other things, to discontinue the interstate and intrastate carrier access charge for payphone service elements and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues. CAD Br., at 2. On the interstate level, all incumbent LEC's were

required to remove payphone costs from their interstate CCLC. *Id.*, at 3, citing 11/8/96 PPO, ¶163. Bell Atlantic, CAD notes, removed \$46.34 million from its interstate CCLC -- of which BA-WV's share was \$2.3 million. On the intrastate level, the FCC required incumbent LECs to file tariffs with states, establishing cost-based rates and removing any charges implicitly recovering payphone costs. *CAD Br.*, at 3, citing 11/8/96 PPO, ¶186.

BA-WV's intrastate CCLC, CAD argues, is conceptually indistinguishable from its interstate counterpart. At the breakup of the Bell system, interstate and intrastate CCLCs were created as mirror images of one another and both contained residual costs. *Id.*, at 7, citing Tr. at 111-12 (Darrah). On the interstate side, such residual costs include 800 and "dial around" calls from payphones. CAD asserts that BA-WV admits that such uncompensated calls account for a substantial portion of all long distance payphone calls in West Virginia. *Id.*, citing Tr. at 68-69 (Given). If BA-WV's costs for a large volume of calls was going uncompensated, the Company would not have earned an adequate return -- yet, CAD claims, this was clearly not the case. *Id.*, citing CAD Cross Exh. 2. Thus, uncompensated payphone calls were recovered as an implicit part of BA-WV's residual charges, such as the intrastate CCLC. *Id.*, citing Tr. at 111 (Darrah). Since BA-WV's previously uncompensated payphone calls will now produce revenue on a per call basis, the existing intrastate charges must be reduced by a corresponding amount.

Finally, CAD characterizes BA-WV's justification for not reducing the Company's intrastate CCLC as "novel and ironic," claiming that BA-WV essentially is arguing that it is making too much money in payphones to be required to reduce intrastate rates. *CAD Br.*, at 7-8, citing Tr. at 66-67 (Given). Finally, BA-WV's distinction between interstate and intrastate subsidies is a "smokescreen" for earning monopoly returns and the Company's unilateral coin rate increase, coupled with the Company's "healthy" returns, underscores the need for Commission action to reduce its intrastate access charges. *CAD Br.*, at 11.

III. Commission Decision And Rationale.

A. BA-WV's Rates for Payphone Lines.

Where LECs have already filed intrastate tariffs for payphone services -- as is the case here -- states may, after considering the requirements of the 9/20/96 PPO, the 11/8/96 PPO, and 47 U.S.C. §276, conclude: (1) that existing tariffs are consistent with the requirements of such FCC orders; and (2) that no further filings are required. 4/15/97 PPO, ¶8. The Commission cannot make such a conclusion. Instead, the Commission must conclude that BA-WV's tarified rates do not satisfy the FCC's "new services" test.

The cost-study submitted by BA-WV as part of its May 19, 1997 tariff filing indicates that its rates are set well above cost. That study indicates that the costs and rates for each type of basic payphone line are as follows:

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Line Type	Cost	Rate	Rate (-) Cost	Difference
NCCL	\$27.0309	\$35.16	\$8.1291	30%
NCCL2	\$27.00	\$33.16	\$6.16	23%
NCNL	\$26.6613	\$39.00	\$12.3387	46%
NCNL2	\$26.6304	\$37.00	\$10.3696	39%
NCIL1	\$26.7193	\$38.00	\$11.2807	42%
NCIL2	\$26.6280	\$36.00	\$9.372	35%
SCCL	\$26.57	\$24.50	(\$2.07)	(7.8%) ¹¹
NCILCoin	\$27.1493	\$52.00	\$24.8507	92%

92% Markup

Test

BA-WV Cost & Forecast (May 19, 1997). These rates did not include the \$6.00 "end user common line" (EUCL) charge which applied to all line types at that time.¹² In virtually every instance, the rate is from 23% to 92% higher than cost.

There simply was insufficient evidence presented by BA-WV to justify such large overhead allocations. As Staff pointed out, the SGAT order(s) BA-WV relied upon in calculating rates for payphone lines included a reasonable allocation for overhead. Staff Exh. 1 (Carden), at 4-5. In fact, the Commission's orders in those proceedings established a 10.2% overhead factor to be used in establishing rates for interconnection and unbundled network elements. See "Commission Order," Bell Atlantic - WV, Case No. 96-1516-T-PC, et al. (April 21, 1997), Public Version at 48. Thus, the cost for each payphone line calculated by Mr. Pehta already included an overhead allocation of 10.2% — exclusive of any additional mark-up in setting rates.

The "new services" test clearly places the burden on incumbent LECs to demonstrate that the

¹¹BA-WV's rates for SCCL lines are capped at \$24.50 pursuant to its Commission-approved incentive regulation plan (IRP). See P.S.C.-W.Va.-No. 202, 3rd Revised Page 2, Section 1.B.2.c & 5th Revised Page 141, Section 2.C.1.c. While it would appear that BA-WV's SCCL rate does not recover its costs for such lines, this is not the case because a measured rate also applies to SCCL lines. See P.S.C.-W.Va.-No. 202, Section 2, 3rd Revised Page 142, Section 2.C.1.d.

¹²Shortly before BA-WV made its initial May 19, 1997 filing, the FCC modified its rules regarding the EUCL, or "subscriber line charge" (SLC), that LEC's are entitled to recover. The FCC modified the formula for calculating the SLC and directed that the SLC for multiline business service, including public payphone, may not exceed \$9.00 per month. See "First Report and Order," In the Matter of Access Charge Reform, CC Docket No. 96-262, FCC 97-158 (Rel. May 16, 1997), ¶¶39-40, 58-59 (FCC ACRO); see also 47 C.F.R. §69.152. The FCC previously determined that the multiline business SLC must apply to subscriber lines that terminate at both LEC and competitive payphones. 9/20/96 PPO, ¶187; see also 11/8/96 PPO, ¶¶204-08.

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service element in the intrastate payphone tariff is cost-based and will not recover more than a reasonable portion of the carrier's overhead costs. See 47 C.F.R. §69.49(f)(2). BA-WV failed to meet this burden. Nor has the Commission's own research satisfied it that an overhead allowance greater than 10.2% is reasonable. The Commission notes that, in similar proceedings before the Maryland P.S.C., MDPSC staff testified that it had discussed overhead loading factors for payphones with FCC staff. According to MDPSC staff's testimony, the FCC suggested that a reasonable range for overhead loading factors was from 20% to 200%. See Direct Testimony of Ann Amalia Dean, MDPSC Case No. 8763 (filed Sept. 22, 1997), at 11. However, in the Maryland proceeding, Peoples Telephone Co. made a strong case for overhead markups below the range suggested by MDPSC staff. Peoples Telephone noted that the FCC decisions referenced by Ms. Dean in her testimony indicated that markups for overhead in excess of 40% have generally been allowed only for service elements that (1) are optional features and (2) have very low costs. Brief of Peoples Telephone Co., MDPSC Case No. 8763 (filed Feb. 13, 1998), at 29-31.

Furthermore, the Delaware P.S.C. ruled on this issue late last year and rejected Bell Atlantic's proposed payphone rates on the grounds that, among other things, the overhead incorporated in the proposed rates was too high. See "Findings, Opinion and Order No. 4637," PSC Docket No. 96-013T Consolidated (Delaware P.S.C., Nov. 4, 1997). DPSC staff testified that Bell Atlantic's proposed rate of \$22.28 for SCCL lines included an unreasonable level of contribution for the service and recommended a rate of \$16.63, based on a level of contribution which the Delaware P.S.C. had deemed reasonable in Bell Atlantic's prior SGAT proceeding. Del. P.S.C. Order No. 4637, at 11. DPSC staff also testified that a higher contribution for payphone features -- such as inward call blocking and line side answer supervision -- was reasonable since that commission traditionally allowed the pricing of vertical services at levels that earn greater than a reasonable level of contribution. *Id.*, at 12. The Commission notes that this latter position accords with Peoples Telephone's observations in the Maryland P.S.C. proceeding regarding the range of reasonable overhead allowed by the FCC. The Delaware P.S.C. ultimately adopted the rates for payphone lines advocated by its staff. *Id.*, at 17.

In this proceeding, BA-WV seeks an overhead contribution for payphone access lines -- not features -- ranging from 23% to 92% over and above the Commission-authorized 10.2% allocation. Nowhere does BA-WV attempt to justify these overhead ranges. See Tr. at 13-14 (Pehta); 64-65 (Given). While the FCC may have approved overhead factors in this range in payphone tariff cases filed with it, there appears to be some question as to what types of services are allowed such large overhead contributions. The Commission has previously determined that a 10.2% overhead factor is reasonable in determining rates for unbundled network elements and interconnection in Case No. 96-1516-T-PC, *et al.* That overhead factor was built into BA-WV's determination of its direct costs for payphone lines. While a higher overhead factor may conceivably be reasonable, BA-WV simply has not done enough to justify allowing an overhead allocation higher than 10.2%.

Staff proposed that BA-WV's payphone rates should be set at \$27.15 for all line types except SCCL, which are capped at \$24.50. The Commission agrees with Staff that these rates will

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adequately cover BA-WV's costs of providing payphone lines, including a reasonable allocation for overhead, and will not burden other tariffed items. Staff Exh. 1 (Carden), at 4-5; Tr. at 122 (Carden).

Furthermore, the Commission generally agrees with AT&T and Staff's proposal that BA-WV's payphone rates should be further reduced by the SLC which BA-WV currently recovers from the FCC. The SLC established by the FCC recovers a portion of the incumbent LEC's interstate common line costs. See "First Report and Order," In the Matter of Access Charge Reform, CC Docket No. 96-262, FCC 97-158 (Rel. May 16, 1997), ¶37 (FCC ACRO). Although the FCC eliminated the usage sensitive (i.e., per minute of use) CCLC from the interstate common line revenues recovered by an incumbent LEC,¹³ the SLC not only was retained but, for certain lines (e.g., non-primary residential and multiline business lines), was increased. FCC ACRO, ¶39. Under the access charge reform plan adopted by the FCC, the agency concluded, "most price cap incumbent LECs will recover their interstate common line revenues through flat-rated SLCs and PICCs." Id., ¶40.

As its testimony made clear during the March 2, 1998 hearing, BA-WV calculated its payphone line costs based on the Commission's orders in Case No. 96-1516-T-PC, et al. Tr. at 12-17 (Pehta). In those orders, the Commission established rates for unbundled network elements provided by BA-WV as part of its local exchange service. Staff concluded that those rates did not distinguish between the interstate and intrastate jurisdictions. Tr. at 123 (Carden). Staff's conclusion was reasonable. The rates for these elements were based on "total element long run incremental costs" -- TELRIC. As the name implies, the total costs associated with an element -- both intrastate and interstate -- are considered in setting such rates. Since BA-WV did not clearly demonstrate otherwise, the Commission must conclude that its payphone cost study included both interstate and intrastate costs.

To allow BA-WV to include interstate costs into its payphone line rates while the Company recovers an SLC would result in BA-WV double-recovering its interstate costs associated with payphone lines. The Commission agrees with AT&T that this would be inappropriate. See Tr. at 105-07 (Darrah). However, while the Commission agrees with Staff and AT&T that BA-WV's payphone line rates should be reduced by the amount of the SLC the Company recovers at the federal level, the Commission cannot endorse their proposal that BA-WV's rates should be reduced by \$7.63. This is because the SLC is not a fixed amount but rather is the product of a calculation, which may vary from year to year. See 47 C.F.R. §§69.104(c) & 69.152(b) (SLC formulae for non-price cap and price cap LECs, respectively). Thus, a fixed \$7.63 reduction in BA-WV's payphone

¹³To the extent that common line revenues are not recovered through the customer's SLC, the FCC permitted LECs to recover those revenues through a flat, per-line charge assessed on the IXC to whom the access line is presubscribed -- the presubscribed interexchange carrier charge or PICC. FCC ACRO, ¶38.

line rates would not be appropriate. Instead, the Commission will require BA-WV to charge no more than \$27.15 for its payphone lines -- \$24.50 for SCCL lines -- including the SLC collected by BA-WV from year to year. In other words, the sum of the SLC and BA-WV's payphone rates shall equal \$27.15 or \$24.50 -- no more. This accords with AT&T's testimony. Tr. at 105-07 (Darrah). These reduced rates will allow BA-WV to recover its costs of payphone lines -- both interstate and intrastate -- plus a 10.2% to 12% overhead allocation.

The Commission concludes that BA-WV's currently tariffed payphone rates do not comply with 47 U.S.C. §276(a)(1) or the FCC's "new services" test and that BA-WV should be directed to file tariffs revised in accordance with this Order within thirty (30) days following the date of entry hereof. If such revised tariffs are consistent with this Order, no further proceedings shall be conducted and an order approving such rates shall be entered.

B. Reducing BA-WV's Other Rates.

1. Removing Subsidies to Payphone Services.

The FCC's payphone orders leave it to the state commissions to remove any subsidy, direct or indirect, from a LEC's local exchange and local exchange access operations to its payphone operations. 9/20/96 PPO, ¶186. After considering the parties' arguments, the Commission cannot conclude that any reduction in BA-WV's local exchange service rates or exchange access rates is warranted under 47 U.S.C. §276 or the FCC's payphone orders.

BA-WV was the only party to have presented a cost-study of its pre-deregulation expenses and revenues associated with payphone service. That study showed that BA-WV's revenues from payphone service -- at a \$0.25 rate -- exceeded costs by [Proprietary] [Proprietary]. BA-WV Exh. 2 (Pehta), Exh. 3. That no subsidy exists where revenues exceed direct costs is undisputed. Tr. at 12 (Pehta); 89 (Given). In this case, BA-WV is the only party to have made any showing regarding this issue, and that showing supports its claim that its payphone operations have not been subsidized, directly or indirectly, by its exchange service operations or exchange access operations. BA-WV Exh. 2 (Pehta), at 3 & Exh. 3; Tr. at 49-50 (Given).

In contrast, AT&T's arguments are based solely on assumptions -- however logical -- that BA-WV has rebutted. With respect to the local coin rate increase, AT&T's argument relies on the assumption that price is driven to cost in a competitive market. BA-WV concedes that this is often true. Tr. at 46 (Given). However, BA-WV presented unrefuted testimony that price may move up or down independently of cost in certain situations -- such as when prices have been suppressed by regulation, as was the case with payphone coin rates. Tr. at 87-89 (Given). AT&T's own witness did not contradict this assertion. Tr. at 109-10 (Darrah). As for AT&T's "complex cross subsidies" argument, the Company simply failed to present any evidence or testimony to suggest that BA-WV's payphone rates were set below TSLRIC or incorporated inefficiently small markups above TSLRIC and were subsidized by rates for other services set with inefficiently large markups above

Nor is the Commission persuaded by MCI's argument that the \$0.10 payphone coin rate increase eliminated a subsidy based on the fact that the FCC concluded that the costs of payphone service in 4 out of 5 states with deregulated payphone service was equivalent to \$0.35 per call. The Commission is not convinced that the FCC discussion cited by MCI compels the conclusion that the cost of payphone service must be \$0.35 per call and that BA-WV's pre-deregulation coin rate of \$0.25 must therefore have been subsidized.

As an initial matter, the FCC did not make any conclusions about whether any particular state payphone service was subsidized nor did it offer any conclusions about what the cost of payphone service was in any particular state. Instead, the FCC was merely selecting a nationwide surrogate to use as a default PCC amount. The Commission considers this distinction significant. Moreover, the Commission considers it significant that the portion of the 9/20/96 PPO upon which MCI places such importance was ultimately rejected by the D.C. Circuit Court of Appeals. See Illinois Public Telecommunications Assn., 117 F.3d 555. To properly dispose of MCI's arguments, however, the Commission believes a more than superficial review of FCC's determination of the PCC amount is necessary.

The FCC originally proposed using cost-based surrogates to determine the amount PSPs should be compensated but ultimately selected local coin rates as the basis for a default PCC rate. 9/20/96 PPO, ¶¶24, 70. The FCC's decision to abandon cost-based surrogates apparently stemmed from its dissatisfaction with the quantity and quality of cost-based data submitted by commenters. Addressing such data, the FCC wrote:

Upon review of the comments submitted in response to the [NPRM], we find that while few parties provided cost surrogate data, [those studies submitted] vary in both their approaches to calculating compensation and their conclusions on the appropriate [PCC] amount that the Commission should adopt.

Id., ¶67. The FCC noted that some commenters -- such as Sprint and MCI -- suggested that PCC should be based on a marginal cost standard while others -- AT&T for example -- argued for a TSLRIC-based standard. Id., ¶42. The appropriate PCC amount recommended by these commenters ranged from \$0.0675 to \$0.083 per call. Id. On the other hand, other commenters -- including regional BOCs, GTE, and Peoples Telephone Co. -- proposed PCC amounts ranging from \$0.40 to \$0.90 per call. Id., ¶¶43-45. Given the widely divergent proposals based on a cost-based approach, the Commission does not fault the FCC for deciding to use market-based surrogates. See 9/20/96 PPO, ¶¶68-70.

As the FCC noted, the regional BOCs and independent PSPs proposed the use of market-based surrogates. Id., ¶69. Instead, as MCI points out, the FCC selected the local coin rate in 4 out of 5 states with deregulated local payphone coin rates on the grounds that these were the "best

available surrogates for payphone costs" and were "superior to the cost surrogate data provided by the commenters." *Id.*, ¶70.¹⁴ The FCC set out the following rationale for selecting the local coin rates in these particular states:

Once competitive conditions exist, we believe that the market should set the compensation amount for all payphone calls, including local coin calls. Because we have an obligation under Section 276 to ensure that the compensation for all local coin calls is fair, we conclude that the market should be allowed to set the price for all compensable calls, including a local coin call.

9/20/96 PPO, ¶56. The FCC relied on the deregulated states' local coin rates rather than the local coin rates in other states because such rates historically had not been set by the market but rather by state commissions and may have been subsidized. 9/20/96 PPO, ¶57; see also 10/9/97 PPO, ¶92.

Subsequently, the FCC denied petitions for reconsideration of its decision to utilize the deregulated local coin rates for purposes of determining the interim PCC amount. Petitioners argued that "the local coin rate is an inappropriate surrogate upon which to base per-call compensation, because local coin calls have additional costs, such as coin collection, that other calls do not incur." 11/8/96 PPO, ¶71.¹⁵ In other words, PCC based on the deregulated local coin rate would tend to overcompensate PSPs for compensable calls. The FCC rejected this argument out of hand, stating "[w]e disagree . . . we found that the costs of originating the various types of payphone calls are similar. . ." and that if there were significant differences, "over time, the market will address these differences." *Id.*

On appeal, the D.C. Circuit Court rejected the FCC's "cavalier" proclamation -- without even acknowledging any of the contrary data in the record -- that the costs of originating the various types of payphone calls were similar. Illinois Public Telecommunications Assn. v. FCC, 117 F.3d 555, 563, clarified, 123 F.3d 693 (D.C. Cir., 1997). The Court concluded that the record was "replete with evidence that the costs of local coin calls versus 800 and access code calls were not similar." *Id.* (original emphasis). Accordingly, the D.C. Circuit vacated and remanded this portion of the FCC's order and rulemaking. 123 F.3d at 694.

¹⁴The four states with \$0.35 market-based local coin rates were Iowa, Nebraska, North Dakota and Wyoming. In the fifth state, South Dakota, the market-based local coin rate was \$0.25. 9/20/96 PPO, ¶56.

¹⁵Specifically, AT&T and Sprint argued that local coin rates should be higher than coinless calls because of coin collection and other costs associated with coin calls. 11/8/96 PPO, ¶35. MCI, LDDS, Cable & Wireless and PageNet similarly argued that use of the local coin rate was inappropriate because costs varied for each type of payphone call. *Id.*

On remand, the FCC reduced its \$0.35 default PCC amount to \$0.284 per call because it found that calling card and 800 subscriber calls (non-coin calls) cost less than local coin calls. The Commission cannot agree with MCI's claim that this action is further evidence that BA-WV's payphone operations were subsidized at the \$0.25 pre-deregulation rate. See MCI Br., Fn. 7. The FCC ultimately retained its market-based approach to setting the default PCC amount, rather than adopting a cost-based approach. 10/9/97 PPO, ¶¶23-24. In doing so, however, the FCC made it clear that market-based rates may be higher than costs associated with payphone calls.¹⁶ In discussing problems associated with methodologies for deriving payphone compensation proposed by various commenters, the FCC wrote:

We conclude that the use of a purely incremental cost standard for each type of call could leave PSPs without fair compensation for payphone calls, because such a standard would not permit the PSP to recover a reasonable share of the joint and common costs associated with those calls. We also reject, for similar reasons, suggestions by commenters that we use local coin rates currently in place as a surrogate for [PCC]. As we stated in the NPRM, "local coin rates in some jurisdictions may not cover the marginal [incremental] cost of the service." Therefore, basing the [PCC] amount on current local coin rates, which are frequently subsidized by state regulators, would not fairly compensate the PSPs.

10/9/97 PPO, ¶92. Differences between the local exchange market (low competition) and the payphone market (existing competition, easy entry and exit), the FCC wrote, justified its reliance on market forces to provide for efficient pricing of payphone services in the near future. *Id.*, ¶¶94-95.

The FCC's discussion in the 10/9/97 PPO makes it clear that market rates for payphone

¹⁶MCI acknowledged this fact, as the FCC noted:

Several of the IXCs assert that the retail price for local coin calls is not an appropriate surrogate for the costs of a noncoin call because there are substantial cost differences between these two types of calls. . . . MCI asserts that a market-based rate, being higher than a cost-based rate, would lead to increased blocking by 800 subscribers, as those subscribers try to avoid having to pay IXCs for unduly high payphone charges. MCI also asserts that market-based rates are artificially driven up by location owners holding out for the highest bidding PSP.

10/9/97 PPO, ¶33 (emphasis added). MCI's suggestion now that market-based coin rates are a benchmark for a local exchange carrier's cost of providing payphone service is at odds with its earlier comments to the FCC.

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services may be higher than -- not equal to -- costs of providing payphone services. How much higher market rates may be is not altogether clear, although the FCC suggests that the costs of providing payphone service are not markedly less than the rates charged for such service. The FCC wrote that its analysis of the record indicated that "an estimate of the long run costs of providing access code and subscriber 800 service, including an equal per call share of joint and common costs, is not significantly less than the market-based rate" it was adopting. *Id.*, ¶99. After summarizing its category-by-category estimation of costs, the FCC concluded that total long run costs of access code and consumer 800 calls would range from \$0.247 per call (based on a sum of low estimates), to \$0.281 per call (based on a sum of high estimates). *Id.*, ¶108. Even using the FCC's estimates -- which the Commission would not rely on in any event -- it appears that BA-WV's pre-deregulation payphone coin rate of \$0.25 should have met or exceeded the Company's costs. BA-WV's testimony and cost-study accords with this conclusion. Tr. at 49-50 (Given).

2. Arguments for Otherwise Reducing BA-WV's Intrastate Rates.

Absent a showing that BA-WV's payphone operations were subsidized, the Commission concludes that there is no basis for otherwise reducing BA-WV intrastate rates under 47 U.S.C. §276 or the FCC's various orders. See 47 U.S.C. §271(a)(1); 9/20/96 PPO, ¶186.

The fact that the FCC determined that the interstate CCLC must be reduced to eliminate the specific payphone cost elements -- and Bell Atlantic subsequently reduced its interstate CCLC by \$43.6 million -- does not, as CAD and AT&T suggest, justify a reduction in BA-WV's intrastate CCLC. CAD is correct in pointing out that the inter- and intrastate CCLCs were established as mirror images of one another, were originally set at the same rate, and are residual in nature. See Tr. at 111-13 (Darrah). However, that alone does not carry the day. What is significant, as BA-WV noted, is that the intrastate CCLC never had a payphone cost element. Tr. at 50 (Given). The Commission also considers significant the fact that BA-WV's payphone revenues exceeded costs once the Commission approved the \$0.25 per call coin rate for outdoor stations in 1985, as well as the fact that, concomitant with this action, the intrastate CCLC was cut in half. Tr. at 89-90 (Given); see also "Commission Order," Chesapeake & Potomac Telephone Co. of WV, Case No. 84-747-T-42T (Sept. 6, 1985), at 95-99.

Finally, CAD and AT&T's arguments -- that allowing BA-WV to receive PCC, or to increase its local coin rates for payphone calls, without a corresponding reduction in its intrastate rates will result in a windfall -- are irrelevant. Neither CAD nor AT&T cite the Commission to any provision in TA96 or the FCC's orders requiring such reductions. Nor has the Commission found such authority. Congress and the FCC only required rates to be reduced to the extent payphone operations were subsidized by local exchange and local exchange access services. Absent subsidized payphone operations, no reduction in rates is required. On this point, the Commission

agrees with BA-WV. See Tr. at 66 (Given).¹⁷

C. Section 276's Requirement That Tariffs For Payphone Services Are Nondiscriminatory.

The Commission concludes that BA-WV's May 19, 1997 tariff filing satisfies the sole remaining requirement of 47 U.S.C. §276 -- namely that the tariffed payphone services do not discriminate in favor of BA-WV or its affiliates. See 47 U.S.C. §276(a)(2). This is BA-WV's uncontroverted position. BA-WV Br., at 3.

To the extent AT&T originally argued that the information submitted with BA-WV's May 19, 1997 tariff filing did not comply with the FCC's "new services" test, the Commission concludes that AT&T abandoned that argument when it urged the Commission, in its post-hearing brief, to adopt Staff's proposed payphone line rates, subject to a further reduction to account for BA-WV's SLC. AT&T Br., at 10-11.

FINDINGS OF FACT

1. On May 19, 1997, Bell Atlantic - West Virginia, Inc. (BA-WV) filed revised tariff pages with the Commission for approval. BA-WV filed two (2) pages with the Commission: (1) P.S.C.-W.Va.-No. 202-Local Exchange Service Tariff, Section 4A, 2nd Revised Page 2 -- which reduced monthly rates for certain optional features associated with Service for Customer-Provided coin and Credit Card Operated Telephones, specifically Outward Call Screening and Line Side Answer Supervision; and (2) P.S.C.-W.Va.-No. 202-Local Exchange Service Tariff, Section 4D, 2nd Revised Page 3 -- which was a re-filing of BA-WV's existing payphone service rates in order to comply with the Federal Communications Commission's (FCC) requirement that intrastate tariffs for payphone services are consistent with the "new services" guidelines established in FCC orders. The proposed tariff changes were to become effective June 19, 1997.

2. On June 6, 1997, AT&T Communications of West Virginia, Inc. (AT&T) filed a petition for suspension of the proposed tariff revisions and an investigation into reducing BA-WV's

¹⁷While it does not affect the Commission's decision in any way, the Commission believes that CAD and AT&T's claims of a windfall may be somewhat overstated. The Commission notes that BA-WV's local coin rate increase was coupled with its expansion of payphone local calling areas to be consistent with the so-called "Winfield Plan" -- an action that will ultimately reduce BA-WV's intraLATA toll revenues. Tr. at 51-52 (Given). This contention was not disputed. Nor was BA-WV's claim that the local coin rate increase will generate higher costs associated with coin collection and competition will drive up costs associated with commissions, marketing and advertising. See Tr. at 95-96 (Given).

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intrastate payphone rates to account for subsidies being paid by interexchange carriers (IXCs) pursuant to FCC orders.

3. By Order entered June 16, 1997, the Commission suspended BA-WV's proposed tariff revisions until March 16, 1998, or until further order of the Commission.

4. On December 19, 1997, BA-WV filed a letter with the Commission withdrawing P.S.C.-W.Va.-No. 202-Local Exchange Services Tariff, Section 4A, 2nd Revised Page 2, and advising that this removed Outward Call Screening and Line Side Answer Supervision feature options from this proceeding.

5. By Order entered February 20, 1998, the Commission established a procedural schedule in this proceeding and scheduled a hearing on March 2, 1998. Parties were directed to file witness lists with a summary of expected testimony and exhibits with the Commission by February 28, 1998.

6. CAD and MCI Telecommunications Corp. (MCI) filed petitions to intervene on February 25 and 26, 1998, respectively.

7. By Order entered February 27, 1998, the Commission granted CAD and MCI leave to intervene.

8. Both AT&T and BA-WV filed pre-filed testimony with the Commission on February 27, 1998. Staff submitted pre-filed testimony on March 2, 1998. Neither CAD nor MCI pre-filed testimony.

9. A hearing was held, as scheduled, on March 2, 1998. MCI did not enter an appearance at the hearing. The following witnesses submitted pre-filed testimony and were presented for cross-examination at the hearing: John A. Pehta and Gale Y. Given -- BA-WV; G. Blaine Darrah, III -- AT&T; and David T. Carden -- Staff. CAD did not present any witnesses. At the conclusion of the hearing, the Commission granted an extension of time for the parties to file post-hearing briefs until 10:00 a.m. March 6, 1998.

10. In accordance with the Commission's order, all parties filed post-hearing briefs with the Commission on March 6, 1998. In addition, BA-WV filed material responsive to AT&T's request as AT&T Cross Exh. 2 with the Commission on March 4, 1998.

11. By Order entered March 13, 1998, the Commission rescinded its June 16, 1997 order suspending the tariff revisions filed by BA-WV until March 16, 1998, on the grounds that BA-WV's withdrawal of its proposed reductions in rates for Outward Call Screening and Line Side Answer Supervision (P.S.C.-W.Va.-No. 202-Local Exchange Service Tariff, Section 4A, 2nd Revised Page 2), removed all proposed rate changes or new changes from this proceeding. Therefore, W. Va.

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Code §24-2-4a was no longer applicable.

12. Section 276 of TA96 provides:

After the effective date of the [FCC's rules governing payphones], any Bell operating company that provides payphone service —

(1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and

(2) shall not prefer or discriminate in favor of its payphone service.

47 U.S.C. §276(a)(1)&(2).

13. Section 276(b) of TA96 requires the FCC to prescribe regulations that: (1) establish a per call compensation (PCC) plan to ensure that all payphone service providers (PSPs) are fairly compensated for completed intrastate and interstate calls from payphones; (2) discontinue the intrastate and interstate carrier access charge payphone service elements in effect on the date of TA96's enactment, as well as all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of the PCC plan; (3) prescribe nonstructural safeguards for Bell operating company (BOC) payphone service; (4) give BOC PSPs the same rights as independent providers to negotiate the location provider's selection of, and contracting with, carriers to carry interLATA and intraLATA calls. 47 U.S.C. §276(b)(1)(A)-(E).

14. In an effort to comply with Congress' directives, the FCC issued a series of orders in its proceeding docketed In the Matter of Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket Nos. 96-128 and 91-35. These orders are as follows: "Report and Order," CC Docket Nos. 96-128 & 91-35, FCC 96-388 (Rel. Sept. 20, 1996)(9/20/96 PPO); "Order on Reconsideration," CC Docket Nos. 96-128 & 91-35 (Rel. Nov. 8, 1996)(11/8/96 PPO); "Order," CC Docket No. 96-128, DA 97-678 (Rel. April 4, 1997)(4/4/97 PPO); "Order," CC Docket No. 96-128, DA 97-805 (Rel. April 15, 1997)(4/15/97 PPO); and "Second Report and Order," CC Docket No. 96-128 (Rel. Oct. 9, 1997)(10/9/97 PPO).

15. The FCC's 9/20/96 PPO deregulated coin rates for payphones and established an interim compensation mechanism that would require interexchange carriers (IXCs), on an apportioned basis, to pay local exchange carriers (LECs) a total of \$45.85 per payphone per month — based on a default rate of \$0.35 per call. PSPs affiliated with LECs would not be eligible to receive interim compensation until "the first day of the month following their reclassification and transfer of payphone equipment, along with the termination of subsidies." 9/20/96 PPO, ¶125.

16. The 9/20/96 PPO also required incumbent LECs to reduce their interstate subsidies

by reducing Carrier Common Line charges (CCLCs) in amounts equal to the payphone costs assigned to the CCLC pursuant to the FCC's costing rules. *Id.*, ¶181. The FCC left it to the States to determine the rate elements that must be removed to eliminate intrastate subsidies. *Id.*, ¶186.

17. In the 11/8/96 PPO, the FCC adopted rules requiring LECs to file intrastate tariffs for basic payphone services that are: (1) cost based; (2) consistent with 47 U.S.C. §276 with respect to the removal of subsidies from exchange and exchange access services; and (3) nondiscriminatory. Furthermore, the FCC directed that such tariffs must be consistent with Computer III tariffing guidelines. 11/8/96 PPO, ¶163. This is the "new services" test applicable in this proceeding.

18. Originally, the FCC required incumbent LECs to file intrastate payphone tariffs with each state, implementing 47 U.S.C. §276 and the FCC's "new services" test, to be effective no later than April 15, 1997. 11/8/96 PPO, ¶186. The FCC subsequently extended the deadline for filing intrastate payphone tariffs to May 19, 1997. 4/15/97 PPO, ¶25.

19. The D.C. Circuit Court of Appeals, vacated the FCC's payphone regulations, in part. Among the rules vacated was the manner in which the amount of interim PCC is to be calculated. See Illinois Public Telephone Assn. v. FCC, 117 F.3d 555, clarified, 123 F.3d 693 (D.C. Cir. 1997).

20. In its "Second Report and Order," issued in the wake of the D.C. Circuit's decision, the FCC established a PCC rate of \$0.284 per call that would apply to 800 and "dial around" (i.e., access code) calls from payphones for two (2) years. 10/9/97 PPO, ¶117. This rate would be paid by IXCs beginning October 7, 1997 -- provided the LEC had complied with 47 U.S.C. §276. *Id.*, ¶121.

21. BA-WV's tariff provides for five basic types of payphone lines: (1) Network Controlled Coin Line (NCCL) -- for "dumb" coin sets; (2) Network Controlled Non-Coin Line (NCNL) -- for "dumb" coinless sets; (3) Network Controlled Inmate Line (NCIL) Coinless -- for "dumb" coinless sets used in a prison setting; (4) Network Controlled Inmate (NCIL) Coin -- for "dumb" coin sets used in a prison setting; and (5) Station Controlled Coin Line (SCCL) -- for "smart" coin sets generally used by independent (COPT) providers. BA-WV Br., at 3; BA-WV Exh. 4 (Given), at 5-6.

22. BA-WV's currently approved rates for its payphone lines are as follows:

<u>Line Type</u>	<u>Rate</u>
NCCL	\$35.16
NCCL2	\$33.16
NCNL	\$39.00
NCNL2	\$37.00

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NCIL1	\$38.00
NCIL2	\$36.00
SCCL	\$24.50
NCILCoin	\$52.00

23. The cost-study submitted by BA-WV as part of its May 19, 1997 tariff filing indicates that its rates are set well above cost. That study indicates that the costs and rates for each type of basic payphone line are as follows:

<u>Line Type</u>	<u>Cost</u>	<u>Rate</u>	<u>Rate (-) Cost</u>	<u>Difference</u>
NCCL	\$27.0309	\$35.16	\$8.1291	30%
NCCL2	\$27.00	\$33.16	\$6.16	23%
NCNL	\$26.6613	\$39.00	\$12.3387	46%
NCNL2	\$26.6304	\$37.00	\$10.3696	39%
NCIL1	\$26.7193	\$38.00	\$11.2807	42%
NCIL2	\$26.6280	\$36.00	\$9.372	35%
SCCL	\$26.57	\$24.50	(\$2.07)	(7.8%) ¹⁸
NCILCoin	\$27.1493	\$52.00	\$24.8507	92%

BA-WV Cost & Forecast (May 19, 1997). These rates did not include the \$6.00 "end user common line" (EUCL) charge which applied to all line types at that time. In virtually every instance, the rate is from 23% to 92% higher than cost.

24. BA-WV calculated its payphone line costs based on the Commission's orders in Case No. 96-1516-T-PC, *et al.* Tr. at 12-17 (Pehta). In those orders, the Commission established rates for unbundled network elements provided by BA-WV as part of its local exchange service. Those rates did not distinguish between the interstate and intrastate jurisdictions. Tr. at 123 (Carden).

25. The rates for unbundled network elements adopted in the Commission's orders in Case No. 96-1516-T-PC, *et al.* were based on "total element long run incremental costs" -- TELRIC. As the name implies, the total costs associated with an element -- both intrastate and interstate -- are

¹⁸BA-WV's rates for SCCL lines are capped at \$24.50 pursuant to its Commission-approved incentive regulation plan (IRP). See P.S.C.-W.Va.-No. 202, 3rd Revised Page 2, Section 1.B.2.c & 5th Revised Page 141, Section 2.C.1.c. While it would appear that BA-WV's SCCL rate does not recover its costs for such lines, this is not the case because a measured rate also applies to SCCL lines. See P.S.C.-W.Va.-No. 202, Section 2, 3rd Revised Page 142, Section 2.C.1.d.

considered in setting such rates.

26. The SGAT order(s) BA-WV relied upon in calculating rates for payphone lines included a reasonable allocation -- 10.2% -- for overhead. Staff Exh. 1 (Carden), at 4-5; see also "Commission Order," Bell Atlantic - WV, Case No. 96-1516-T-PC, et al. (April 21, 1997), Public Version at 48. Thus, the cost for each payphone line calculated by BA-WV already included an overhead allocation of 10.2% -- exclusive of any additional mark-up in setting rates.

27. BA-WV's 12-month cost study filed with the Commission on May 19, 1997, indicates that BA-WV's payphone business generated [Proprietary] [Proprietary] in revenues. BA-WV Exh. 2 (Pehta), at 3 & Exh. 3.

28. BA-WV's interstate and intrastate CCLCs were initially set at the same level (i.e., \$0.0461 per minute). BA-WV Br., at 6.

29. BA-WV's interstate CCLC contained a specific, FCC-prescribed cost element for payphone service; the intrastate CCLC did not. BA-WV Br., at 6-7 & Fn. 6.

30. The portion of BA-WV's payphone service that was funded by the interstate CCLC at the interstate level was funded directly and entirely by payphone end-users in West Virginia. BA-WV Exh. 4 (Given), at 12; Tr. at 38-39 (Pehta).

31. BA-WV's cost studies in Case No. 84-747-T-42T showed that, when only indoor payphones were priced at \$0.25, coin service was priced below cost by roughly \$850,000. BA-WV Br., Fn. 7. When rates for outdoor payphones were increased to \$0.25 in 1985, however, payphone revenues increased by \$1.2 million.

32. Although both the inter- and intrastate CCLCs were initially set at \$0.0461 per minute, the Company reduced its intrastate CCLC by half -- to \$0.0231 -- in 1985. BA-WV Br., at 8. This reduced BA-WV's annual intrastate CCLC charges to IXCs by more than \$4.4 million. Id., Fn. 8; see also "Commission Order," Chesapeake & Potomac Telephone Co. of WV, Case No. 84-747-T-42T (Sept. 6, 1985), at 54-59 and 95-99.

33. The interstate CCLC was increased to \$0.0524 in 1985. BA-WV Br., at 8.

34. Bell Atlantic removed \$46.34 million from its interstate CCLC -- of which BA-WV's share was \$2.3 million. CAD Br., at 3.

35. The Commission adopts and incorporates all recitals of fact otherwise set forth herein.

CONCLUSIONS OF LAW

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1. Where incumbent LECs have already filed intrastate tariffs for payphone services, states may, after considering the requirements of 47 U.S.C. §276 and the FCC's payphone orders, conclude: (1) that existing tariffs are consistent with the requirements of such FCC orders; and (2) that no further filings are required. 4/15/97 PPO, ¶8.

2. BA-WV's tariffed rates do not satisfy the FCC's "new services" test. The cost-study submitted by BA-WV as part of its May 19, 1997 tariff filing indicates that its rates are set well above cost. BA-WV Cost & Forecast (May 19, 1997).

3. In virtually every instance, BA-WV's payphone line rate is much higher than its cost -- anywhere from 23% to 92% higher. BA-WV presented insufficient evidence to justify such large overhead allocations.

4. The "new services" test clearly places the burden on incumbent LECs to demonstrate that the service element in the intrastate payphone tariff is cost-based and will not recover more than a reasonable portion of the carrier's overhead costs. See 47 C.F.R. §69.49(f)(2). BA-WV failed to meet this burden.

5. BA-WV's payphone rates should be set at \$27.15 for all line types except SCCL, which should be set at \$24.50.

6. The SLC established by the FCC recovers a portion of the incumbent LEC's interstate common line costs. See "First Report and Order," In the Matter of Access Charge Reform, CC Docket No. 96-262, FCC 97-158 (Rel. May 16, 1997), ¶37 (FCC ACRO).

7. Since BA-WV did not clearly demonstrate otherwise, the Commission must conclude that its payphone cost study included both interstate and intrastate costs.

8. It would be inappropriate to allow BA-WV to include interstate costs in its payphone line rates while the Company recovers an SLC since this would result in BA-WV double-recovering its interstate payphone line costs. See Tr. at 105-07 (Darrah).

9. BA-WV's payphone rates should be reduced further by the SLC which BA-WV recovers from the FCC.

10. A fixed \$7.63 reduction in BA-WV's payphone line rates would not be appropriate, since the SLC is not a fixed amount but rather is the product of a calculation, which may vary from year to year. See 47 C.F.R. §§69.104(c) & 69.152(b).

11. BA-WV should be required to charge no more than \$27.15 for its payphone lines -- \$24.50 for SCCL lines -- including the SLC collected by BA-WV from year to year. In other words, the sum of the SLC and BA-WV's payphone rates shall equal \$27.15 or \$24.50 -- no more. Tr. at 105-07 (Darrah).

12. The reduced rates for payphone lines set forth herein will allow BA-WV to recover its costs of payphone lines -- both interstate and intrastate -- plus a 10.2% to 12% overhead allocation.

13. Section 276 of TA96 and the FCC's payphone orders require state commissions to remove any subsidy, direct or indirect, from a LEC's local exchange and local exchange access operations to its payphone operations. 47 U.S.C. §276(a)(1); 9/20/96 PPO, ¶186.

14. BA-WV's revenues from payphone service -- at a \$0.25 rate -- exceeded costs by [Proprietary] [Proprietary]. BA-WV Exh. 2 (Pehta), Exh. 3.

15. No subsidy exists where revenues exceed direct costs. Tr. at 12 (Pehta); 89 (Given).

16. BA-WV's payphone operations were not subsidized, directly or indirectly, by its exchange service operations or exchange access operations. BA-WV Exh. 2 (Pehta), at 3 & Exh. 3; Tr. at 49-50 (Given).

17. No reduction in BA-WV's local exchange service rates or exchange access rates is warranted under 47 U.S.C. §276 or the FCC's payphone orders.

18. The FCC's determination that coin rates in 4 of 5 deregulated states are the best surrogate for compensable payphone calls does not justify a conclusion that BA-WV's payphone costs must be at or near \$0.35 per call.

19. Although the FCC ultimately retained its market-based approach to setting the default PCC amount, rather than adopting a cost-based approach, it made it clear that market-based rates may be higher than costs associated with payphone calls. 10/9/97 PPO, ¶¶23-24, ¶92.

20. The costs of providing payphone service are not markedly less than the market rates for such service. 10/9/97 PPO, ¶108.

21. Even using the FCC's estimates of costs to provide payphone service, it appears that BA-WV's pre-deregulation payphone coin rate of \$0.25 should have met or exceeded the Company's costs. Tr. at 49-50 (Given).

22. Absent a showing that BA-WV's payphone operations were subsidized, the Commission concludes that there is no basis for otherwise reducing BA-WV intrastate rates under 47 U.S.C. §276 or the FCC's various orders. See 47 U.S.C. §271(a)(1); 9/20/96 PPO, ¶186.

23. The fact that the FCC determined that the interstate CCLC must be reduced to eliminate the specific payphone cost elements -- and Bell Atlantic subsequently reduced its interstate CCLC by \$43.6 million -- does not justify a reduction in BA-WV's intrastate CCLC.

24. The intrastate CCLC never had a payphone cost element. Tr. at 50 (Given). Moreover, BA-WV's payphone revenues exceeded costs once the Commission approved the \$0.25 per call coin rate for outdoor stations in 1985. Tr. at 89-90 (Given).

25. There is no provision in TA96 or the FCC's payphone orders requiring BA-WV's intrastate rates to be reduced to offset PCC payments to BA-WV or revenues resulting from an increase in BA-WV's local coin rate.

26. BA-WV's May 19, 1997 tariff filing satisfies the sole remaining requirement of 47 U.S.C. §276 -- namely that the tariffed payphone services do not discriminate in favor of BA-WV or its affiliates. See 47 U.S.C. §276(a)(2). This is BA-WV's uncontroverted position. BA-WV Br., at 3.

27. The Commission adopts and incorporates all legal conclusions otherwise set forth herein.

ORDER

IT IS, THEREFORE, ORDERED that Bell Atlantic - West Virginia, Inc.'s May 19, 1997 petition for approval of its Commission-approved and tariffed payphone line rates, pursuant to 47 U.S.C. §276 and the FCC's "new services" test, should be, and hereby is, denied.

IT IS FURTHER ORDERED that BA-WV shall file with the Commission, within thirty (30) days from the date of entry herewith, revised payphone line tariffs in accordance herewith.

IT IS FURTHER ORDERED that BA-WV's revised payphone line tariffs shall provide that the rates set forth therein include the currently applicable multiline subscriber line charge calculated in accordance with FCC regulations.

IT IS FURTHER ORDERED that BA-WV's intrastate rates and charges shall not be reduced to remove any subsidies to its payphone service, direct or indirect, from BA-WV's local exchange or local exchange access services. BA-WV's payphone service was not subsidized from such services.

IT IS FURTHER ORDERED that BA-WV's payphone tariffs do not need to be modified to eliminate any preference or discrimination in favor of BA-WV's payphone service. BA-WV's payphone tariffs do not prefer or discriminate in favor of BA-WV's payphone service.

IT IS FURTHER ORDERED that BA-WV's tariffed payphone line rates shall remain in effect until BA-WV re-files new tariffed rates in accordance herewith.

IT IS FURTHER ORDERED that, upon entry hereof, this proceeding shall be removed from

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the Commission's docket of active cases.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this Order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.

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**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DEREGULATION OF LOCAL EXCHANGE	)	ADMINISTRATIVE
COMPANIES' PAYPHONE SERVICE	)	CASE NO. 361

O R D E R

Section 276 of the Telecommunications Act of 1996 ("the Act") establishes requirements designed to promote competition among Payphone Service Providers ("PSPs") and promote the widespread deployment of payphone service to the benefit of the general public. In the Payphone Reclassification proceeding,¹ the Federal Communications Commission ("FCC") required that Local Exchange Carriers ("LECs") file tariffs for basic payphone lines at the state level only. Unbundled features and functions provided by LECs to their own payphone operations or to others are required to be tariffed at both the state and federal levels. The FCC required that all LEC payphone tariffs filed at the state level be cost-based, nondiscriminatory, and consistent with both Section 276 and the FCC's Computer III tariffing guidelines.² The FCC determined that the rates charged by the LECs for payphone services tariffed at the state level must satisfy the requirements that the FCC applies to new interstate access

¹ CC Docket No. 96-128, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (September 20, 1996).

² CC Docket Nos. 96-128 and 91-35, Order on Reconsideration (November 8, 1996) at ¶ 163.

services proposed by LECs subject to price cap regulation (the "new services test").³ The "new services test" is a cost-based methodology that establishes the direct cost of providing the new service as a price floor; a reasonable amount of overhead is then added to derive the overall price of the new service. The FCC stated that it would initially rely on the 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. The FCC determined that state commissions that are unable to review these tariffs could require LECs operating in their states to file these tariffs with the FCC. All LECs filed their respective tariffs with the Commission and the Commission approved these tariffs on an interim basis pending further review in this proceeding.⁴

On April 15, 1997, the Commission received a complaint from Coin Phone Management Company ("CPMC") about the rates paid by PSPs to BellSouth Telecommunications, Inc. ("BellSouth"), GTE South Incorporated ("GTE"), and Cincinnati Bell Telephone Company ("CBT"). The Kentucky Payphone Association ("KPA") joined this complaint. The petitioners argued that the rates contained in the tariffs of the respective companies do not meet the "new services test" as required by the FCC.

BellSouth states that the difference between the current rate and the sum of the long run incremental cost ("LRIC") and the overhead allocation is a subsidy provided to basic exchange service.⁵ However, BellSouth denies that this is the proper way for the

³ Id. at ¶ 163 and footnote 492.

⁴ Order dated April 11, 1997.

⁵ BellSouth Brief at 9.

Commission to apply the "new services test." The purpose of the "new services test" and the Act is to remove subsidy from rates and make these subsidies explicit.

The companies filed cost studies to support their tariffs when filed in early 1997. The Commission and the parties examined the cost studies under protective agreements and exchanged information requests about the cost studies. All the parties submitted pre-filed testimony for the hearing. The Commission held a public hearing on these matters on February 12 and 13, 1998.

The study from BellSouth was detailed sufficiently to allow the Commission and the parties to analyze the study and make adjustments if necessary. The study filed by GTE is a summary of its cost study and the assumptions and underlying data were not provided. CBT likewise submitted a summary of its cost study and the underlying data has not been provided. The Commission concludes that because the derivation of the studies is somewhat unknown and because the parties and the Commission are not able to verify all of the facts within the studies, they will not be used by the Commission.

The Commission has completed the costing portion of its Universal Service docket.⁶ The Commission's Order established a cost of providing Universal Service for BellSouth, CBT, and GTE based on the HAI 5.0a Model.⁷ The HAI 5.0a Model estimates the cost to provide service on a Total Service Long Run Incremental Cost ("TSLRIC"). The costs established by this model are not only useful for universal service cost determinations, but are applicable to the payphone area as well. Because GTE

⁶ Administrative Case No. 360, An Inquiry Into Universal Service and Funding Issues, Order dated May 22, 1998.

⁷ Hatfield Associates Inc.

and CBT have only supplied summary materials and not actual cost studies and underlying assumptions, the Commission will use the average cost per line for each company as established by the HAI 5.0a Model. As established by the HAI 5.0a Model, BellSouth's average statewide cost per line is \$28.83, CBT's average statewide cost per line is \$30.45, and GTE's average statewide cost per line is \$33.49.⁸ These costs include a reasonable share of all overheads and therefore meet the "new services test." These costs will become the statewide rates for payphone access to "dumb lines" for each respective ILEC. The LECs also have tariffed rates for "smart lines"; these lines provide functions and features of the switching equipment, whereas on a "dumb line" the payphone instrument provides the features and functions. The Commission will use a combination of the cost studies to determine the rates for "smart lines," because the HAI model only provides cost estimates for general access lines without any special features. The cost studies submitted by the companies provide an incremental part for the "smart lines," this will be added to the costs set out above to determine this rate. The resulting statewide rates for "smart lines" are \$37.41, \$38.04, and \$38.49 for BellSouth, CBT, and GTE, respectively.

The companies also filed tariffs for certain unbundled features and functions that relate to payphone service. The FCC required that these unbundled features and functions be tariffed at the state and federal level. The Commission finds that the tariffed rates approved by the FCC should also be approved on an intrastate basis. Any

⁸ As calculated by the HAI 5.0a Model, the statewide average costs are determined by weighting the average monthly wirecenter costs per line by total lines. The GTE statewide rate was determined by weighting the combination of the aforementioned outputs for GTE and Contel.

rate for an unbundled payphone feature or function that is tariffed at a higher rate on an intrastate basis shall be reduced to the interstate level.

Public Interest Payphones

A public interest payphone can generally be defined as one that serves the public policy interests of health, safety and welfare in locations where there would not otherwise be payphones as a result of the operation of the market.⁹ Generally, public interest payphones are unlikely to be economically self-supporting.

The need for public interest payphones in Kentucky generally has been satisfied by 807 KAR 5:061 which required each ILEC to supply at least one coin phone per exchange. In the wake of the 1996 Act, the FCC has given to the states the responsibility of ensuring the existence of payphones that serve the public interest and the primary responsibility for administering and funding a public interest payphone program.¹⁰ The programs are required to be funded in a competitively neutral basis meaning that all PSPs should contribute to the maintenance of public interest payphones. LECs alone should not be responsible for bearing the cost of non-profitable payphones, to do so would put the LECs at a competitive disadvantage.

Support for a public interest payphone program, particularly in low-income areas where payphones may provide the basic means of communications for many of the areas residents, was provided by the Metro Human Needs Alliance ("MHNA") representing low-income groups in Louisville and Jefferson County.¹¹ Although MHNA

⁹ CC Docket 96-128 and 91-35, (September 20, 1996) at ¶ 277.

¹⁰ Id. at ¶ 280.

¹¹ Id. at 27-32.

was unable to quantify the exact needs relative to the number of public interest payphones required in low-income areas, MHNA stated it would welcome the opportunity to participate in a program to identify needy areas and to work on how public interest payphones would be paid for and maintained. BellSouth stated that the issues raised by MHNA are appropriately addressed in Administrative Case No. 360 and suggested that MHNA look for another forum to keep its issues alive, although it did provide a plan for dealing with the issue.

Finally, a witness for Coin Phone Management Company testified that requests for public interest payphones had been made, but the requests were not filled because there was no economic basis for placement in that specific location.¹²

The Commission is aware that payphones in low income and remote areas serve an important public interest, because in many cases they are the only means by which residents can reach emergency services, potential employers, public welfare agencies and family. Therefore, it is vitally interested in ensuring that adequate numbers of public interest payphones are available throughout Kentucky even where, under market conditions, no supplier of service is willing to place a phone. However, the Commission has received no complaint alleging that there are insufficient payphones in Kentucky. The Commission will defer any action on this issue until such time as an interested party demonstrates that payphone providers are not meeting the need for public interest payphones.

¹² Transcript of Evidence ("TE"), Vol. I at 100.

Refunds

The FCC's Order in the Payphone Reclassification proceeding dated April 15, 1997 granted a waiver of the FCC's requirement that effective intrastate tariffs for payphone service be in compliance with the federal guidelines, specifically that the tariffs comply with the "new services test," as set forth by the FCC.¹³ A LEC who seeks to rely on this waiver must reimburse its customers or provide credit from April 15, 1997 in situations where the newly tariffed rates when effective are lower than the existing tariffed rates.¹⁴ BellSouth agreed that if the Commission changed the payphone rates, refunds will be made back to April 15, 1997.¹⁵ The Commission's Order dated April 11, 1997 ruled that payphone tariffs filed in conjunction with this case were approved on an interim basis. This was done in order to meet the April 15, 1997 FCC deadline for effective payphone rates, thereby allowing LECs to participate in the interstate per call compensation plan for PSPs.

CPMC and KPA argue that BellSouth, CBT and GTE have not filed rates that satisfy the FCC's "new services test" and, thus, request that the LECs be required to reimburse them or provide a credit for the difference between what has been charged and the cost-based rates adopted by the Commission in this proceeding. The LECs argue that their rates satisfy the FCC's requirements, therefore no refunds or credits are required. The Commission has found herein that the cost-based rates are lower than

¹³ CC Docket No. 96-128, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (April 15, 1997).

¹⁴ Id. at ¶ 25.

¹⁵ TE Vol. I at 52.

the existing tariffed rates and therefore BellSouth, CBT, and GTE shall provide credits or refunds back to April 15, 1997.

IT IS THEREFORE ORDERED that:

1. The rates for payphone access lines shall be set at \$28.83, \$30.45, and \$33.49 statewide for BellSouth, CBT, and GTE, respectively.

2. The rates for "smart lines" shall be set at \$37.41, \$38.04, and \$38.49 statewide for BellSouth, CBT, and GTE, respectively.

3. Within 30 days of the date of this Order, BellSouth, CBT, and GTE shall file tariffs with the effective date of this Order which also note that refunds or credits will be provided back to April 15, 1997.

4. BellSouth, CBT, and GTE shall file a plan with the Commission within 30 days of the date of this Order outlining the procedure to issue credits or refunds back to April 15, 1997.

5. All procedural motions are denied.

Done at Frankfort, Kentucky, this 5th day of January, 1999.

By the Commission

ATTEST:

Executive Director

000151

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

June 12, 2002

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

FINAL ORDER

This docket came before the Tennessee Regulatory Authority ("Authority") at the May 21, 2002 Authority Conference for consideration of: 1) the *Proposed Settlement Between TPOA and United* ("Payphone Settlement") filed by Untied Telephone-Southeast, Inc. ("UTSE") and Tennessee Payphone Owners Association ("TPOA") on May 6, 2002 and 2) the comments regarding the need for deaveraged rates filed by TPOA and BellSouth Telecommunications, Inc. ("BellSouth") on February 16, 2001 and by UTSE on February 20, 2002.

I. RELEVANT PROCEDURAL HISTORY

Pursuant to § 276 of the Federal Telecommunications Act of 1996 ("Act"), the Federal Communications Commission ("FCC") issued a series of orders directing state commissions to enforce the FCC's newly promulgated rules. These rules required telephone companies to file

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tariffs with state commissions reclassifying payphones and removing subsidies associated with payphone operations from other classes of services.¹

On February 28, 1997, BellSouth filed a tariff in Docket No. 97-00346, and on January 10, 1997, UTSE filed two tariffs in Docket Nos. 97-00345 and 97-00344. The tariffs each contained an effective date of April 1, 1997.² The TPOA filed a petition to intervene in each of the dockets on March 14, 1997.

Claiborne Telephone Co., Ooltewah/Collegedale Telephone Co., Ardmore Telephone Co., Adamsville Telephone Co., Millington Telephone Co., Peoples Telephone Co., West Tennessee Telephone Co., United Telephone Co., Crockett Telephone Co., Citizens Telecommunications Company of Tennessee LLC and Citizens Telecommunications Company of the Volunteer State LLC (collectively "Citizens"), Loretto Telephone Co., and the Telephone Data System Companies ("TDS"), which include Tennessee Telephone Co., Humphreys County Telephone Co., Concord Telephone Exchange, Inc., and Tellico Telephone Co., each filed tariffs and revised tariffs in January, February, and/or March 1997. All the tariffs contained an effective date of April 15, 1997.

The Authority considered the tariffs in Docket Nos. 97-00344, 97-00345, and 97-00346 and the TPOA's petitions to intervene at a regularly scheduled Authority Conference on March 18, 1997. Thereafter, the Authority entered an order on April 4, 1997 in Docket Nos. 97-00344 and 97-00345 and on April 7, 1997 in Docket No. 97-00346 granting the TPOA's petitions to

¹ *In re: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 F.C.C.R. 20,541 (Sept. 20, 1996) (Report and Order); *In re: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 F.C.C.R. 21,233 (Nov. 8, 1996) (Order on Reconsideration).

² UTSE later filed an amended tariff on May 19, 1997, with an effective date of April 15, 1997.

intervene, approving the respective tariffs pending the outcome of a contested case, and opening consolidated Docket No. 97-00409 to proceed with the contested case.³

By letter of April 9, 1997, AT&T Communications of the South Central States, Inc. ("AT&T") requested that the Authority consider its petitions to intervene filed on April 2, 1997 in Docket Nos. 97-00344, 97-00345, and 97-00346 as filed in the new, consolidated docket. The Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter ("Consumer Advocate") filed a *Petition to Intervene* on April 14, 1997.

At the regularly scheduled Authority Conference held on April 15, 1997, the Authority appointed Director H. Lynn Greer, Jr. as the Pre-Hearing Officer in Docket No. 97-00409. The Authority granted AT&T's and the Consumer Advocate's petitions to intervene,⁴ ordered TDS to reduce its rates and eliminate the subsidy to payphones from regulated services revenues through tariff filings, and approved the tariffs of TDS,⁵ Loretto Telephone Co., Citizens, Peoples Telephone Co., West Tennessee Telephone Co., United Telephone Co., Crockett Telephone Co., Claiborne Telephone Co., Ooltewah/Collegedale Telephone Co., Ardmore Telephone Co., Adamsville Telephone Co., and Millington Telephone Co. pending the outcome of the contested case.⁶

³ In re: *Tariff Filing by BellSouth Telecommunications to Comply with FCC Order 96-439, Concerning the Reclassification of Pay Telephones (Tariff 97-067)*, Docket No. 97-00346, Order (Apr. 7, 1997); In re: *Tariff Filing by United Telephone Southeast to Comply with FCC Order 96-439, Concerning the Reclassification of Pay Telephones (Tariff 97-010)*, Docket No. 97-00345, Order (Apr. 4, 1997); In re: *Tariff Filing by United Telephone Southeast to Revise General Subscribers Tariff to Comply with FCC Order 96-439, Concerning the Reclassification of Pay Telephones (Tariff 97-007)*, Docket No. 97-00344, Order (Apr. 4, 1997).

⁴ On August 17, 2000, AT&T filed its *Notice of Withdrawal of Intervention*.

⁵ These tariffs added coin supervision and did not remove the subsidy.

⁶ *Order Granting Petition to Intervene of AT&T Communications of the South Central States, Inc.* (Apr. 24, 1997); *Order Granting Intervention of the Consumer Advocate, Appointing a Hearing Officer and Approving Tariffs for Reclassification of Pay Telephones* (May 2, 1997).

On April 22, 1997, MCI Telecommunications Corporation ("MCI") filed a petition to intervene. At the regularly scheduled Authority Conference held on April 29, 1997, the Authority unanimously voted to grant the petition.⁷

At a Pre-Hearing Conference held on May 29, 1997, the Consumer Advocate asserted that Docket No. 97-00409 should include BellSouth, UTSE, and Citizens and that the Authority should open a separate docket to include the remaining, smaller, independent local exchange carriers ("independent LECs"). The Pre-Hearing Officer ordered such after finding that the expense of preparing cost studies for this docket would be too great for the independent LECs. In addition, the Pre-Hearing Officer obtained the parties' agreement to a procedural schedule.⁸

On June 26, 1997, the TPOA filed *TPOA Request for Continuance*. The TPOA requested that the Pre-Hearing Officer continue the procedural schedule for approximately thirty (30) days to allow the TPOA to consult with expert witnesses and prepare for the hearing. On July 8, 1997, the Pre-Hearing Officer held a Pre-Hearing Conference to address several issues including the *TPOA Request for Continuance*. During the conference, the Pre-Hearing Officer granted the TPOA's request and scheduled a status conference for September 3, 1997 to finalize the issues list and amend the procedural schedule.⁹

On September 3, 1997, the Pre-Hearing Officer conducted the previously scheduled status conference. During the conference, the parties determined that the issues included:

⁷ Order Granting Intervention (May 12, 1997).

⁸ Preliminary Report and Recommendation of the Hearing Officer (May 29, 1997); Order Establishing a Separate Docket for the Smaller Companies (Jun. 6, 1997). The docket involving the independent LECs was assigned No. 97-01181.

⁹ Second Report and Recommendation of the Hearing Officer (July 15, 1997).

1) the calculation of subsidies to or from payphone operations; 2) the rate changes to remove any determined subsidies; and 3) an access line rate for payphones. Also during the conference, the Consumer Advocate requested a delay in the procedural schedule until after the first of 1998. The TPOA and UTSE favored the requested delay. MCI expressed no preference, and BellSouth opposed the delay. The Pre-Hearing Officer agreed to the requested delay and determined that another status conference was necessary to establish a new procedural schedule.¹⁰ At the second status conference held on September 23, 1997, the parties stated that they had not settled any of the issues and agreed to a new procedural schedule.¹¹

On March 4, 1998, the TPOA filed an *Agreed Motion for Continuance* on behalf of all the parties. The TPOA asserted that the Authority should continue the docket until it completes the Permanent Prices docket and the Universal Services docket, Docket Nos. 97-01262 and 97-00888 respectively, because both dockets involve the determination of the costs of various BellSouth services, including the costs of facilities used to serve payphones. In addition, the motion stated that the parties had agreed to the postponement because, as required by the FCC, the final rates would be applied retroactively to April 15, 1997. The Pre-Hearing Officer agreed to the motion and granted the continuance.¹²

Docket No. 97-00409 remained inactive until March 21, 2000, when the TPOA filed a letter requesting that the Pre-Hearing Officer reconvene the proceeding and set a procedural schedule. BellSouth, UTSE, and Citizens responded to the request. On July 21, 2000, the Pre-

¹⁰ *Third Report and Recommendation of the Hearing Officer* (Sept. 16, 1997). The Authority adopted the report and recommendation at the October 7, 1997 Authority Conference. *Order Adopting the Third and Fourth Report and Recommendation of Hearing Officer from the Pre-Hearing Conferences Held September 3, 1997, and September 23, 1997* (Apr. 1, 1998).

¹¹ *Fourth Report and Recommendation of the Hearing Officer* (Sept. 24, 1997). The Authority adopted the report and recommendation at the October 7, 1997 Authority Conference. *Order Adopting the Third and Fourth Report and Recommendation of Hearing Officer from the Pre-Hearing Conferences Held September 3, 1997, and September 23, 1997* (Apr. 1, 1998).

¹² *Initial Order for Extension of Time* (Mar. 27, 1998).

Hearing Officer filed an order reconvening Docket No. 97-00409 and directing the parties in Docket Nos. 97-00409 and 97-01181 to file comments on three options for proceeding with the two dockets. The three options were: combining the dockets, maintaining separate proceedings, or maintaining separate proceedings with the Docket No. 97-01181 parties intervening in Docket No. 97-00409 for the limited purpose of commenting on the proposed rates.¹³

The parties filed comments on the three options proffered by the Pre-Hearing Officer. After considering the comments, the Pre-Hearing Officer filed an order on July 31, 2000 finding that none of the parties had provided a compelling reason to overturn the June 6, 1997 order bifurcating the dockets. The Pre-Hearing Officer reaffirmed his previous conclusion that the parties to Docket No. 97-01181 should be spared the expense associated with filing cost studies in Docket No. 97-00409.¹⁴ During the August 15, 2000 Conference, the Directors voted unanimously to approve the Pre-Hearing Officer's orders of July 21 and 31, 2000.¹⁵

BellSouth and UTSE filed their cost studies on September 15, 2000, and Citizens filed their cost studies on August 15, 2000. BellSouth, UTSE, Citizens and TPOA also filed direct testimony in support of their cost studies on September 15, 2000. On October 6, 2000, BellSouth, UTSE and TPOA filed rebuttal testimony.

At a Pre-Hearing Conference held on October 10, 2000, the Pre-Hearing Officer with the agreement of the parties determined that the Authority would decide the issues in this docket based on the pre-filed testimony, the administrative record, and oral arguments. In addition, the Pre-Hearing Officer ordered that the parties could file supplemental rebuttal testimony related to

¹³ Order of Pre-Hearing Officer Denying Motion for Interim Relief, Requesting Comments from Parties to Docket No. 97-00409 and Setting a Procedural Schedule, pp. 9-10 (Jul. 21, 2000).

¹⁴ Order of Pre-Hearing Officer Continuing Separation of the Docket No. 97-01181, Granting the Tennessee Small Local Exchange Companies Coalition's Petition to Intervene in Docket No. 97-00409, p. 3 (Jul. 31, 2000).

¹⁵ Order Affirming Pre-Hearing Officer's Orders of July 21, 2000 and July 31, 2000 (Jan. 4, 2001).

additional discovery productions by October 20, 2000.¹⁶ Pursuant to this order, BellSouth and TPOA filed supplemental rebuttal testimony.

The Directors heard oral arguments in this matter on October 25, 2000. The parties in attendance were: BellSouth, Citizens, TPOA, UTSE, the Consumer Advocate, and TDS. During the October 25th oral arguments, TPOA orally moved for an award of prejudgment interest. Thereafter, the Directors heard from opposing parties and ultimately requested the TPOA file a written motion to ensure clarity. The TPOA complied with the Authority's request and filed its *Motion for Prejudgment Interest* on October 26, 2000 and *Memorandum of Law in Support of Motion for Prejudgment Interest* on October 31, 2000. The Consumer Advocate filed a memorandum of law in support of the motion on November 3, 2000. On this same day, BellSouth and UTSE filed responses opposing the motion. On November 13, 2000, the TPOA filed a *Motion to File a Reply Brief* with an attached brief.

The Directors considered the *Motion to File a Reply Brief* during the regularly scheduled Authority Conference on November 21, 2000. The Directors found that TPOA, as the movant, should have the final opportunity to reply to opposing arguments. Therefore, the Directors voted to overrule the objections and grant the motion.¹⁷

On December 19, 2000, the Authority deliberated the issues in this docket and memorialized their decisions in the *Interim Order* issued on February 1, 2001. The Authority found that payphone rates should include a monthly flat rate component and a usage rate component. The Authority further determined that to further study the need for deaveraged rates, the parties should file comments thereon by February 16, 2001. The Authority next

¹⁶ *Order Reflecting Rulings Rendered During October 10, 2000 Pre-Hearing Conference*, p. 4 (Oct. 10, 2000).

¹⁷ *Order Granting Motion to File Reply Brief and Overruling Objections to Authority Data Requests*, p. 3 (Jan. 4, 2001).

adopted the new services test as the appropriate test to use in calculating payphone access line rates.¹⁸ In addition, the Authority held that "any rates calculated pursuant to the new services test must comply with § 276 of the Act and state law."¹⁹ In summary, the Authority concluded that rates shall be "1) compliant with the new services test; 2) consistent with § 276 of the Act; 3) nondiscriminatory; and 4) cost-based."²⁰

As to the specific application of the new services test, the Authority determined that when "payphone rates are based on jurisdictionally unseparated costs, such costs must be adjusted using the seventy-five percent (75%) intrastate/twenty-five percent (25%) interstate separation factor used by the FCC to segregate non-traffic sensitive costs" and applied this finding to the cost studies filed by BellSouth and Citizens.²¹ As to the specific parties, the Authority concluded that BellSouth may assess a reasonable allocation of overhead for each of BellSouth's payphone service products that, at a maximum, results in a rate that is one and five-tenths (1.5) times greater than direct costs. Citizens may set rates that, at a maximum, are based on the overhead allocation calculations contained in their cost studies.²²

Based on these determinations, the Authority set the maximum non-traffic sensitive rate to be charged by BellSouth for PTAS²³ at \$13.78 per month exclusive of SLC, EULC, or PICC²⁴ with a \$0.0042 charge per minute of usage. The Authority set the maximum non-traffic sensitive

¹⁸ *Interim Order*, pp. 28-29 (Feb. 1, 2001).

¹⁹ *Id.* at 16.

²⁰ *Id.* at 17.

²¹ *Id.* at 29, Exhs. 1, 2, 4 - 7.

²² *Id.* at 29.

²³ PTAS is an acronym for Pay Telephone Access Service and is sometimes referred to as a "dumb" line because the intelligence for certain payphone features, such as coin-handling, resides in the payphone set instead of the LEC's central office switch. For SmartLine® service, this intelligence resides in the LEC's switch. Additionally, SmartLine® and "dumb" line are terms used exclusively by BellSouth to describe their services.

²⁴ Subscriber Line Charge ("SLC"), End User Common Line Charge ("EULC"), and Primary Interexchange Carrier Charge ("PICC") are interstate line charges.

rate to be charged by BellSouth for SmartLine® at \$20.94 per month exclusive of SLC, EULC, or PCCC with a \$0.0042 charge per minute of usage.²⁵

The Authority found that Citizens Telecommunications Company of Tennessee LLC may charge a maximum non-traffic sensitive rate of \$13.22 per month exclusive of SLC, EULC, or PCCC with a \$3.98 charge per month for coin supervision. Citizens Telecommunications Company of the Volunteer State LLC may charge a maximum non-traffic sensitive rate of \$17.78 per month exclusive of SLC, EULC, or PCCC with a \$3.96 charge per month for coin supervision. The Authority determined that it would be inappropriate to use the data provided by Citizens to fix usage sensitive rates for payphone service. Therefore, the Authority ordered Citizens to file a payphone-specific study identifying the average monthly minutes of use per payphone access line for each company by December 29, 2000.²⁶

As to UTSE, the Authority found that it had insufficient information to set rates for UTSE's payphone service due to deficiencies in UTSE's cost study. Therefore, the Authority ordered UTSE to file a payphone-specific cost study that is consistent with the methodology adopted for BellSouth and Citizens by February 2, 2001. In the interim, the Authority ordered UTSE to charge the flat and usage sensitive rates adopted for BellSouth.²⁷

The Authority ordered BellSouth, UTSE and Citizens to "correct their subsidy calculations once the Authority adopts permanent rates for each LEC by filing appropriate reclassification tariffs that remove any subsidies."²⁸ Lastly, the Authority ordered BellSouth, UTSE, and Citizens to fully reimburse all payphone service providers by paying to all payphone

²⁵ *Interim Order*, p. 29, Exhs. 1-3.

²⁶ *Id.* at 29-30, Exhs. 4-7.

²⁷ *Id.* at 22, 30.

²⁸ *Id.* at 24, 30.

service providers the true-up amount plus six percent (6%) interest annually since April 15, 1997.²⁹

On December 29, 2000, Citizens responded to the Authority's directive by filing usage data for Citizens Telecommunications Company of Tennessee LLC. On January 8, 2001, Citizens filed additional usage data for Citizens Telecommunications Company of the Volunteer State LLC and a letter explaining that Citizens Telecommunications Company of the Volunteer State LLC does not have measured service available in its territory.

On January 12, 2001, UTSE filed *UTSE Motion for Extension of Time* requesting an extension until March 6, 2001 to file a compliant cost study. Finding that good cause existed for the requested extension, the Authority granted UTSE's motion and ordered UTSE to file its payphone-specific cost study no later than Tuesday, March 6, 2001.³⁰

As directed in the *Interim Order*, BellSouth, TPOA and UTSE filed on February 16, 2001 comments on the need for deaveraged payphone rates in Tennessee.

At a regularly scheduled Authority Conference on February 21, 2001, the Authority deliberated the issues related to Citizens' filings. Based on Citizens' cost studies, responses to the December 19th directive, and the record as a whole, the Authority found that the application of the new services test methodology to the data provided by Citizens Telecommunications Company of Tennessee LLC resulted in a per minute, payphone usage rate of \$0.00175.³¹ The Authority further found that Citizens Telecommunications Company of the Volunteer State LLC does not have the technical capability to provide business measured service; therefore, the Authority did not set a per minute, payphone usage rate. Instead, the Authority established a

²⁹ *Id.* at 28, 30.

³⁰ *Order Approving Tariff No. 01-00003 Filed on December 29, 2000 as Revised on January 11, 2001, Approving Tariff No. 01-00004 Filed on January 2, 2001, and Granting Motion for Extension*, p. 4 (Feb. 23, 2001).

³¹ *Second Interim Order*, p. 2, Exh. 1 (Mar. 2, 2001).

single, monthly flat rate of \$ 20.54 using the new services test. This rate recovers the costs of the non-traffic sensitive portion of the payphone access line as well as associated usage and replaces the monthly, non-traffic sensitive rate adopted in the *Interim Order*.³²

On March 6, 2001, UTSE filed its revised payphone cost study. On April 19, 2001, the Authority issued a data request asking UTSE to "re-compute the cost of payphone loops and services utilizing rate of return inputs that are consistent with those determined appropriate for the Universal Service cost study."³³ On May 1, 2001, UTSE filed a second revised cost study in response to the Authority's data request.

TPOA filed its comments to the second revised cost study on May 11, 2001. In its comments, TPOA noted significant differences in the payphone line rates proposed by UTSE and the rates approved for BellSouth and Citizens. Because of the disparity, TPOA contended that the Authority should conduct a thorough review of UTSE's cost study before setting UTSE's rates.

These filings came before the Authority at the regularly scheduled May 15, 2001 Authority Conference. Based upon a review of UTSE's revised cost study and TPOA's comments, the Authority found that good cause existed for further review of UTSE's methodology. Accordingly, the Directors voted to remand this docket to the Pre-Hearing Officer for the purpose of setting a schedule for further discovery. The Authority also voted to await the completion of discovery before determining whether to convene further hearings in this docket.³⁴

³² *Id.* at 2, Exh. 2.

³³ Authority Data Request to UTSE (Apr. 19, 2001).

³⁴ *Order Remanding Docket to Pre-Hearing Officer*, pp. 2-3 (Jun. 8, 2001).

The Pre-Hearing Officer set a discovery schedule by order entered on June 11, 2001.³⁵ Thereafter, the parties engaged in discovery by filing interrogatories, objections, and motions. In response to certain discovery disputes, the Pre-Hearing Officer found:

[T]he filing of the cost study described by [UTSE] in its Response to Order may aid the Authority in its efforts to set payphone rates pursuant to the New Services test. For this reason the Pre-Hearing Officer concludes that [UTSE] should be permitted to file the cost study. As a corollary, TPOA should be afforded an opportunity to review the newly-filed cost study and to submit additional discovery requests relevant thereto if it so chooses.³⁶

UTSE filed the requested cost study on October 10, 2001. Thereafter, discovery ensued with the parties filing interrogatories, responses thereto, and motions. Finally, on May 6, 2002, TPOA and UTSE filed the Payphone Settlement. In support of the Payphone Settlement, the parties also filed cost data and exhibits demonstrating the calculation of the agreed-upon payphone rates as well as UTSE's proposed payphone tariff.

The provisions of the Payphone Settlement include the following agreements. The parties agreed to a monthly non-traffic sensitive rate of \$26.39 per payphone access line and a traffic sensitive rate of \$0.0037 per minute of use. Optional call screening features are provided at no additional cost; however, service order and installation charges will apply if such features are requested subsequent to installation of the associated payphone access line. The Payphone Settlement recites the parties' agreement "that the proposed payphone line and [usage] rates are cost-based, non-discriminatory, consistent with Section 276 of the Federal Telecommunications Act and consistent with the 'new services' test, as described in the rules and orders of the Federal Communications Commission."³⁷ The parties further "represent that the [payphone] line and usage rates have been calculated using the same formula crafted by the Authority in setting

³⁵ *Order Setting Discovery Schedule* (Jun. 11, 2001).

³⁶ *Order on Discovery Disputes*, p. 3 (Oct. 9, 2001).

³⁷ *Payphone Settlement*, p. 1 (May 6, 2002).

payphone rates for BellSouth.”³⁸ The parties also agreed to provide reimbursement consisting of the true-up amount with interest from the time the Payphone Settlement rates become effective back to the date on which the payphone service provider established service but, in no event, before April 15, 1997. The interim payphone rates that the Authority set for UTSE in December 2000 will be taken into account in the true-up process.

At a regularly scheduled Authority Conference on May 21, 2002, the Authority addressed the only remaining issues in this docket, that is, setting UTSE’s rates and determining whether deaveraged rates are needed in Tennessee. Based on the Payphone Settlement, the comments on deaveraged rates, and previous Authority orders, the Directors made the following findings and conclusions.

II. THE PAYPHONE SETTLEMENT

The primary issue under consideration is whether the agreed-upon rates set forth in the Payphone Settlement are consistent with the rate-setting standards previously established by the Authority. The Authority’s *Interim Order* describes the appropriate standard of review, the new services test, as follows:

In its payphone service orders, the FCC has indicated that states must use the “new services test” when establishing intrastate payphone rates pursuant to § 276 of the [Federal Telecommunications Act of 1996]. The new services test creates a price floor equal to the direct or economic cost of providing a service, including a reasonable rate of return. Additionally, the new services test creates a price ceiling equal to the direct cost plus a reasonable allocation of overhead costs. Thus, the new services test produces a rate that is restricted to a reasonable range of prices. The new services test does not mandate the use of any particular costing methodology; however, once a LEC selects a particular method for computing costs, it must consistently apply that same methodology in arriving at the direct costs for all related services.

Additionally, any rates calculated pursuant to the new services test must comply with § 276 of the Act and state law. Section 276 of the Act prohibits payphone rates from including subsidies to or from other telecommunications services and creating preferences to a LEC’s payphone operation. As for state

³⁸ *Id.*

law, the LECs in this docket are price-regulated companies whose rates must comply with applicable statutes, including Tenn. Code Ann. §§ 65-5-208 and 65-5-209. Furthermore, the payphone rates set in this proceeding must be consistent with the state's general telecommunications policy established in Tenn. Code Ann. § 65-4-123. Lastly, the rates established in this docket must be cost-based and non-discriminatory, which is consistent with the mandates of § 276 and Tenn. Code Ann. § 65-5-208(c) listed above.

Based on the foregoing, the Directors voted unanimously to set rates that are 1) compliant with the new services test; 2) consistent with § 276 of the Act; 3) nondiscriminatory; and 4) cost-based.³⁹

As was the case for BellSouth and the Citizens companies, direct costs are the starting point of the analysis of UTSE's proposed payphone rates. UTSE and TPOA have agreed upon the inputs used to produce direct costs and have filed supporting calculations demonstrating the computation of payphone direct costs based on a TSLRIC methodology.⁴⁰ Although the payphone direct costs for UTSE are higher than the direct costs for BellSouth and the Citizens companies, the costs are reasonable. Because telephone companies have different cost characteristics, one would expect that the direct costs of services for some companies would be higher than for other companies.⁴¹ Therefore, the Authority concludes that the payphone direct costs proposed in the Payphone Settlement are based on a reasonable costing methodology that has produced reasonable direct cost outputs that adhere to the new services test.

Additionally, in order to avoid the potential double recovery of costs, the Authority determined in the *Interim Order* that direct costs based on unseparated cost inputs should be multiplied by the traditionally-accepted seventy-five (75%) intrastate cost separations factor in order to account for the SLC revenue that the LECs collect from payphone service providers for

³⁹ *Interim Order*, pp. 16-17 (February 1, 2001) (footnotes omitted).

⁴⁰ TSLRIC is an acronym for Total Services Long Run Incremental Cost and is costing methodology. The payphone direct costs of BellSouth and Citizens were computed using a TSLRIC methodology and, as in this case, the parties did not contest the validity of the direct costs.

⁴¹ The record in this docket reveals that the direct costs of Citizens Telecommunications Company of the Volunteer State L.L.C. are higher than the direct costs of Citizens Telecommunications Company of Tennessee L.L.C., both of which are higher than the direct costs of BellSouth.

recovery of costs attributable to the interstate jurisdiction.⁴² Accordingly, in the Payphone Settlement, the parties multiplied the payphone direct costs produced by the TSLRIC cost model by seventy-five percent (75%) in order to remove the direct costs that are attributable to the interstate jurisdiction. This approach is consistent with that ordered for BellSouth and Citizens. The Authority concludes that the separations calculations made by the parties in arriving at the rates proposed in the Payphone Settlement reasonably address the potential double recovery of costs by UTSE absent the separation of costs and, moreover, that the separations calculations have produced results that are consistent with the new services test.

As for the assignment of overhead costs to payphone services, the Authority found that an overhead loading factor of one and one-half (1.5) times direct costs is appropriate when overhead costs are not specifically assigned. Because the parties did not specifically assign overhead costs to payphone services, they utilized the one and one-half (1.5) times direct costs overhead loading factor in order to account for overhead in the calculation of the payphone service rates proposed in the Payphone Settlement. The Authority concludes that this allocation of overhead costs to payphone services is consistent with the previous findings of the Authority and that such allocation has produced reasonable overhead loadings that accord with the new services test.

The rates produced by the new services test are cost-based rates, which satisfy the price floor requirement found in Tenn. Code Ann. § 65-5-208(c). Relative to the payphone services market, the uniform application of cost-based rates are nondiscriminatory and foster the pro-

⁴² *Interim Order*, pp. 17-18 (February 1, 2001). The FCC solves the double-recovery issue by requiring Bell Operating Companies, including BellSouth, to subtract SLC revenues from payphone service rates that are based on combined costs. See *In the Matter of Wisconsin Public Service Commission*, 17 F.C.C.R. 20,512, para. 61 (Jan. 31, 2002) (Order Directing Filings).

competitive goals and policies outlined in § 276 of the Act as well as Tenn. Code Ann. §§ 65-4-123, 65-5-208, and 65-5-209.

Based on the Payphone Settlement and accompanying cost support, the Directors voted that the payphone rates proposed by UTSE and TPOA are consistent with the rate-setting procedures established by the Authority in this proceeding. Therefore, the Directors voted to approve the proposed Payphone Settlement between UTSE and TPOA and to direct UTSE to file a compliant tariff by Tuesday, May 28, 2002.

III. DEAVERAGED RATES

The parties filing comments on the deaveraging issue unanimously conclude that payphone access line rates should not be deaveraged. BellSouth states that averaged rates would promote the widespread deployment of payphone services to the benefit of the general public and that deaveraged rates would only serve to frustrate the goals of § 276 of the Act.⁴³ UTSE states that while current payphone tariffs show that line rates are deaveraged by exchange, these tariffs have an inexact relationship to costs.⁴⁴ UTSE further states that the new services test does not require rate deaveraging, that there is no compelling reason to deaverage payphone rates in Tennessee, and that payphone line rates should be based on a company-wide average.⁴⁵ The TPOA states that it "agrees with the comments expressed in the TRA's [Interim] Order of February 1, 2001, that average rates will promote the widespread availability of payphones in rural areas, consistent with the goals of state and federal law."⁴⁶

⁴³ BellSouth Telecommunications, Inc.'s Comments on Deaveraging, pp. 1-2 (Feb. 16, 2001).

⁴⁴ Comments of United Telephone-Southeast Concerning the Deaveraging of Payphone Line Service Rates, pp. 1-2 (Feb. 16, 2001).

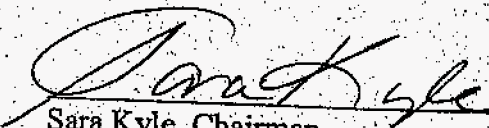
⁴⁵ Id.

⁴⁶ Letter of TPOA (Feb. 16, 2002).

The Authority agrees with the comments of the parties. Average, company-wide payphone rates are consistent with the goal of widespread deployment of payphones in Tennessee. High-cost regions are less likely to be served by payphone service providers because higher costs cast greater doubt on profitability. Deaveraged payphone rates would only intensify a payphone service provider's reluctance to serve these regions. Moreover, average, company-wide payphone rates adequately compensate the LECs for the payphone services that they provide to payphone service providers in Tennessee. Finally, there is no evidentiary record developed in this proceeding that would support a deaveraging methodology. Based on the foregoing, the Directors found that the payphone rates established in this proceeding should be average, company-wide rates; therefore, deaveraged payphone rates will not be fixed at this time.

IT IS THEREFORE ORDERED THAT:

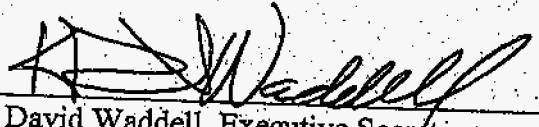
1. The *Proposed Settlement Between TPOA and United* filed by United Telephone Southeast, Inc. and Tennessee Payphone Owners Association on May 6, 2002 is approved.
2. United shall file a compliant tariff by Tuesday, May 28, 2002.⁴⁷
3. Deaveraged payphone rates will not be fixed at this time.
4. Any party aggrieved by the decision of the Tennessee Regulatory Authority may file a Petition for Reconsideration with the Tennessee Regulatory Authority within fifteen (15) days of the entry of this Order.
5. Any party aggrieved by the decision of the Tennessee Regulatory Authority may file a Petition for Review with the Tennessee Court of Appeals, Middle Division, within sixty (60) days of the entry of this Order.


Sara Kyle, Chairman


H. Lynn Groer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary

⁴⁷ UTSE filed its tariff on May 24, 2002. The tariff was assigned number 02-00633.

DECEMBER 4, 2001

IN RE: Application of BellSouth) ORDER REDUCING
Telecommunications, Inc. for Approval of) PTAS RATE
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.)

This matter comes before the Public Service Commission of South Carolina (the Commission) in response to the filing by BellSouth Telecommunications, Inc. (BellSouth or the Company) of Tariff No. 2001-462, which would reduce the rate for Payphone Telephone Access Line Service (PTAS). BellSouth states that the requested reduction is to comply with our latest Universal Service Fund Orders.

In Order No. 1999-285 dated April 19, 1999, this Commission established a PTAS rate of \$36.37 per month, inclusive of the current Subscriber Line Charge (SLC) and Primary Interexchange Carrier Charge (PICC). Tariff No. 2001-462 would further reduce the payphone access line rate by \$1,615,000, which would reduce the access line rate from \$36.37 to \$27.86 per month, a rate that shall include all revenues that BellSouth earns on each line from the federal Subscriber Line Charge and Primary Interexchange Carrier Charge (PICC).

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(SEAL)

Executive Director

Henry E. Wood

ATTEST:

Chairman

William J. ...

BY ORDER OF THE COMMISSION:

Commission

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

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Orders¹ issued by the Federal Communications Commission ("FCC") implementing Section 276 of the Telecommunications Act of 1996 ("1996 Act").

This matter was originally set for hearing on June 11, 1997. On April 21, 1997, the SCPCA moved to continue the hearing and requested an accounting order. By Order No. 97-367, dated May 2, 1997, the Commission granted SCPCA's motion for continuance. The Commission also granted SCPCA's request for an accounting order requiring BellSouth to reimburse or provide credit to its payphone customers, from April 15, 1997, if any newly approved rates are lower than existing tariff rates.

On May 19, 1997, BellSouth filed a petition requesting a declaratory order from the Commission certifying that BellSouth's existing tariff rates for its payphone services comply with the FCC's new services test. BellSouth's petition was filed to comply with the FCC regulations promulgated under Section 276 of the 1996 Act. Section 276 of the 1996 Act establishes certain requirements designed to promote competition among payphone service providers ("PSPs") and to promote the widespread deployment of payphone services for the benefit of the general public. By Order No. 97-519, dated June 16, 1997, the Commission declined to certify that BellSouth's payphone rates comply with the FCC's new services test. The Commission also reaffirmed that should the Commission determine that the actual rates [for pay telephone] are lower than those filed that BellSouth will be required to refund and provide credit to its payphone customers back to April 15, 1997.

¹ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *Report and Order*, FCC 96-388 (rel. Sept. 20, 1996) ("*Report and Order*"), *Order on Reconsideration*, FCC 96-439 (rel. Nov. 8, 1996) ("*Order on Reconsideration*"), *Order*, DA 97-678 (Com. Car. Bur., rel. Apr. 4, 1997) ("*Bureau Waiver Order*"), *Order*,

The docket was reset for hearing on October 22, 1997. On September 30, 1997, the SCPCA filed a second motion for continuance requesting that the Commission continue the hearing until after the completion of the BellSouth unbundled network element cost docket ("UNE docket"), Docket No. 97-374-C, and the Commission's Universal Service Fund docket ("USF docket"), Docket No. 97-239-C. In Order No. 97-860, dated October 13, 1997, the Commission granted the SCPCA's motion for continuance. In granting the motion for continuance, the Commission agreed with the SCPCA that both the UNE docket and the USF docket, and the resulting orders, would have a direct bearing on the instant case. A final order was issued in the UNE docket in June 1998, Order No. 98-214, but no final order has yet been issued in the USF docket.

A public hearing in the instant docket was held in the Commission's hearing room on December 10, 1998, with the Honorable Philip T. Bradley, Chairman, presiding. BellSouth was represented by Caroline N. Watson, Esquire, Robert A. Culpepper, Esquire, William F. Austin, Esquire, and Mary K. Keyer, Esquire. BellSouth presented the testimony of Sandy E. Sanders, D. Daonne Caldwell, and Dr. William E. Taylor. The SCPCA was represented by John F. Beach, Esquire and John J. Pringle, Jr., Esquire. The SCPCA presented the testimony of Walter Rice, Michael Carowitz, Don Wood, and Vince Townsend. The Commission Staff ("Staff") was represented by Florence P. Belser, Staff Attorney. The Staff presented no witnesses. AT&T Communications of the Southern States, Inc. ("AT&T") intervened in the docket but did not participate in the hearing.

II. REGULATORY BACKGROUND

1. In February 1996, President Clinton signed the 1996 Act into law.

Congress' express purpose for passing Section 276 of the 1996 Act was:

... to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public ...

Congress' intent was to place the payphone operations of LECs and independent PSPs on an equal footing. The FCC implemented the payphone provisions of the 1996 Act through its Payphone Orders.

2. In the *Report and Order*, the FCC expressed concern that "incumbent LECs may have an incentive to charge their competitors unreasonably high prices for [payphone] services." ¶ 146. The FCC required certain steps to ensure that this LEC incentive does not hamper the development of competition for payphone services. *Order on Reconsideration*, ¶¶ 162, 163. LECs are required to tariff, in the state jurisdiction only, a basic payphone line" that enable PSPs to use either "instrument-implemented 'smart' payphones or 'dumb' payphones" *Id.*

3. In addition to tariffing a "basic payphone line" in the state jurisdiction, LECs must tariff, in both the federal and state jurisdictions, "any basic network services or unbundled features used by a LEC's operations to provide payphone services" *Id.* The unbundled features offered by BellSouth include central office blocking and screening and billed number screening.

4. The FCC requires further that LECs must tariff their payphone lines and unbundled features at rates that are:

- a. Cost based;

- b. Consistent with the requirements of Section 276 with regard, for example, to the removal of subsidies from exchange and exchange access services;
- c. Nondiscriminatory; and
- d. In compliance with the FCC's *Computer III* tariffing requirements (the new services test).

Order on Reconsideration, ¶ 163.

5. The FCC ruled that "states must apply these requirements and the *Computer III* guidelines for tariffing such intrastate services." *Id.* The FCC initially required LECs to file these tariffs with each state "no later than January 15, 1997 and ... effective no later than April 15, 1997." *Order on Reconsideration*, ¶ 163. The FCC extended this time, so that LECs were required to file their cost based payphone tariffs, and supporting cost data by May 19, 1997. *Second Bureau Waiver Order*, ¶ 2.

6. By May 19, 1997, BellSouth filed tariffs with the Commission that it contended were in compliance with the 1996 Act requirements, as implemented by the FCC. We started the instant docket to review BellSouth's filing in light of the requirements of the 1996 Act, as implemented by the FCC. Consistent with our obligations under the 1996 Act, we ruled that BellSouth must either reimburse or provide credit to its payphone customers from April 15, 1997, if the rates approved in this proceeding are lower than BellSouth's existing tariffed rates. Docket No. 97-124-C, Order No. 97-367, dated May 2, 1997, and Order No. 97-519, dated June 16, 1997.

7. This Commission must review BellSouth's tariffs for PTAS and associated features in light of the FCC's pricing requirements, and revise the tariffs as necessary to meet those requirements.

8. In reviewing the BellSouth tariffs for PTAS and associated features, this Commission must apply the *Computer III* guidelines. *Order on Reconsideration*, ¶ 163. The FCC refers to these tariffing requirements as the new services test and has codified them at 47 C.F.R. Section 61.49(g)(2). *Id.*, note 492. The FCC provides a more complete discussion of the *Computer III* pricing requirements in the *Amendments 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, 6 FCC Rcd 4524, 4531 (1991) at ¶¶ 38-44 ("ONA Order"). *Id.*

9. BellSouth's tariffed rates for payphone services must all be "cost based." The rates must be set to recover the LECs "direct costs" plus "an appropriate level of overhead costs," in compliance with the *Computer III* pricing guidelines. *Id.*, ¶ 44.

10. Further, with regard to BellSouth's overhead costs, the FCC has mandated that the LEC must justify the level of overhead costs it proposes to add to the direct cost of a service or feature. *ONA Order*, ¶ 44.

11. In addition to its currently tariffed rate, BellSouth charges each of its PSP customers a monthly Subscriber Line Charge ("SLC") and Primary Interexchange Carrier Charge ("PICC"). Payphone lines provided by BellSouth are considered multiline business lines for the purposes of the SLC and the PICC. Accordingly, BellSouth currently recovers an \$8.14 monthly SLC for each payphone line purchased by a PSP, and a \$2.75 monthly PICC for each payphone line purchased by a PSP.²

² At the time of this hearing, all PSPs paid BellSouth a monthly SLC of \$8.14. Only those PSPs who "no-PIC" their PTAS lines must also pay a monthly PICC of \$2.75. When a PSP PIC's its payphone lines to a long distance carrier, the long distance carrier pays the \$2.75 to the LEC. *In the Matter of Access Charge Reform, et al.*, CC Docket No. 96-62, *et al.*, First Report and Order, FCC 97-158 (Released May 16, 1997) ("Access Reform Order") at ¶ 55, Note 52.

III. SUMMARY OF TESTIMONY

Sandy E. Sanders:

BellSouth presented the testimony of Sandy E. Sanders, Manager - Federal Regulatory for BellSouth. In short, Mr. Sanders testified that BellSouth's existing intrastate tariff rates for its Public Telephone Access Service ("PTAS") and SmartLine® Service meet the new services test because the cost/price ratios for the PTAS and SmartLine® Service fall within cost/price ratios accepted by the FCC in interstate filings.³ (Tr. at 44) Mr. Sanders testified that the new services test is a cost-based test that has historically been applied to FCC new service filings. (Tr. at 38)

Mr. Sanders explained that PTAS is an exchange line service furnished from a central office switch to a PSP location where it is attached to a PSP payphone for use by the general public. A PTAS line is attached to a "smart payphone set" which is a payphone set that can rate calls, collect coins, and diagnose maintenance problems. The majority of PSPs in South Carolina subscribe to PTAS lines. (Tr. at 39-40) BellSouth's PTAS rates, which were first tariffed in 1985, are set forth in Section A7.4.5 of BellSouth's GSST. Sanders testified that the PTAS rate is 80% of the single line business rate ("1FB") plus a usage component. The average monthly PTAS rate, including the fixed amount and usage is \$45.75 (Tr. at 53-54)

Mr. Sanders also described BellSouth's SmartLine® Service as being similar to PTAS, except that SmartLine® Service is generally attached to a PSP's "dumb payphone set" which is a payphone set that does not have the capability to rate calls, collect coins or

³ According to Mr. Sanders, cost and revenue information included in the new services test filings with the FCC are expressed as cost/price ratios. (Tr. at 44)

diagnose problems. (Tr. at 40) SmartLine® Service uses software in the commercial office switch to accomplish functions that "dumbsets" are unable to handle. (Tr. at 40) BellSouth's SmartLine® Service rates, first tariffed in 1994, are set forth in Section A7.8.2 of BellSouth's GSST. Mr. Sanders testified that SmartLine® Service is available at a statewide rate of \$44 per month where BellSouth cannot measure usage, or \$38 per month plus usage where BellSouth has the capability to measure usage. (Tr. at 54)

Mr. Sanders testified that PTAS and SmartLine® Service are business services. Mr. Sanders testified that business rates traditionally have been priced in the context of Universal Service. That is, business services have generally been priced at a level to recover direct and overhead costs, to provide a return on investment and to provide Universal Service support for basic residential services which are often priced below cost. (Tr. at 40) Mr. Sanders testified that the cost/price ratios for PTAS and SmartLine® Service are similar to the cost/price ratio for 1FB service. (Tr. at 45)

Regarding the new services test, Sanders testified that the cost/price ratios for PTAS and SmartLine® Service in South Carolina fall within a range of cost/price ratios that have been accepted by the FCC interstate filings. (Tr. at 44)

Mr. Sanders further testified that BellSouth's payphone rates are nondiscriminatory and consistent with the requirements of Section 276 of the 1996 Act. Specifically, Sanders testified that because BellSouth offers the same tariffed services at the same rates and conditions to its own payphone affiliate that it offers to other PSPs, BellSouth is providing non-preferential and non-discriminatory payphone service offerings to all PSPs. (Tr. at 46-47)

Finally, Mr. Sanders testified that the BellSouth payphone rates at issue in this docket are the rates BellSouth charges to a PSP. The PSP in turn sets specific payphone coin rates that are charged to the end user. (Tr. at 54)

D. Daonne Caldwell:

D. Daonne Caldwell, Director – Finance for BellSouth, testified about the cost methodology used to develop the cost studies for BellSouth's payphone offerings in South Carolina.⁴ Ms. Caldwell testified that the PTAS and SmartLine® Service cost studies developed for this docket were based on the Total Service Long Run Incremental Cost ("TSLRIC") methodology. TSLRIC methodology is a long-run incremental cost methodology that includes volume sensitive (variable) and volume insensitive (fixed) costs. Ms. Caldwell testified that the model used to determine costs in this docket, the TELRIC Calculator®,⁵ is the same model previously approved by this Commission in BellSouth's UNE docket, Docket No. 97-374-C. (Tr. at 71)

Ms. Caldwell testified that the TSLRIC methodology recognizes only the direct, forward-looking, long-run incremental cost of providing PTAS and SmartLine® Service. As a result, the cost studies in this docket do not include shared or common costs. (Tr. at 72-73) Ms. Caldwell testified in detail about the fundamental components utilized in providing PTAS and SmartLine® Service. (Tr. at 7375, 85-91)

According to Ms. Caldwell, although the UNE docket cost studies provided the

⁴ On October 6, 1998, BellSouth filed with the Commission cost studies indicating a monthly direct cost of \$21.54 for PTAS and \$30.42 for SmartLine® Service. The cost studies were also provided to the SCPCA and are responsive to item 1-6 of the SCPCA's Data Requests dated October 5, 1998. At the hearing, the SCPCA introduced into the record, without objection, all responses to the SCPCA's discovery requests. (Tr. at 118)

⁵ © 1997 BellSouth Corporation All Rights Reserved

foundation for the cost studies in the instant docket, these studies had to be modified to reflect the cost of a service, such as PTAS, instead of an element, for example a loop. (Tr. at 76-77) Because the TSLRIC methodology does not include shared and common costs, Ms. Caldwell testified that the payphone rates should not be set equal to the TSLRIC for the PTAS and SmartLine® Service. (Tr. at 77-78) In addition to excluding shared and common costs, Ms. Caldwell testified that the TELRIC methodology used in the UNE docket excludes all of BellSouth's retail costs associated with providing a service, such as all its marketing, product management, project management, advertising, and sales costs. (Tr. at 95-96) Ms. Caldwell testified that the retail costs associated with providing PTAS and SmartLine® Service would add additional costs to providing these services. (TR. at 112-113, 135-137)

Dr. William E. Taylor:

BellSouth also presented in rebuttal the testimony of William E. Taylor, Ph.D, an economist and a Senior Vice President of National Economic Research Associations, Inc. ("NERA"). Dr. Taylor is head of NERA's communications practice and has participated in numerous telecommunications regulatory proceedings before this Commission, as well as other regulatory bodies throughout the United States. In sum, Dr. Taylor testified that BellSouth's tariffed rates for PTAS and SmartLine® Service in South Carolina meet all statutory requirements, are fair and reasonable, conform to efficient pricing principles, and do not jeopardize the growth of the payphone market in South Carolina. (Tr. at 150; 180-182)

Dr. Taylor explained the "retail-wholesale structure" of the payphone market. (Tr. at 152) Dr. Taylor described the retail part of the payphone market as the service

provided by PSPs to payphone users, i.e. the output. In contrast, Dr. Taylor described the wholesale part as the inputs needed by a PSP to provide payphone service, such as the PTAs and SmartLine® Service access line that connects a PSP's payphone set to BellSouth's central office. (Id.)

Regarding rates, Dr. Taylor testified that PTAS and SmartLine® Service are business services that have been traditionally priced at or near levels for business local exchange service. Dr. Taylor testified that the business rates, including payphone rates, have traditionally included contribution toward (i.e. subsidized) the Universal Service program under which residential local exchange service rates are set at low levels, frequently below cost. (Tr. at 152)

Regarding the implicit subsidies included in the rates for BellSouth's payphone rates, Dr. Taylor testified that although Section 254 of the 1996 Act envisions replacing implicit subsidies with an explicit support fund, the FCC has not yet provided guidelines on how and when such a transition will be carried out. Accordingly, Dr. Taylor testified that until the transition is effectively completed, that it would be premature and unwise to unilaterally eliminate the implicit subsidies included in BellSouth's PTAS and SmartLine® Service rates. (Tr. at 169)

Dr. Taylor also testified about the new services test. Dr. Taylor testified that while the FCC has addressed the new services test on various occasions, it has not settled on definitive interpretation of the new services test. (Tr. at 159) Dr. Taylor testified that there are two important aspects to the new services test. The first concerns the choice of the cost standard that best measures the direct cost element of the new service. The second concerns a determination whether the markup or overhead loading by which the

tariff rate exceeds the direct cost is reasonable. (Tr. at 160) Regarding the first concern, Dr. Taylor testified that BellSouth's choice of the TSLRIC cost standard is appropriate because TSLRIC measures the direct cost of providing PTAS and SmartLine® Service. (Tr. at 162)

As for the second concern or the appropriate markup, Dr. Taylor testified that although it is economically efficient for service prices to be set as close to underlying incremental costs as possible, in certain capital intensive industries like telecommunications, that form of pricing is simply not feasible. Dr. Taylor testified that in the telecommunications industry, firms such as BellSouth typically experience relatively high fixed and shared and common costs and relatively low service specific incremental costs. Accordingly, Dr. Taylor testified that setting prices to recover only those incremental costs would prevent firms from recovering their substantial shared and common costs and from breaking even. (Tr. at 153) In short, Dr. Taylor testified that if all service prices were set exactly equal to their respective incremental costs, that a company such as BellSouth would fail to recover all of its costs. (Tr. at 157)

Dr. Taylor testified that this Commission has the latitude to apply its own best judgment in determining the proper loading factor for all of BellSouth's services including its payphone services. Dr. Taylor testified that the FCC has stated that uniform loading factors are not required by the new services test, (Tr. at 163), and that the FCC has approved overhead loadings ranging from 4.8 times direct cost to almost 75 times direct cost. (Tr. at 167) In summary, Dr. Taylor testified that in light of BellSouth's cost structure and the FCC's interpretation of what constitutes reasonable loadings (and

particularly, the absence of any FCC requirement that loadings be uniform), Dr. Taylor concluded that the markup on BellSouth's payphone rates are reasonable. (Tr. at 165)

Walter Rice:

The SCPCA presented the testimony of Walter Rice, Vice President of R&Y Communications and President of the SCPCA. Mr. Rice asserted that payphones are the only means to send and receive calls for many economically disadvantaged people, and that this segment of the population is often the most difficult for PSPs to serve. (Tr. at 208, 219) Mr. Rice asserted that lower rates for the payphone line and associated features will allow more locations to operate at a profit, making more payphones available for use by the general public. (Tr. at 209) Mr. Rice contended that if rates for payphone service charged by BellSouth remain at their current level, PSPs will be forced to remove many currently marginal payphones, and increase their rates for local calls from certain other payphones in order to stay in business. (Tr. at 212, 221-223) Mr. Rice asserted that lower rates will cause a more widespread deployment of payphones which, in turn, result in healthy competition in the payphone market. Mr. Rice testified that BellSouth's concurrent role as the monopoly provider to PSPs of the payphone line and the largest single provider to the public of payphone service creates an incentive for BellSouth to charge PSP competitors unreasonably high prices for PTAS. (Tr. at 213) Mr. Rice also contended that forcing BellSouth to lower the rates in question will minimize BellSouth's ability to use excessive prices for the purposes of suppressing competition. (Id.) Mr. Rice took issue with BellSouth's PTAS rate and its rates for associated features, and asserted that the cost documentation filed in this Docket by

BellSouth in response to the Commission Staff's Data Request demonstrates that a cost based PTAS rate must include both the SLC and PICC. (Tr. at 215-216)

Michael Carowitz:

The SCPCA presented the testimony of Michael Carowitz, an attorney with Dickstein, Shapiro, Morin, and Oshinsky. Mr. Carowitz explained the FCC's requirement in the Payphone Orders that rates for the payphone line and associated features be "cost based," and in compliance with the FCC's new services test. He asserted that these requirements ensure that local coin rates and other rates to end-users will remain as low as possible. Mr. Carowitz maintained that a "forward looking" cost study was appropriate in this proceeding, and asserted that the rates resulting therefrom must include only BellSouth's direct cost of providing these services, plus an appropriate level of overhead costs. (Tr. at 248) Mr. Carowitz asserted that revenues received by BellSouth from the Subscriber Line Charge ("SLC"), the Primary Interexchange Carrier Charge ("PICC"), and the intrastate and interstate Carrier Common Line Charges ("CCLCs") reimburse BellSouth for a portion of its total loop and other non-traffic sensitive costs, and that appropriate rates can be no higher than BellSouth's total direct and overhead costs for the service, minus the dollar value of each of those revenue elements. (Tr. at 248) Mr. Carowitz explained the concept of overhead cost, overhead loadings, and overhead loading factors, as those terms relate to the FCC's new services test. Mr. Carowitz explained that the FCC has required LECs to determine appropriate overhead cost through a "bottom-up" approach. Mr. Carowitz went on to state that, based upon the FCC's rate requirements that apply in this proceeding, any rate, including the SLC and PICC, that exceeded BellSouth's demonstrated total cost for PTAS of \$25.48 would

violate the FCC's requirement that rates be cost based, and in compliance with the new services test. (Tr. at 252-253) Finally, Mr. Carowitz asserted that the FCC's Payphone Orders eliminated PTAS rate components designed to recover "contributions" of otherwise subsidize basic local telephone service. (Tr. at 253)

Don J. Wood:

The SCPCA presented the testimony of Don J. Wood, an economic consultant with the firm of Wood & Wood. Mr. Wood reviewed and evaluated rates for payphone access lines and related rate elements proposed by BellSouth in order to determine whether those rates conform to the requirements of the 1996 Act and the Payphone Orders. Mr. Wood concluded that based upon BellSouth's own cost study that BellSouth's proposed rates for PTAS and related features are not cost based. (Tr. at 316-317) He explained that BellSouth has not provided evidence supporting its contention that the direct, shared and common costs of these services support BellSouth's current rates. Mr. Wood also concluded that BellSouth's proposed rates for payphone access service are discriminatory, because independent PSPs pay the same rate for PTAS as BellSouth Public Communications, Inc. ("BellSouth Public") pays for SmartLine® Service, even though PTAS contains fewer features and costs BellSouth less to provide. (Tr. at 317) Mr. Wood also concluded that BellSouth's proposed rates do not comply with the FCC's new services test, because BellSouth has not demonstrated that both its direct and overhead costs are reasonable. (Tr. at 317) Mr. Wood also proposed rates for PTAS and associated features consistent with his interpretation and application of the new services test.

Mr. Wood testified that the SLC and PACC specifically assist Local Exchange Carriers ("LECs") to recover a portion of their loop costs – those allocated to the interstate jurisdiction. Mr. Wood testified that a rate based upon BellSouth's jurisdictionally unseparated direct and overhead costs will provide BellSouth with 100% recovery of its loop costs. Mr. Wood stressed that an appropriate cost based rate must be tariffed to include the SLC and PACC. He concluded that BellSouth would receive a double recovery if it were allowed to collect SLC and PACC on top of a rate that already compensates BellSouth for 100% of its cost.

Mr. Wood testified that a monthly flat rate of \$20.45, inclusive of the SLC and PACC and local usage, would fully compensate BellSouth for all direct and overhead costs associated with PTAS. (Tr. at 313) Mr. Wood also testified that in the event the Commission chooses instead to implement a usage sensitive rate, a fixed monthly component of \$17.70, inclusive of the PACC and SLC, would fully compensate BellSouth for all direct and overhead costs associated with the non-traffic sensitive part of the service. (Tr. at 312) To this, Mr. Wood testified that an additional local usage rate of \$.0043 per minute of use would fully compensate BellSouth for both the direct and overhead costs associated with the traffic sensitive part of this service. (Tr. at 312-313) Mr. Wood further concluded that even if the Commission accepts BellSouth's cost data without adjustment, the highest flat monthly PTAS rate should be \$25.48. (Tr. at 313)

Vince Townsend:

The SCPCA presented the testimony of Vince Townsend, President of Pay Tel Communications, Inc. Mr. Townsend asserts that the FCC's Payphone Orders mandated reductions in the rates for the payphone access lines and features. (Tr. at 362) Mr. Townsend also asserted that the excessive rates currently in place will greatly reduce the general availability of payphone service, while causing PSPs to increase prices to end users for local and long distance calls. (Tr. at 370-373) Mr. Townsend cited Section 276 of the 1996 Act to require that any rate relief ordered by the Commission be applied to the inmate telephone industry. (Tr. at 365) Mr. Townsend challenged the cost data submitted by BellSouth, in particular the reported usage revenue for its PTAS customers, and proposed a flat rate for all PSPs, including inmate service providers, that is inclusive of the SLC and the PICC. (Tr. at 365-367) Mr. Townsend contended that the payphone industry has been in a pronounced decline over the past several years, and that such an industry trend was a major impetus for the FCC's decision to require LECs to reduce rates. (Tr. at 368) Mr. Townsend presented data purporting to demonstrate his contention that the current BellSouth rates cause PSPs to lose money on local calls priced at \$.35 per call, as well as on inmate calls. (Tr. at 369) Mr. Townsend concluded that lower rates for PTAS will enable PSPs to continue to charge the current coin rate of \$.35, and that lower rates are imperative for PSPs to fully serve economically disadvantaged customers in South Carolina. (Tr. at 370-371) Mr. Townsend also asserted that the number of local calls being made from payphones has decreased, due to growth in the use of cellular telephone service. (Tr. at 374)

IV. FINDINGS OF FACT

1. The Commission finds, based on the record before us, that BellSouth has failed to justify its current rates for PTAS and associated features. We find that BellSouth's average monthly rate for PTAS service, including the \$8.14 SLC and \$2.75 PICC is between \$56.64 and \$67.43. BellSouth witness Sanders estimated that BellSouth's average rate for PTAS service is \$45.75. (Tr. at 54) SCPCA's witness Rice testified that BellSouth's asserted average rate for PTAS is \$58.28 and further testified that the average rate PSPs actually pay BellSouth is \$67.43. (Tr. at 215)

2. The Commission finds that the cost studies submitted by BellSouth in response to the Data Request of the Commission Staff should be used to determine direct costs and shared and common costs in establishing rates for PTAS and associated features.

3. The costing methodology asserted by BellSouth in this proceeding is based almost entirely on a similar study asserted by BellSouth and adopted by this Commission in Docket No. 97-374-C, the BellSouth UNE proceeding. SCPCA witness Wood and BellSouth witness Caldwell both acknowledged that FCC mandates in the BellSouth UNE proceeding and the present docket are substantially the same, that is to set rates that are cost based, just and reasonable, and non-discriminatory. (Tr. at 105-107, 289) In Order No. 98-214, this Commission set UNE rates for BellSouth that we specifically found to meet these three standards. Consequently, the direct and overhead costs that BellSouth has provided in its responses to Staff Data Requests and as found in Hearing Exhibit No. 4 (Rice Exhibit 3) in the instant proceeding are appropriately applied in this Docket.

4. Because BellSouth's TELRIC costs of providing PTAS and associated features already include a reasonable return on investment, it is not appropriate to add any additional return beyond the costs identified in the study in the price of PTAS or its associated features. As stated by BellSouth witness Caldwell, the direct cost BellSouth reported to the Commission for PTAS already includes a Commission-approved return on investment of 10.86%. (Tr. at 115) (See, Docket No. 97-374-C, Order No. 98-214, p. 22.)

5. Our decision that BellSouth's forward-looking TELRIC costs for providing the payphone line include a reasonable return on investment is consistent with our decision in order No. 98-214 in the BellSouth UNE Docket. In the UNE Docket, we held that because BellSouth's TELRIC cost studies already include a reasonable return on investment, it is not appropriate to include any additional profit in the price of the service." Order No. 98-214 at 22.

6. The Commission finds that BellSouth's asserted loop cost as contained in its response to Staff Data Request and as found in Hearing Exhibit No. 4 (Rice Exhibit 3) and reflecting a 47% residence/53% business mix is the appropriate loop cost to apply in determining the PTAS rate.

BellSouth used the UNE studies recently completed in the UNE Docket as the foundation for the costs used in this docket, with certain modifications outlined by the Commission in the UNE Docket and further modifications to correspond to the services under study in the instant docket. (Tr. at 76, 91, 93) One modification specifically challenged by the SCPCA was the residence/business weighting adjustment to reflect payphone loop lengths. (TR. at 77, 92, 99-100, 291-292) BellSouth utilized the sampling technique approved by this Commission in the UNE Docket and extracted information

from the payphone sample (not relevant and not included in the UNE study) to determine the average payphone loop length of approximately 18,000 feet. (TR. at 81) BellSouth then determined what percentage of residence loops and what percentage of business loops would yield a weighted length close to 18,000 feet. (*Id.*) Hence, BellSouth utilized a 47%/53% split for residence/business loop costs in its studies. (TR. at 128)

Although PTAS and SmartLine® Service are business services, one of the major costs associated with providing PTAS and SmartLine® Service depends on the length of the loops. (Tr. at 129, 288, 290) Density may also be a cost driver, but BellSouth did not consider the density factor in its cost studies because it did not think density would be a cost driver for the services in question. (Tr. at 129)

The SCPCA asserted that the loop costs should be calculated as 100% business because all of its members payphones are “exclusively at business locations.” (Tr. at 291) While witness Wood for the SCPCA testified that costs should be based on loop length for a business line, other SCPCA testimony asserted that reductions in rates are necessary to prevent removal of payphones in rural and less populated areas. (Tr. at 373) Another witness recounted an encounter with a payphone user in a neighborhood. (Tr. at 220) Thus the testimony from the SCPCA’s witnesses are somewhat contradictory in that the testimony reveals that the SCPCA’s witnesses acknowledge that PSPs are located in areas that certainly have residential characteristics.

Based on the record which reveals that PSPs are found in areas that are not exclusively business areas but are found in areas that have residential characteristics, the Commission finds that the cost figures submitted by BellSouth indicating a 47%/53% split for residence/business loop characteristics is appropriate for this proceeding.

Therefore, based on the cost figures submitted by BellSouth, the Commission adopts a cost figure for the loop, including shared and common costs, of \$18.69.

7. To the cost figure for the payphone loop, the Commission adopts without modification BellSouth's proposed TELRIC costs for the port and PTAS blocking and originating line screening. These cost figures also include shared and common costs and total \$4.06.

8. Accordingly, the Commission finds that the appropriate rate element to attribute to the payphone line, excluding usage, is \$22.75. Based upon the cost information as contained in BellSouth's response to its response Staff Data Requests and as found in Hearing Exhibit No. 4 (Rice Exhibit 3) this figure allows BellSouth to recover its direct costs of providing PTAS, a reasonable return on investment, and an appropriate amount of shared and common costs.

9. The Commission's approved \$22.75 rate element compensates BellSouth for all costs associated with the provision of PTAS Blocking and Screening. BellSouth presented its cost for this service as a component of BellSouth's total cost for PTAS service. BellSouth included its direct and overhead costs associated with these services. Consequently, BellSouth's provision of PTAS service at the approved monthly rate shall include the provision of PTAS Blocking and Screening services.

10. SCPCA witness Wood proposed a rate of \$0.015 per month for Billed Number Screening. We recognize that this rate is consistent with BellSouth's cost study, and allows BellSouth a full recovery of all its direct costs to provide this function, as well as a 31% loading of shared and common costs. (Tr. at 302) However, because of the *de minimus* nature of this charge, we decline to adopt Mr. Wood's proposal. Instead we find

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 than \$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

unbundled BSE will not recover more than a just and reasonable portion of the carrier's overhead costs.

47 C.F.R. §61.49(f)(2).

The Commission finds that the rates approved herein meet the new services test as these rates are cost based as supported by the TELRIC cost data referenced by the Commission throughout this Order. The TELRIC cost data on which the Commission has relied throughout this Order includes the direct cost of providing the service, an appropriate amount of shared and common costs, as well as a reasonable return on investment or return component. As the cost data upon which the Commission has relied in setting the rates herein contain what the Commission has determined to be an appropriate amount of shared and common costs as well as a reasonable return on investment, as previously determined appropriate by this Commission, the Commission concludes that the rates as established herein do not recover "more than a reasonable portion of the carrier's overhead costs."

18. The Commission finds that BellSouth's PTAS rates as established herein and the SmartLine® Service rates as approved herein meet the requirements of Section 276 of the 1996 Act and are not discriminatory. Section 276 of the 1996 Act requires in part 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 own payphone service."

While not required by the 1996 Act, BellSouth separated its payphone service from its local exchange service. (Tr. at 188) By setting up this structural safeguard,

BellSouth has removed the subsidies of its payphone service from its telephone exchange service operations, as required by the 1996 Act. (Tr. at 186, 188) Further, as Dr. Taylor testified, "the PTAS rate and the SmartLine® rate exceeds [sic] their incremental costs, which to an Economist means they are not subsidized." (Tr. at 186)

The September 20 and November 8, 1996, Payphone Orders required the BOCS to set up the non-structural safeguards outlined in the Computer III guidelines in the form of a Comparably Efficient Interconnection ("CEI") Plan describing how they will not discriminate in providing payphone service. (FCC 96-388 Order at ¶¶ 194-195, 200; Tr. at 33). The FCC approved BellSouth's CEI Plan on April 15, 1997. (Tr. at 34) BellSouth CEI Plan certifies that BellSouth offers the same tariffed services, such as PTAS and SmartLine® Service, at the same rates and conditions to its own payphone affiliate that BellSouth offers to other PSPs. (Tr. at 46) Likewise, service ordering, installation, maintenance and repair services are handled through the same channels for BellSouth Public as for any other PSP. (Tr. at 46)

The SCPCA presented no convincing evidence that BellSouth's rates are discriminatory. Its arguments that BellSouth's charges for PTAS and SmartLine® Service to its affiliate are simply going from one BellSouth pocket to another does not consider the fact that if BellSouth Public places a payphone in a location, BellSouth forgoes the PTAS price that BellSouth will receive from another PSP for that payphone. As Dr. Taylor noted, this is a real economic cost to BellSouth Corporation that cannot be ignored and that shows there is no discriminatory treatment regarding BellSouth's rates for the payphone services. (Tr. at 187-188) The SCPCA's arguments on this point are not persuasive.

Therefore, the Commission finds that BellSouth's rates for PTAS, as established herein, and for SmartLine® Service, as approved herein, meet the requirements of Section 276 of the 1996 Act and are nondiscriminatory as required by the 1996 Act and the Payphone Orders.

CONCLUSIONS OF LAW

1. The Commission holds that BellSouth bears the burden in this proceeding of demonstrating that its proposed rates for payphone access line and associated features are cost based, consistent with the requirements of §276 of the 1996 Act, non-discriminatory, and in compliance with the FCC's new services test. We hold that the rate we adopt for PTAS in this Order, comprised of the sum total of the elements described in the Findings of Fact above, provides BellSouth with full recovery of its direct costs, plus an appropriate level of overhead costs, in compliance with the new services test. We find that the rates approved herein are otherwise in compliance with the requirements of §276 of the 1996 Act and are non-discriminatory.

2. The Commission holds that the rates we adopt today shall apply to payphone lines and features purchased by providers of inmate telephone services in confinement facilities. As demonstrated by SCPA witness Townsend, Section 276(d) of the 1996 Act defines "payphone service" as "the provision of public or semi-public payphones, *the provision of inmate telephone service in correctional institutions*, and any ancillary services." (emphasis added) The cost based rates requirements of the 1996 Act and the Payphone Orders apply with equal force to the payphone lines and features

provided by BellSouth to inmate providers. BellSouth has offered no evidence to contest this conclusion.

3. The Commission holds that the rate we adopt for PTAS herein shall include all amounts charged by BellSouth to PSPs for the SLC and PICC, as more fully detailed in the Findings of Fact above.

4. The Commission also holds that the rates adopted herein comply with the requirements of the 1996 Act and the Payphone Orders; specifically they are "cost based," "consistent with the requirements of Section 276 of the 1996 Act," nondiscriminatory, and consistent with the FCC's *Computer III* tariffing guidelines, *i.e.* in compliance with the new services test.

5. The rates approved herein recognize the actual costs that BellSouth is expected to incur in providing payphone service on a going-forward basis as supported by the cost study provided in this proceeding. The Commission concludes that these rates will fairly and adequately compensate BellSouth for the services, functions and features it provides to PSPs, and provide BellSouth a reasonable return on investment, while promoting competition among PSPs and promoting the widespread deployment of payphone services to the benefit of the general public.

6. The Payphone Orders required BellSouth to have rates filed in compliance with the standards we apply in this Order by April 15, 1997. See, *Second Bureau Waiver Order* at ¶¶ 1-2. The Commission has twice, in Order No. 97-367, dated May 2, 1997, and in Order No. 97-519, dated June 16, 1997, confirmed that any rate reductions resulting from this proceeding will be applied retroactively. Accordingly, we require BellSouth to provide a refund or a credit to its PSP customers in an amount equal to the

difference between the rates approved herein and those rates PSPs actually paid, including any SLC and PICC, from April 15, 1997, until the date BellSouth places its new rates into effect.

7. The refund or credit shall cover the period from April 15, 1997, through the date BellSouth places the rates approved herein into effect. Further, the refund or credit shall include interest at 8.75% per annum, which is the legal rate of interest established by S.C. Code Ann. Section 34-31-20 (1976, as amended), from April 15, 1997, until the refund or credit is made.

8. The Commission approves the rates for BellSouth's Smartline® Service and associated features as filed, since we received no opposition to BellSouth's proposed rates for this service.

9. On May 19, 1997, BellSouth filed a petition in this proceeding requesting an order that its pay telephone rates, as filed in tariffs on or before May 19, 1997, comply with the FCC's implementation of the Pay Telephone Reclassification and Compensation provisions of the 1996 Act. In addition, BellSouth asserted that its pay telephone rates should be declared by this Commission to have met the new services test. In Order No. 97-519, we declined to do either, pending our hearing and final decision in this matter. Based upon the Commission's decision in this order, we hereby grant BellSouth's request, and declare that, upon implementing the rates set forth herein, and making appropriate refunds or credits, BellSouth has fully met these requirements.

10. Further, the Commission concludes that BellSouth should be allowed to present evidence in the Universal Service proceeding ("USF") that the implicit subsidies which have been removed from PTAS rates in this proceeding should be subject to USF

funding. The Commission is mindful that, historically, business rates and services have been priced in the context of Universal Service to support basic residential service that is often priced below cost. With that philosophy in mind, the Commission believes that fairness dictates that BellSouth be allowed the opportunity in the USF proceeding to persuade the Commission that the implicit subsidies which have been removed in the instant proceeding be recoverable to USF funding.

IT IS THEREFORE ORDERED THAT:

1. The Commission approves the rates for PTAS and associated features and SmartLine® Service and associated features as set forth herein.
2. The new PTAS rates shall be inclusive of any monthly SLC and PICC paid by each PSP customer, as more fully explained in our Findings of Fact.
3. BellSouth shall file revised tariff pages containing the rates approved herein within 30 days of receipt of this Order. These revised pages shall bear the effective date of April 15, 1997.
4. Within sixty (60) days of receipt of this Order, BellSouth shall provide refunds or credits to its PSP customers in an amount as described in our Conclusions of Law, above, and shall provide proof of these refunds or credits to the Commission Staff within thirty (30) days thereafter.

APRIL 19, 1999

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5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)

000202

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Florida Public)
Telecommunications Association)
for Expedited Review of BellSouth)
Telecommunications, Inc.'s Tariffs)
with respect Rates for Payphone)
Line Access, Usage, and Features.)

Docket No.: DN 030300-TD

April 9, 2004

FLORIDA PUBLIC TELECOMMUNICATIONS ASSOCIATION, INC.
RESPONSES TO BELLSOUTH'S FIRST SET OF
INTERROGATORIES/ADMISSIONS (NOS. 1-36)
AND REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1-2)

Florida Public Telecommunications Association, Inc. ("FPTA"), pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.340 and 1.280, Florida Rules of Civil Procedure, hereby files the following Responses to the Bellsouth Telecommunications, Inc. First Set of Interrogatories/Admissions (Nos. 1-36) and Request for Production of Documents (Nos. 1-2), dated March 10, 2004.

FPTA incorporates herein by reference all of its general and specific objections filed on March 10, 2004. Any responses provided by FPTA in response to this discovery are provided subject to and without waiving any of FPTA's previously filed objections.

Request: Please provide a full listing of all current FPTA individual member companies, including the legal name and any trade names or "doing business as" names of each individual member company.

Response: See Exhibit A.

000205

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
BellSouth's 1st Set of Interrogatories/Admissions
Item No. 2
Page 1 of 1

Request: Please provide a full listing of all FPTA individual member companies as of January 20, 1999, including the legal name and nay trade names or "doing business as" names of each individual member company.

Response: The information responsive to this request is not currently within the possession, custody and control of FPTA. However, FPTA can compile this information by conducting a poll of its membership. FPTA reserves the right to supplement this response upon the compilation of said information.

000206

Florida Public Telecommunications Association, Inc.

Florida Public Service Commission

Docket No. 030300-TP

BellSouth's 1st Set of Interrogatories/Admissions

Item No. 3

Page 1 of 1

Request: Please state the approximate percentage of pay telephone service providers in Florida currently represented by the FPTA.

Response: Approximately fifteen percent of the payphone service providers registered with the Florida Public Service Commission are FPTA members.

000207

Request: Please state the approximate percentage of pay telephone access lines in Florida that are owned and/or operated by FPTA members.

Response: Approximately nine percent of the payphone access lines in Florida are owned and/or operated by FPTA members. That percentage is based upon the information contained in the FCC's Report on Trends in Telephone Service dated August 2003. That approximate percentage is likely understated as a result of BellSouth's recent exit for the payphone business in which BellSouth has removed all, or substantially all, of its payphones installed in the State of Florida.

Request: Referring to Paragraph 6 of the Petition filed in March 26, 2003 ("Petition"), state all facts and identify all documents that support your contention that "since the effective date of Docket 970281-TL, BellSouth's costs to provide PTAS have consistently decreased.

Response: All available evidence suggests that BellSouth's costs have trended downward over time. This Commission's orders regarding UNE rates are consistent with such an observation. Moreover, BellSouth's testimony and PTAS cost study filed in this docket clearly evidences that BellSouth's costs have significantly reduced. Discovery in this docket is ongoing and FPTA reserves the right to supplement this response upon receipt of discovery responses from BellSouth.

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
BellSouth's 1st Set of Interrogatories/Admissions
Item No. 6
Page 1 of 1

Request: Referring to Paragraph 8 of the Petition. How many public pay telephones throughout Florida do FPTA members currently own and operate?

Response: Approximately 6,700.

000210

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
BellSouth's 1st Set of Interrogatories/Admissions
Item No. 7
Page 1 of 1

Request: Referring to Paragraph 8 of the Petition, how many public pay telephones throughout do FPTA members currently own and operate in BellSouth's serving territory in Florida?

Response: According to the FCC's Report on Trends in Telephone Service dated August 2003, there were approximately 35,139 independent telephones installed in RBOC territories in Florida.

000211

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
BellSouth's 1st Set of Interrogatories/Admissions
Item No. 8
Page 1 of 1

Request: Please describe with particularity how FPTA is funded; including, but not limited to, a description of the financial contributions and percentages of contributions made by each individual FPTA member.

Response: FPTA objects to this interrogatory on the grounds that it is neither relevant nor reasonably calculated to lead to the admission of admissible evidence, seeks business information that is confidential and/or proprietary in nature and is intended solely for harassment and/or embarrassment. Based upon these objections, FPTA will not respond to this Interrogatory.

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
BellSouth's 1st Set of Interrogatories/Admissions
Item No. 9
Page 1 of 1

Request: Please list the names, titles, and business addresses of the officers, directors, and management employees of FPTA. State also whether each officer, director, and management employee is affiliated with an individual member company of FPTA; if so, provide the title and name of the individual member company.

Response: FPTA objects to this interrogatory on the grounds that it is neither relevant nor reasonably calculated to lead to the admission of admissible evidence, seeks business information that is confidential and/or proprietary in nature and is intended solely for harassment and/or embarrassment. Based upon these objections, FPTA will not respond to this Interrogatory.

000213

Request: Of the FPTA members, state how many members (or the approximate percentage) currently purchase retail payphone access lines from BellSouth?

Response: The information responsive to this request is not currently within the possession, custody and control of FPTA. However, FPTA can compile this information by conducting a poll of its membership. FPTA reserves the right to supplement this response upon the compilation of said information. Additionally, FPTA objects to this interrogatory on the grounds that its response calls for information that is within the possession, custody or control of BellSouth. Discovery in this docket is ongoing and FPTA reserves the right to supplement this response upon receipt of discovery responses from BellSouth.

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
BellSouth's 1st Set of Interrogatories/Admissions
Item No. 11
Page 1 of 1

Request: Of the FPTA members, state how many members (or the approximate percentage) currently purchase retail payphone access lines from CLECs?

Response: The information responsive to this request is not currently within the possession, custody and control of FPTA. However, FPTA can compile this information by conducting a poll of its membership. FPTA reserves the right to supplement this response upon the compilation of said information. Nevertheless, FPTA is aware that the percentage of its members that purchase retail payphone access lines from CLECs has significantly increased over time since 1997 as a direct result of those CLECs offering PTAS rates that are significantly lower than the PTAS rates offered by BellSouth.

000215

Request: Of the FPTA members, state how many members (or the approximate percentage) purchased retail payphone access lines from BellSouth in January 1999?

Response: FPTA objects to this interrogatory on the grounds that its response calls for possession that is within the possession, custody or control of BellSouth. Subject to and without waiving the foregoing objection, FPTA states that the information responsive to this request is not currently within the possession, custody and control of FPTA. However, FPTA can compile this information by conducting a poll of its membership and upon receipt of discovery responses from BellSouth. Accordingly, FPTA reserves the right to supplement this response.

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
BellSouth's 1st Set of Interrogatories/Admissions
Item No. 13
Page 1 of 1

Request: Of the FPTA members, state how many members (or the approximate percentage) purchased retail payphone access lines from CLECs in January 1999?

Response: The information responsive to this request is not currently within the possession, custody and control of FPTA. However, FPTA can compile this information by conducting a poll of its membership. FPTA reserves the right to supplement this response upon the compilation of said information.

000217

Request: Referring to Paragraph 13 of the Petition, state all facts and identify all documents that support your contention that "FPTA members...compete with BellSouth...."

Response: During the period from April 15, 1997 until BellSouth's recent exit from the payphone industry, BellSouth was the largest provider of payphone services in its territory in the State of Florida. As the largest payphone provider, BellSouth competed for payphone locations with all other providers in its region, including the FPTA's members. Moreover, as BellSouth exits the payphone business, it has become a major national presence in the wireless communications market through its Cingular Wireless joint venture. Wireless is the primary technological competitor of payphone services. Accordingly, it would serve BellSouth's own competitive interests, without necessary regard for the public interest, to continue charging excessive PTAS interconnection rates—thereby increasing migration of the calling public from payphone to wireless services.

Request: Referring to Paragraph 22 (a) of the Petition, state all facts and identify all documents that support your contention that "BellSouth's PTAS rates preclude the 'widespread deployment' of pay telephones...."

Response: The PTAS rate charges are typically the largest single cost to provide payphone service at any location. Every time a payphone service provider determines whether to serve a particular payphone location, it must do a cost analysis. Sometimes this cost analysis is very formal and rigorous and sometimes it is "seat of the pants." In the end, however, no payphone service provider can serve a location if its costs for providing service at that location exceed its revenues. Logic dictates that if the single largest cost is reduced, the revenue threshold necessary to support station deployment at any particular payphone location is correspondingly reduced. Naturally, the amount of revenue available from a location is largely the result of the number of consumers who will be using the payphone there. However, as the cost of serving a location decreases, more potential and current locations become economically viable. This naturally results in the deployment of more payphones, particularly in rural and low-income areas where payphones may have previously been unprofitable.

Request: Referring to page 4 of the Direct Testimony of Bruce Renard state all the facts and identify all documents that support your contention that "the excessive rates charged today by BellSouth have greatly reduced the availability of payphone service...."

Response: FPTA incorporates its response to Interrogatory 15.

Mr. Renard served as an associate general counsel for the Florida Public Service Commission, with a specialty representing Florida's interests at the national level on key telecom issues. After leaving the Florida Public Service Commission, Mr. Renard engaged in the private practice of law with a specialization in telecommunications and utility law - representing a variety of national and regional telecom concerns, including payphone providers, before a wide range of state and federal forums. Mr. Renard then joined Peoples Telephone Company, Inc. ("Peoples"), the then largest non-local exchange company provider of payphone services in the United States, as its General Counsel and Vice President of Regulatory Affairs. At the end of 1998, Peoples Telephone Company merged with another publicly traded payphone service provider, Davel Communications, Inc. ("Davel"), where Mr. Renard served in a number of senior management roles, ultimately serving as President until the merger of Davel with PhoneTel Technologies, Inc. in 2002. During his tenure with Peoples and Davel, and continuing today in his current role with FPTA, Mr. Renard has served as a member of the board of directors and Legal/Regulatory committee (even serving as Chairman for a significant period of time) of the American Public Communications Council ("APCC"), a national self-regulatory organization representing the independent payphone industry throughout the United States. As a member of the APCC's board of directors and a member of its Legal/Regulatory committee, Mr. Renard has been intimately involved in working with the FCC in the promulgation of the FCC's *Payphone Orders* through which it implemented the payphone provisions of the Telecommunications Act of 1996. In 2002, Mr. Renard served as the Interim President of the APCC. Mr. Renard became the Executive Director of the FPTA in 2003. In his testimony, Mr. Renard relies on his more than ten years' experience in the telecommunications and payphone industries.

Request: Referring to page 4 of the Direct Testimony of Bruce Renard state all facts and identify all documents that support your contention that "the requested relief will meaningfully promote the continued widespread availability of payphone service."

Response: Most payphone providers already own the equipment and operating infrastructure necessary to operate a payphone from any location. Accordingly, the specific cost analysis is normally dispositive in determining whether or not a payphone will be installed at any particular location. Reducing the single largest cost of providing payphone service can only, logically, lower the economic threshold for payphone viability and thereby increase the number of payphones deployed. Additionally, there can be no doubt that the payphone industry has suffered significant decline over the past several years as a result of the proliferation of wireless phones. The relief requested in this docket--in the form of a refund of amounts previously collected by BellSouth that it was not properly entitled to collect--would allow payphone providers to reinvest in their businesses and, for at least some period of time, help preserve the financial viability of the remaining payphone providers in Florida. Given the continued importance of payphone services to the public interest in Florida, and all the relative equities at play, this is a proper policy goal and result.

Request: State all the facts and identify all documents, including providing specific references to language in any regulatory decision that supports your contention that this Commission has the authority to order refunds.

Response: FPTA objects to this Interrogatory on the grounds that it calls for a legal conclusion. To the extent that a response to this Interrogatory would require discovery of the mental impressions, conclusions, opinions or legal theories of FPTA's counsel or other representatives, FPTA further objects to this Interrogatory on the basis of the attorney/client privilege and/or work-product doctrine.

Subject to and without waiving the foregoing objection, FPTA states that this Commission is acting under Section 276 of the Telecommunications Act of 1996 and the FCC's delegation of authority to implement the new services test, as ultimately clarified in the *Wisconsin Order*. Section 276(c) of the Telecommunications Act of 1996 specifically provides that "To the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements." Additionally, under Florida law, this Commission is acting under (i) Sections 364.01 and 364.03, Florida Statutes and (ii) its inherent power to modify its prior orders by the reason of the nature of the agency and the functions it is empowered to perform. As support for this proposition that the FPSC possesses said inherent power, FPTA refers to, among others, the cases of *Reedy Creek Util. Co. v. Florida Pub. Serv. Comm'n*, 418 So.2d 249 (Fla. 1982); *United Tele. Co. of Fla. v. Mann*, 403 So.2d 962 (Fla. 1981); *Sunshine Util. v. Florida Pub. Serv. Comm'n*, 577 So.2d 663 (Fla. 1st DCA 1991).

Request: Referring to page 9 of the Direct Testimony of Bruce Renard state all facts and identify all documents, including providing specific references to language in nay regulatory decision, that support your contention that "Congress and the FCC have recognized that this economic decline in the industry has significantly intensified the need for sharp reductions in costs payphone service providers pay for access service."

Response: Section 276 of the Telecommunications Act of 1996 was adopted "... to promote competition among payphone service providers and promote the widespread deployment of payphone services to benefit the general public." 47 U.S.C. § 276(b)(1). In its recent Order and Notice of Proposed Rulemaking *In the Matter of Request to Update Default Compensation Rate for Dial-Around Calls from Payphones*, WC Docket No. 03-225, RM No. 10568 (the "*Dial Around Rate NPRM*"), the FCC clearly recognized that "there appears to be no dispute that industry conditions have changed significantly since the adoption of the initial per call compensation rate. Payphone usage and deployment are decreasing as the use of wireless services increases." *Dial Around Rate NPRM* at paragraph 18. Based upon that decline, the FCC initiated the rulemaking to consider an increased "default" dial around compensation rate. Implicit in the FCC's decision to initiate the rulemaking is the cost studies filed by the APCC and the RBOC Payphone Coalition and others, including BellSouth, that the underlying "cost per call" to provide payphone service has increased largely as a result of fewer calls. Additionally, comments filed by the APCC and RBOC Coalition argue that increasing the default per call dial around rate will promote the widespread deployment of payphone services to the benefit of the general public. The inverse must be true as well. A decrease in the single largest cost to provide payphone services will similarly promote the widespread deployment of payphone services to the benefit of the general public. It is most important to note that the Dial Around NPRM just cited was issued to address the major "revenue" side of the payphone equation—after the FCC had already adopted its New Services Test decisions, designed to address the key cost component of payphone deployment.

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
BellSouth's 1st Set of Interrogatories/Admissions
Item No. 20
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Request: Referring to pages 10-11 of the Direct Testimony of Bruce Renard, has any analysis, study, or evaluation been conducted by, on behalf of, or at the direction of Mr. Bernard concerning "a significant rate reduction and a refund of past overcharges will have a direct effect on the number of installed payphones in Florida." If the answer to this interrogatory is in the affirmative, describe with particularity the results of that analysis, study, or evaluation, and identify all documents referring or relating to such analysis, study, or evaluation.

Response: No. FPTA also incorporates its response to BellSouth Interrogatory 16.

Request: Referring to page 12 of the Direct Testimony of Bruce Renard, has any analysis, study, or evaluation been conducted by, on behalf of, or at the direction of Mr. Renard concerning "PSPs will be forced to remove a large number of payphones in rural, high cost and less populated areas, increase rates for local coin calls at the phones in those area." If the answer to this Interrogatory is in the affirmative, describe with particularity the results of that analysis, study, or evaluation, and identify all documents referring or relating to such analysis, study, or evaluation.

Response: No. FPTA also incorporates its response to BellSouth Interrogatories 15 and 16. Additionally, payphones installed in rural, high cost and less populated areas generate less revenue. If a true cost-based rate is not adopted, many low revenue phones will not generate enough revenue to support the expenses associated with those payphones. This has become particularly important with BellSouth's exit from the payphone business.

Request: Referring to pages 10-11 of the Direct Testimony of Bruce Renard, has any analysis, study, or evaluation been conducted by, on behalf of, or at the direction of Mr. Renard concerning "more and more payphones will be removed from service." If the answer to this Interrogatory is in the affirmative, describe with particularity the results of that analysis, study, or evaluation, and identify all documents referring or relating to such analysis, study, or evaluation.

Response: No. FPTA also incorporates its response to BellSouth Interrogatories 15 and 17.

Request: Referring to pages 5-6 of the Rebuttal Testimony of Bruce Renard, is it the FPTA's contention that this Commission has equitable jurisdiction? If the answer to this Interrogatory is in the affirmative, state all facts and identify all documents that support your answer.

Response: Yes. FPTA incorporates its response to BellSouth Interrogatory 18 and further states that, among other Florida courts, the Florida Supreme Court has explicitly stated that ratemaking is fundamentally an equitable undertaking in, among other decisions, the case of *GTE Florida, Inc. v. Clark*, 668 So.2d 971 (Fla. 1996).

Request: Referring to page 5 of the Rebuttal Testimony of Bruce Renard, state all facts and identify all documents that support your contention that "BellSouth's arguments as set forth in its Motion to Dismiss are all based upon principles of "equity" and not "law."

Response: In its Motion to Dismiss, BellSouth has asserted the retroactive ratemaking prohibition and the filed rate doctrine as defenses to the relief sought by FPTA in this docket. Both doctrines, however, are grounded in the equitable principle that when a utility tariffs at a rate approved by a regulatory agency, that utility is entitled to rely upon the regulatory agency's determination that the rate is appropriate. In its Motion to Dismiss, BellSouth would have this Commission believe that both the retroactive ratemaking prohibition and the filed rate doctrine apply mechanically by operation of law to bar the FPTA's petition. That is not the law of this State. In fact the Florida Supreme Court has routinely stated that ratemaking is, inherently and fundamentally, a matter of equity and fairness.

It is a fundamental equitable principle that in order to receive equity, one must do equity. In the context of ratemaking, and in particular ordering refunds for overcharging, the courts of this state have routinely approved refund orders by the FPSC where it was demonstrated that the utility was charging and collecting an excessive rate.

BellSouth is, in essence, seeking to rely upon equitable doctrines in order to reap an inequitable reward. BellSouth has charged and collected excessive rates for PTAS services, in clear violation of preemptive Federal law, since April 15 1997. It committed to make refunds back to that date, if and when a State Commission later found the filed implementation rates to be non-compliant. Here, there has been a federal regulatory and judicial delay that has allowed BellSouth to charge what have been shown to be excessive rates for a number of years under these tariffs. This Commission must now correct the error in its prior order, brought to light by subsequent and binding federal administrative and judicial rulings, in all material respects. Under these facts and circumstances, equity would demand that one who has been unjustly enriched should be required to

disgorge that resulting windfall, notwithstanding the time periods involved.

000229

Request: Referring to page 7 of the Rebuttal Testimony of Bruce Renard, state all facts and identify all documents, including providing specific references to language in any regulatory decision, that support your contention that "the *Second Wisconsin Order*" was not intended to implement a new requirement prospectively."

Response: The FCC's *Wisconsin Orders* do not implement new law. Rather, in those decisions the FCC made clear that it was merely confirming the FCC's "long standing policy." *Wisconsin Order* at paragraphs 24 and 43. Common Carrier's *Wisconsin Order* at paragraph 10. Additionally, the *Wisconsin Order* was appealed to the DC Circuit Court of Appeals by the BOCs, including BellSouth, which court of appeals affirmed the applicable portions of the *Wisconsin Order* that are at issue in this docket and no petition for review by the United States Supreme Court was filed. Accordingly, the FCC will not be providing any additional "clarification" that would conflict with the current federal law on this subject. Moreover, other aspects of Section 276 of the Telecommunications Act of 1996 involving dial around compensation have been the subject of years of FCC and judicial review. In those proceedings, the FCC has required payphone service providers to refund significant amounts collected from interexchange carriers based upon clarifications made years later. There is no justifiable reason that this proceeding should be treated differently.

In addition, the Michigan Public Service Commission recently considered the issues that are before this Commission in this docket, *In the matter of the Complaint of Michigan Pay Telephone Association et. al., against Ameritech Michigan and GTE North Incorporated*, Case No. U-1176. In its decision, the Michigan Public Service Commission specifically found that "...the *Wisconsin Order* did not change existing law. Rather, it is a reiteration of the requirements that the FCC set forth in its 1996 payphone orders, and merely restates and clarifies what the law according to the agency is and has been."

Request: Referring to page 9 of the Rebuttal Testimony of Bruce Renard, has any analysis, study, or evaluation been conducted by, on behalf of, or at the direction of Mr. Renard concerning whether the denial of a refund "will have a severe negative impact on the widespread deployment of payphones and payphone competition in the State of Florida." If the answer to this Interrogatory is in the affirmative, describe with particularity the results of that analysis, study, or evaluation, and identify all documents referring or relating to such analysis, study, or evaluation.

Response: No. FPTA also incorporates its response to BellSouth Interrogatories 15 and 16.

Request: Referring to page 9 of the Rebuttal Testimony of Bruce Renard, state all facts and identify all documents that support your contention that "there is no doubt that a significant rate reduction will have a direct effect on the number of installed payphones in Florida."

Response: No. FPTA also incorporates its response to BellSouth Interrogatories 15, 17 and 19.

Request: Referring to page 5 of the exhibit attached to the Rebuttal Testimony of Bruce Renard identify the precise page or reference in *GTE Florida Inc. v. Clark* that supports your contention that "Florida law requires the PSC to determine rates based upon equitable considerations."

Response: FPTA objects to this Interrogatory on the grounds that it calls for a legal conclusion. To the extent that a response to this Interrogatory would require discovery of the mental impressions, conclusions, opinions or legal theories of FPTA's counsel or other representatives, FPTA further objects on the ground of the attorney/client privilege and/or work product doctrine.

Subject to the foregoing objections, in stating that Florida law requires the Commission to determine rates based upon equitable considerations, FPTA was referring to, in part, the following, explicit pronouncements and directives by the Supreme Court of Florida in *GTE Florida, Inc. v. Clark*:

"We [the Florida Supreme Court] view utility ratemaking as a matter of fairness. Equity requires that both ratepayers and utilities be treated in a similar manner."

GTE Florida, Inc. v. Clark, 668 So.2d 971, 972 (Fla. 1996);

"[Referring to Justice O'Connell's reasoning in *Village of North Palm Beach v. Mason*, 188 So.2d 778 (Fla. 1966)], Justice O'Connell was stating that equity applies to both utilities and ratepayers when an erroneous rate order is entered. it would be clearly inequitable for either utilities or ratepayers to benefit, thereby receiving a windfall, from an erroneous PSC order."

Id. at 973.

Request: Referring to pages 5-6 of the exhibit attached to Rebuttal Testimony of Bruce Renard state all facts and identify all documents, including citations to regulatory decisions or cases, that support your contention that "the cornerstone to the general prohibition on retroactive ratemaking is the utilities' reasonable reliance on the approved rate."

Response: FPTA objects to this Interrogatory on the grounds that it calls for a legal conclusion. To the extent that a response to this Interrogatory would require discovery of the mental impressions, conclusions, opinions or legal theories of FPTA's counsel or other representatives, FPTA further objects on the ground of the attorney/client privilege and/or work product doctrine.

Subject to and without waiving the foregoing objections, FPTA states that support for the proposition that the cornerstone to the general prohibition on retroactive ratemaking is the utilities' reasonable reliance on the approved rate can be found in, among others, the cases of *Reedy Creek Util. Co. v. Florida Pub. Serv. Comm'n*, 418 So.2d 249 (Fla. 1982); *United Tele. Co. of Fla. v. Mann*, 403 So.2d 962 (Fla. 1981); *Sunshine Util. v. Florida Pub. Serv. Comm'n*, 577 So.2d 663 (Fla. 1st DCA 1991).

Request: Referring to page 7 of the Direct Testimony of Don Wood, state all facts and identify all documents, including providing specific references to language in any regulatory decision, that support your contention that "the Commission can and should order refunds."

Response: FPTA objects to this Interrogatory on the grounds that it calls for a legal conclusion. To the extent that a response to this Interrogatory would require discovery of the mental impressions, conclusions opinions or legal theories of FPTA's counsel or other representatives, FPTA further objects to this Interrogatory on the basis of the attorney/client privilege and/or work-product doctrine.

Subject to and without waiving the foregoing objections, FPTA states that Section 276(c) of the Telecommunications Act of 1996 specifically provides that "To the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements." Additionally, Pursuant to a letter dated April 10, 1997 from Michael K. Kellogg, the RBOC Payphone Coalition counsel, to the Deputy Chief of the Common Carrier Bureau the RBOC Coalition, including BellSouth, requested that the FCC waive the requirement for the RBOCs to file intrastate payphone tariffs that met the new services test by April 15, 1997. As a part of that request, Mr. Kellogg asserted that in the event a new tariff rate for PTAS is filed "to comply with the 'new services' test pursuant to this waiver and the new tariff rate is lower than the previous tariff rate as a result of applying the 'new services' test, the LEC will provide a credit or other compensation to purchasers back to April 15, 1997." Moreover, this Commission has the inherent power to modify its prior orders, and order refunds where appropriate, due to the nature of the agency and the functions it is empowered to perform. This inherent power has long been recognized and affirmed by Florida's courts. As support for this proposition that the FPSC possesses said inherent power, FPTA refers to, among others, the cases of *Reedy Creek Util. Co. v. Florida Pub. Serv. Comm'n*, 418 So.2d 249 (Fla. 1982); *United Tele. Co. of Fla. v. Mann*, 403 So.2d 962 (Fla. 1981); *Sunshine Util. v. Florida Pub. Serv. Comm'n*, 577 So.2d 663 (Fla. 1st DCA 1991).

Request: Referring to page 24 of the Direct Testimony of Don Wood, state all facts and identify all documents that support contention that "while cellular providers currently pay cost-based rates to BellSouth, payphone providers are paying much higher rates...."

Response: BellSouth is currently charging payphone service providers PTAS rates far in excess of the statewide flat rate proposed by BellSouth in Ms. Blake's direct testimony - \$24.63. Assuming for purposes of this response that BellSouth proposed rate is "cost-based," then BellSouth has been charging rates far in excess of its cost plus some reasonable allocation of overhead.

Request: Referring to page 25 of the Direct Testimony of Don Wood, has any analysis, study, or evaluation been conducted by, on behalf of, or at the direction of Mr. Wood that refers or relates to your contention that "the adoption of cost-based PAL rates, coupled with refunds of the excessive charges, is necessary to permit FPTA members to continue to provide payphone services in the marketplace." If the answer to this Interrogatory is in the affirmative, describe with particularity the results of that analysis, study, or evaluation, and identify all documents referring or relating to such analysis, study, or evaluation.

Response: No. However, the FCC has recognized the significant decline in the payphone industry and all applicable reports from the FCC clearly indicate that the number of payphones in Florida and across the country has consistently been decreasing. The adoption of cost-based rates, which are significantly less than the rates currently charged by BellSouth, coupled with refunds, will have a positive financial impact on payphone service providers throughout Florida.

Request: Referring to page 31 of the Direct Testimony of Don Wood, state all facts and identify all documents that support your contention that "BellSouth has presented conflicting direct cost results for certain elements and has not presented information that demonstrates the reasonableness of the existing level of overhead loadings."

Response: Since 1997 BellSouth has produced a series of cost results for local loops, switched line ports, and the various components of local usage. These varying results have been filed with the Commission and are publicly available.

BellSouth has offered no information that could form the basis for a demonstration that its proposed overhead loading, exceeding 50% of direct costs, is reasonable, but has simply asserted the reasonableness of such an overhead loading. There are no documents that are responsive to this request because BellSouth has produced no documents in support of its proposed overhead loading.

Discovery in this docket is ongoing and FPTA reserves the right to supplement this response upon obtaining discovery responses from BellSouth.

Request: For the purposes of this question, please assume that BellSouth cannot eliminate the federal subscriber line charge from Monthly bills, and that payphone service providers will be billed the tariffed rate plus the federal subscriber line charge. Referring to page 27 of the Rebuttal Testimony of Don Wood and page 13 of the Rebuttal Testimony of Bruce Renard, what monthly rate is the FPTA recommending in this proceeding?

Response: \$18.04, including the federal EUCL charge.

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
BellSouth's 1st Set of Interrogatories/Admissions
Item No. 35
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Request: Referring to the preceding Interrogatory, please identify with specificity the analysis, study, or evaluation that has been conducted by, on behalf of, or at the direction of the FPTA that supports your response.

Response: The FPTA utilized the following analysis to calculate the rate as follows:

<u>Rate</u>	<u>EUCL/SLC</u>	<u>Implied Intrastate Rate</u>
\$18.04	\$7.13	\$10.91

Request: Referring to your response to Interrogatory 34, please identify with specificity how the FPTA's proposed rate differs from the statewide average rate contained in BellSouth's cost study filed in this docket.

Response: The average statewide rate proposed by the FPTA in its response to BellSouth Interrogatory 34 includes an overhead loading factor of 10%. BellSouth's proposed statewide average rate includes what FPTA believes to be an excessive overhead loading factor of more than fifty percent.

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
BellSouth's 1st Request for Production of Documents
Item No. 1
Page 1 of 1

Request: Please produce all documents identified in your responses to the foregoing interrogatories.

Response: See attached. To the extent that documents responsive to this Request have been previously produced to BellSouth as part of FPTA's response to Staff's discovery requests, please refer to said production.

000242

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
BellSouth's 1st Request for Production of Documents
Item No. 2
Page 1 of 1

Request: Please produce copies of any responses you have made to the discovery requests served by the Commission Staff.

Response: FPTA has previously provided BellSouth with all documents responsive to this request.

000243

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition of Florida Public)
Telecommunications Association)
for Expedited Review of BellSouth)
Telecommunications, Inc.'s Tariffs)
with respect Rates for Payphone)
Line Access, Usage, and Features.)


Docket No.: DN 030300-TD

March 22, 2004

I HEREBY CERTIFY that one copy of FPTA's Prehearing Statement has been
furnished by Federal express 9th day of April, 2004, to the following:

Meredith E. Mays
Regulatory Counsel
BellSouth Corporation
Legal Department
675 West Peachtree Street
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Nancy White
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000244

Member Name	DBA
A.A.A. Payphone Inc.	
Coin Phone Management Com	d/b/a ACI
ACI Communications	
Alex Altman	
Arlen Communications Inc.	
Michael Anthony Holoday	d/b/a Atlantic & Gulf Communications
John G. Ralls, Jr.	d/b/a Australia Enterprises, Inc.
B&B Telecommunications	d/b/a Empire Vending
Beach One Telecom	
Brink's Incorporated	
Caribbean Hotel Services	
Charles Ingrassia and Eugene I	d/b/a CJ Systems
Coastal Printing Corp.	
Colonial Systems Inc.	
Commercial Telephones Inc.	
Fayyaz A. Shuja	d/b/a Commtrack Enterprise
Communication Connection	
Custom Teleconnect Inc.	
E & G Computers and Electronics	
Faircall	
Ferob Corporation	
Florida Digital Network	
David Lynn Swearingen	d/b/a Florida Public Telephone Company
Focus Connection Inc.	
Fone Connection of Tampa Bay	
Geoffrey A. Lynch	d/b/a G & G Communications
Go Communications	
GPE Southeast, Inc.	
Hicks Laundry Equipment Corp.	
IKN	
Imron Network	
In Line Telecom Inc.	
Rifat M Hasan	d/b/a Intel, X Communications
Interstate Telecommunications, Inc.	
James Kenworthy	
JLW Technical Commun.	
Joy Valiquette	
Emmett Edgar Hollis & Lucille C	d/b/a L & E Payphones
M.S. Payphone Repair	
MLV Communications, Inc	
NCIC	
New Star Communications	
North Atlantic Inc.	
Northwest Florida Telephone Co.	
NSC Communications	
Jedi, Inc.	d/b/a Omega One Telecommunications, Inc
Opticom	
Oriando Payphone Inc.	
Pay Tel Communications, Inc.	d/b/a Pay Tel Communications, Inc. of the Southeast
Payphone211	
Payphones of America Inc.	

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Payphones Plus Inc.	
Paytel USA Inc.	
Protel, Inc.	
Qwest/USLD	
Rauenzahn Enterprises, Inc.	
Robert A. Hackett	d/b/a Reliable Payphone Maintenance
Reliable Telephone Co.	
Sirron Communications	
Smart City Telecommunications	d/b/a Smart City Telecom
South Miami Wash Bowl	
Edward J. Kaberna	d/b/a Southcom Service
Southeast Pay Telephone	
Southeast Payphones	
Southern Payphones Co.	
Spearman Distributors, Inc.	
Sun Coast Communications, Inc.	
Suncoast Payphone Co.	
Symtelco	
TeleCom Printing Solutions Inc.	
Telecom Products	
Telemonde Communications	
Thomas G Marsell	d/b/a TP Industries Incorporated
Train-Tel Company	
TransFlorida Communications	
Trinity Holdings Ltd.	
Randell & Lenice Hubbard	d/b/a TRL Enterprises
Universal Communications TU LLC	
US Inter/Com	
V&B Communication	
Verizon	
Whitney-Phillips TRF Inc.	
Wholesale Carrier Services Inc.	

000246

H

District Court of Appeal of Florida,
 First District.

SUNSHINE UTILITIES, Appellant,
 v.
 FLORIDA PUBLIC SERVICE COMMISSION,
 Appellee.

No. 90-2742.

March 29, 1991.
 Rehearing Denied April 25, 1991.

Public utility sought review of final order entered by Public Service Commission denying motion for reconsideration of final order prospectively correcting rate based computation and requiring utility to refund overearnings. The District Court of Appeal, Wentworth, Senior Judge, held that: (1) Public Service Commission did not abuse its discretion in concluding that, without tax returns, unconfirmed assertions of utility's witness did not compel finding that water systems were not written off or otherwise expensed on owner's tax returns, and (2) testimony that audit did not and could not reflect contributions in aid of construction (CIAC) that might have existed when systems were purchased supported rejection of proposed finding.

Affirmed.

West Headnotes

[1] Public Utilities ⇨169.1

317Ak169.1 Most Cited Cases
 (Formerly 317Ak169)

Public Service Commission has authority to determine if there are mistakes in prior orders or if utility fails to prove its investment in amount alleged and has duty to correct those errors. West's F.S.A. § 367.081.

[2] Public Utilities ⇨165

317Ak165 Most Cited Cases

Public Service Commission has authority to require evidence of utility's investment in order to determine whether rate is reasonable. West's F.S.A. § 367.081.

[3] Waters and Water Courses ⇨203(6)

405k203(6) Most Cited Cases
 General.

Public Service Commission's rejection of utility's proposed findings of fact concerning its investment rates was justified since, without tax returns, unconfirmed assertions of utility's witness did not compel finding that none of the water systems were written off or otherwise expensed on owner's tax returns; administrative tribunal was not required to accept evidence without evaluation particularly where tax returns were withheld.

[4] Waters and Water Courses ⇨203(6)

405k203(6) Most Cited Cases

Testimony that audit did not and could not reflect contributions in aid of construction (CIAC) received by public utility when systems were purchased supported rejection of utility's proposed finding that all CIAC received by utility had been recorded by utility.

*664 Diane D. Tremor and Martin S. Friedman, Rose, Sundstrom & Bentley, Tallahassee, for appellant.

Susan F. Clark, General Counsel, Martha C. Brown, Associate General Counsel, Florida Public Service Com'n, for appellee.

WENTWORTH, Senior Judge.

This is an appeal of a final order entered by the Florida Public Service Commission denying appellant Sunshine Utilities' Motion for Reconsideration of a Final Order correcting prospectively a rate base computation effected by a

1984 order, and requiring Sunshine to refund overearnings after August 30, 1988, when the inquiry was noticed. We affirm, finding no error with respect to the three issues argued here, as follows: (1) whether the Public Service Commission (PSC or Commission) properly placed the burden upon the company to prove that the sum of \$280,753 should be allocated to its investment and not to Contributions-in-Aid-of-Construction (CIAC); [FN1] (2) whether there was a basis for the PSC to determine that its initial order, No. 13014, was in error; (3) whether the PSC erred in rejecting Sunshine Utilities' proposed findings of fact numbers 6 and 7.

FN1. The amount of CIAC is at issue because the statute, § 367.081, Florida Statutes, does not allow the inclusion of CIAC in the rate base of any utility during a rate proceeding. Therefore the increase in the amount of CIAC would decrease the rate base.

Appellant, Sunshine Utilities, is a water utility which provides water service to approximately 2,000 customers in Marion County. Appellant seeks review of the PSC's Order No. 23354, an order denying reconsideration of a final order requiring a refund to customers (Order No. 22969). The order requiring refund declared that a prior PSC order entered on February 20, 1984, Order No. 13014, which set the initial rate base, contained an incorrect assumption. [FN2] The order requiring refund further provided that CIAC be increased by \$280,753 on the ground that Sunshine Utilities failed to prove its investment in this amount. [FN3]

FN2. While acknowledging that its staff had made an incorrect assumption as to the origin of the \$280,753 adjustment, the final order adopted the PSC staff position of imputing that sum as a statutory exclusion and required it to refund overearnings for the period of August 30, 1988 (when investigation commenced), through December 31, 1989. The PSC ordered the utility to refund 9.79% of its revenues for service rendered between September 19, 1989, through December

31, 1989, but the amount to be refunded between August 30, 1988 and September 19, 1989 was limited to 7.68% due to the insufficient amount of funds being held subject to refund.

FN3. The order for refund states in material part:

The error in Order No. 13014 was discovered by Staff in its review of the Utility's 1987 annual report for overearnings. In its annual report, the Utility had reflected the difference as a negative acquisition adjustment. The Utility reflected this in its calculation of rate base as a reduction. Utility Witness Nixon testified that the difference was included as an acquisition adjustment by the Utility's outside CPA in 1984. He testified that it was his belief that it was made because of a lack of understanding of regulatory accounting and Statement of Financial Accounting Standards No. 71. Mr. Nixon further testified that '... [a]fter investigation, the amount is merely a balancing entry made by a former CPA in an attempt to comply with the last rate order.' He states further, '... [t]he amount is the difference between a trial balance started by the company in 1983, which only reflects plant added in 1981 and 1982, and the balances established in Order No. 13014.' He states that the \$280,753 acquisition adjustment was nothing more than a 'plug entry' in an attempt to adjust to the original cost study. Staff's position on this issue is that the Utility, in the prior cases and in this overearnings investigation, has failed to meet its burden to prove that it had any investment in the \$280,753 'plug entry.' Staff's view is that an error was made in the original case by not offsetting the \$280,753 increase in plant with a matching credit to CIAC. In fact, Mr. Nixon testified that there was no support for investment in the \$280,753 except for the original cost study. And as Witness Wood testified, *the purpose of an original cost study is to determine the original cost of the total system, not to determine the*

amount of investment that a Utility has in those costs. The Utility did not produce, in that staff assisted rate case, any records or documentation whatsoever to support that it had any investment represented by that \$280,753 adjustment....

In *Reedy Creek Utilities v. Florida Public Service Commission*, 418 So.2d 249 (1982), the Florida Supreme Court upheld our authority to modify our orders that derives from the nature of our ratemaking powers.... Although the Court noted that this Commission's inherent power to modify its orders is not without limitation, it stated ...

'An underlying purpose of the doctrine of finality is to protect those who rely on a judgment or ruling. We find that Reedy Creek did not change its position during the lapse of time between orders, and suffered no prejudice as a consequence.' 418 So.2d 249.

... Sunshine Utilities has not specifically argued the defenses of equitable and collateral estoppel in this case.... The Utility's position is that the Commission's only opportunity to evaluate its rate base was when the Utility first came in for a rate case and the Commission issued the final order in that case, Order No. 13014, in 1984.

However, this is not the case. This Commission received jurisdiction over the utilities in Marion County on May 5, 1981.

Subsequently, Sunshine Utilities applied to this Commission for certification on September 29, 1981, without benefit of adequate business records.... [T]he Utility did not complete its own minimum filing requirements. At that time, the Commission found it necessary, because of the lack of any reliable records or documentation, to order an original cost study for the Utility to correct its deficiency in basic business records.

....

In a trucking certificate transfer case, while recognizing the Commission's limited inherent authority to modify its prior orders, the Supreme Court noted that a showing of significant change in circumstances or great public interest

would be required to permit a prior Commission order to be superseded. *Austin Tupler Trucking, Inc. v. Hawkins*, 377 So.2d 679 (Fla.1979) at 681. ...

... There is adequate proof in the record of this hearing that the net book value 'recognized' by the Commission was wrong, and that modification of the transfer order is necessary to ensure just and reasonable rates, in the public interest.

To the extent that prior staff audits did not identify the accumulated depreciation adjustment here at issue, such audits were simply in error. Where ... *mistake or inadvertence* is shown, the Commission must have the power to alter previously entered final rate orders under extraordinary circumstances. *Richter v. Florida Power Corporation*, 366 So.2d 798 (2nd DCA 1979), at 800....

... There is no question that there was an error made in that Order in not classifying the \$280,753 as CIAC. Sunshine Utilities has not changed its position, in reliance on Order No. 13014, beyond the fact that it has become accustomed to earning a return on the \$280,753. It is simply inappropriate to allow this Utility's ratepayers to pay for an inadvertent mistake made by this Commission in Order No. 13014. The fundamental fact that must be remembered is that Sunshine Utilities had an opportunity, in its first staff assisted rate case, to establish its investment in this \$280,753 amount and it has now had a second opportunity, in this full proceeding, to prove that it had any investment in the \$280,753 that has been included in its rate base erroneously.

Therefore, we find it appropriate to increase CIAC by a credit of \$280,753. (e.s.)

*665 Sunshine concedes the PSC has authority to correct errors in prior orders, but asserts that the PSC, as challenger of the correctness of the prior order's factual premises, has the burden of presenting evidence on the critical facts. Sunshine further contends that it can rely on the terms of the prior order to establish its investment and does not have to submit evidentiary proof of its investment in

order to retain its rate base. We disagree and affirm the PSC's order.

[1] The PSC, under the pertinent statutes as construed by earlier decisions, *Reedy Creek Utilities v. Florida Public Service Commission*, 418 So.2d 249 (Fla.1982), and *Richter v. Florida Power Corp.*, 366 So.2d 798 (Fla. 3d DCA 1979), has the authority to determine whether there are mistakes of this character in its prior orders and has a duty to correct such errors. *666 Section 367.081, Florida Statutes, provides that the PSC has exclusive jurisdiction over the rates of each public utility and must:

either upon request or upon its own motion, fix rates which are just, reasonable, compensation.... In every such proceeding, the commission shall consider ... a fair return on the investment of the utility in property used and useful in the public service. However, the commission shall not allow the inclusion of contributions-in-aid-of-construction in the rate base of any utility during a rate proceeding. (e.s.)

In *Reedy Creek, supra*, the court recognized PSC's inherent authority to modify its orders but noted that such authority is not without limitation. See also, *Richter, supra* ("where a substantial change in circumstances, or fraud, surprise, mistake, or inadvertence is shown ... the PSC must have the power to alter previously entered final rate orders"). *Peoples Gas Systems, Inc. v. Mason*, 187 So.2d 335, 339 (Fla.1966), and *Austin Tupler Trucking, Inc. v. Hawkins*, 377 So.2d 679 (Fla.1979), recognize an exception to the doctrine of administrative finality where there is a demonstrated public interest. Unlike the issues raised in those cases (authority to approve territorial agreements and the dormancy of transportation certificates), the issue of prospective rate-making is never truly capable of finality.

In the present case, the PSC determined that the factual premise for its prior Order No. 13014 was in error because:

The Commission, at that time, increased plant-in-service to reflect the original cost study, but made no adjustment to reconcile the difference as to whether it was Utility investment.

Staff Witness Wood testified that an error was made by the Commission in that docket. In this hearing, Witness Wood testified that because the

Utility failed in that docket, and in this case, to prove that it had any investment in the \$280,753 difference, ... a corresponding adjustment to CIAC should have been made.

The order requiring refund is also supported by testimony that no evidence of investment was presented except Order No. 13014. Sunshine contends that the original cost study by the PSC engineer recognized an investment of \$280,753. However, the original cost study was to determine the original cost of the total system and did not determine the source or time of investment. Here, Sunshine never attempted by any evidentiary means to establish its investment. It contended that the audits indicated the records were sufficient to establish CIAC, and therefore any difference between the record and audit would have to be attributable to investment. However, testimony also indicated that the records did not reflect the CIAC which may have existed prior to the purchase of the company, the CIAC that the former owners might have had.

[2] Although Sunshine contended that it did not have the burden of establishing its investment, statutory and case law indicates to the contrary. See *South Florida National Gas Co. v. Public Service Commission*, 534 So.2d 695 (Fla.1988). Section 367.081, Florida Statutes, provides that the commission shall upon request or upon its own motion fix rates which are reasonable. The statute further provides that in determining whether a rate is reasonable, the commission must consider, among other things, a fair return on investment. To do so, the PSC must have authority to require proper evidence as to the utility's investment.

[3] The Commission properly rejected Sunshine's proposed findings of fact numbers 6 and 7. The PSC did not abuse its discretion in concluding that without tax returns, the unconfirmed assertions of the utility's witness could not compel finding No. 6 that "[n]one of the water systems were written off or otherwise expensed on the owner's tax returns." An administrative tribunal is not required to accept such evidence without evaluation, particularly where, as here, the tax returns were withheld.

[4] The PSC likewise did not err in rejecting Sunshine's proposed finding No. 7 that all CIAC received by Sunshine has been recorded by the

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(Cite as: 577 So.2d 663)

utility. Testimony *667 that the audit did not and could not reflect CIAC that may have existed when the systems were purchased constituted competent substantial evidence supporting the Commission's rejection of the proposed finding.

Affirmed.

SMITH and WIGGINTON, JJ., concur.

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C

Supreme Court of Florida.

REEDY CREEK UTILITIES CO., Appellant,
v.
FLORIDA PUBLIC SERVICE COMMISSION,
Appellee.

No. 60677.

July 29, 1982.

Appeal was brought by public utilities to review orders of the Public Service Commission. The Supreme Court, Ehrlich, J., held that: (1) there was substantial evidence to support Commission's finding that parties had agreed to refund expanded revenues, and (2) second order issued by Commission to change first order was not issued until two and one-half months later but was not too late to change first order under doctrine of administrative finality.

Affirmed.

McDonald, J., dissented.

West Headnotes

[1] Electricity ⇨11.5(1)
145k11.5(1) Most Cited Cases

Substantial evidence supported Public Service Commission's finding that utilities had agreed to refund to consumers expanded revenues.

[2] Public Utilities ⇨149
317Ak149 Most Cited Cases

Public Service Commission is a quasi-judicial body and sitting in capacity that it does, it is empowered to promulgate rules which apply to those under its jurisdiction and subject to its regulation; those rules do not apply to the Commission itself but to those who appear before it and thus notwithstanding almost adversarial stance it must take at times, the

Commission is not a "party" at that level.

[3] Public Utilities ⇨169.1
317Ak169.1 Most Cited Cases
(Formerly 317Ak169)

Since Public Service Commission was not a party to proceeding before it, it was not required to comply with one of its rules requiring that any request for reconsideration of an order be made within 15 days after order is issued.

[4] Public Utilities ⇨169.1
317Ak169.1 Most Cited Cases
(Formerly 317Ak169)

The power of the Public Service Commission to modify its orders is inherent by reason of nature of agency and functions it is empowered to perform and inherent authority to modify is not without limitation.

[5] Public Utilities ⇨120
317Ak120 Most Cited Cases

The Public Service Commission is charged with statutory duty of regulating and supervising public utilities with respect to their rates.

[6] Public Utilities ⇨169.1
317Ak169.1 Most Cited Cases
(Formerly 317Ak169)

When the Public Service Commission determined that it erred to the detriment of using public with respect to determining certain utility rates, it had inherent power and statutory duty to amend its order to protect customer even though second order was not issued until two and one-half months after first order; it was not too late to change first order under doctrine of administrative finality.

*250 Lee G. Schmudde, Lake Buena Vista, for appellant.

William S. Bilenky, Gen. Counsel and Virginia Alice Daire, Associate Gen. Counsel, Tallahassee, for appellee.

EHRlich, Justice.

This cause is before us on direct appeal brought by Reedy Creek Utilities Co. to review Orders No. 9456-A and No. 9998 of the Public Service Commission. We have jurisdiction under article V, section 3(b)(2), Florida Constitution, and we hereby affirm those orders.

In November 1978, Congress enacted the Revenue Act of 1978. Among other things this act reduced the tax rates on corporations from 48% to 46% on taxable income in excess of \$100,000. Thereafter, on December 29, 1978, the Public Service Commission opened a docket to investigate the effect of these changes on the utilities under its ratemaking jurisdiction. Among those utilities was petitioner, Reedy Creek, an investor-owned electric utility.

The initial Order No. 8624, which opened the docket, advised the utilities that since the new tax act will result in a "beneficial effect on the earnings of affected utilities," the Commission intended to monitor "the revenues associated with the reduction of income tax liability caused by the enactment by Congress of the Revenue Act of 1978." Recognizing that consumer rates are determined on a projected estimate of costs including taxes, the Commission announced that should this tax reduction result in revenue to the utilities exceeding a fair and reasonable return upon their investment, the utilities could be required to refund these revenues to the consumers.

On January 31, 1979, the Commission issued Order No. 8624-A [FN1] which further clarified the Commission's stance and outlined the method of calculation.

FN1. Paragraphs 4, 5, 6, 7 of Order No. 8624-A, subsequently referred to in the stipulation:

(4) Measurement of earnings for refund purposes. Order No. 8624 provides that our initial hearings "shall serve as a basis for attaching jurisdiction over the revenues in question and any accrued thereafter shall be subject to refund or other appropriate disposition depending on the financial condition of the individual utilities." For purposes of measuring the

financial condition of each utility for calendar year 1979, we intend to use the same procedures as are employed under our continuing surveillance program. That is, we shall look at the actual per books earnings together with the actual average net investment rate base which calculations will be consistent with the Commission's determination of rate base and operating income in the utility's most recent rate proceeding. From this information, the actual per books achieved rate of return for jurisdictional purposes may be derived. This jurisdictional return shall then be compared with the rate of return calculated by using the 13 month average capital structure for calendar year 1979 and ceiling of the last authorized return on equity. The capital structure shall be developed on a basis consistent with the Commission's determination of capital structure in the utility's most recent rate proceeding.

(5) Disposition of revenues. All "savings" accumulated during 1979 after the date of our order dealing with the initial hearings shall be subject to refund. If the utility's actual earned overall rate of return exceeds the ceiling of the zone of reasonableness, as determined in paragraph (4), the utility shall, after notice and hearing, refund to its customers revenues equal to the lesser of the total calculated differential contained in the reports, or the amount of revenue for 1979 that exceeds that which would have been produced by the ceiling of the utility's rate of return as calculated in paragraph (4).

(6) Refunds. Refunds, if any, shall be made to current customers served by the utility and refund amounts shall be based on each customer's consumption or basic local exchange service during the month immediately preceding the month during which a refund is consummated.

(7) FASB. No. 5. The utilities shall account for the revenues associated with the differential between the 1978 federal corporate income tax rate for calendar year 1979 in accordance with generally accepted accounting principles for contingencies. (Underlining in original)

*251 On March 2, 1979, representatives of the six investor-owned electric utilities that were subject to the said orders, the Commission staff, and a representative from the Public Counsel's office met at an informal workshop to discuss the matter. [FN2] At all times the utilities maintained that the Commission lacked the authority to order a refund, as this constituted retroactive ratemaking. The Commission, however, maintained that this authority was an inherent power of the Commission.

FN2. At the workshop, the representatives of the utilities conferred privately to see if they could agree on a possible stipulation to resolve the issue and avoid litigation. One of their group said, upon a resumption of the workshop meeting:

MR. WILLIS: I would like to outline a proposal which I think has been accepted by the Public Counsel, but let me state basically what the provisions would be and if we do have an agreement then we can wrap it up and come back and maybe execute it this afternoon.

The first provision that we would insist on would be that the company maintains that the Commission lacks the power to engage in retroactive ratemaking, but that in an effort to amicably settle the question and the disposition of revenues associated with the reduction of federal income tax, that the companies would voluntarily agree not to appeal an order of the Commission for refund of the revenues based on the Commission's Order No. 8624-A, and as specifically described in Paragraphs 4, 5, 6 and 7 of the order; that while we also feel very strongly that the Commission would not have the authority to require refunds to be made back to the beginning of the year, that we would accept that as part of a negotiated settlement, that the tax savings involved would be calculated on the basis of calendar year 1979. (Transcript, Workshop, March 2, 1979, at pages 36-37.)

Realizing that litigation over the disagreement would be costly and time consuming, the parties at the workshop signed a stipulation which was prepared by the representatives of the utilities concerning these revenues, agreeing to a one time

refund under certain circumstances limited to the year 1979. The agreement set forth the method for calculating the amount subject to refund. [FN3]

FN3. The stipulation provides in part:

1. The Companies, although they firmly maintain that the Commission lacks the power to engage in retroactive ratemaking as may be contemplated by Order Nos. 8624 and 8624-A, in an effort to amicably settle the question of the disposition of the revenues associated with the reduction by the Revenue Act of 1978 of the federal income tax rates voluntarily agree to the incorporation of this stipulation into an order and not to appeal such order by this Commission for a refund of such revenues to be determined and refunded only on the basis described in paragraphs (4), (5), (6) and (7) of Order No. 8624-A.

By Order No. 8783 dated March 22, 1979, the Commission approved the stipulation. By this time it had been determined, however, that only two companies, Reedy Creek and Florida Public Utilities Company, met the criteria for refunding the money.

On April 17, 1980, Reedy Creek forwarded to the Commission documentation computing the refund at \$47,833. Reedy Creek arrived at this figure by calculating its taxes first at the 48% bracket and then at the *252 46% rate. The difference, it concluded, was the amount of the money subject to refund.

No response to this calculation was forthcoming from the Commission or its staff, until the Commission issued Order No. 9456 on July 21, 1980, which approved the amount of \$47,833 for Reedy Creek's refund.

Thereafter, on September 2, 1980, Reedy Creek drafted a plan to allocate the tax saving among its customers and sought approval from the Commission. On October 3, 1980, before any approval was granted, three commissioners issued Supplementary Order No. 9456-A to clarify Order No. 9456. This order stated that the calculations made by Reedy Creek were made on the "actual tax reduction received by the utility and did not specify

the revenue equivalent which the tax saving would translate into as far as the customer is concerned." The amount, it said, should have been increased by an "expansion factor." The amount to be refunded by Reedy Creek was increased to \$93,281.

Reedy Creek filed a petition for reconsideration on October 9, 1980, and a full evidentiary hearing was held on April 7, 1981.

On May 6, 1981, the Commission issued Order No. 9998 denying the petition for reconsideration. Reedy Creek filed this appeal, asserting two issues: (1) that there was not substantial competent evidence to support the Commission's finding that the parties had agreed to refund the expanded revenues, and (2) that even so the second order was not issued until two and a half months later, too late to change the first order under the doctrine of administrative finality.

[1] As to the first issue, we have thoroughly examined the record and find that Orders No. 9456-A and No. 9998 are supported by competent and substantial evidence and this Court will not reevaluate the evidence. *Florida Retail Federation, Inc. v. Mayo*, 331 So.2d 308 (Fla.1976).

The Commission's first order spelled out its position. Its amended order of January 31, 1979 explained in further detail how the calculation would be made. The stipulation, which no party questions, incorporated by reference both orders. All these documents set forth a formula for calculating the revenues.

At the workshop a representative of the Commission was present to explain the formula. Viewing the documents together with the testimony in the record, it is clear that a utility would be required to refund revenues if and only if it were earning in excess of the range of its authorized rate of return.

Reedy Creek was in this "over-earnings position," or above the "zone of reasonableness" to the extent of \$151,309. Of these excess earnings, \$47,833 could be attributed to the actual tax decrease, but the revenue collected from the consumer to pay the tax was \$93,281. [FN4]

FN4. It appears to be the practice of

utilities to pass through as an expense to the customer, the payment of income taxes and in so doing the utility collects roughly twice as much from the customer as it expects to pay in income taxes.

Reedy Creek insists that the amount contemplated by the stipulation was the tax saved by the company, but it is patent from the record that the Commission intended for a refund to be on the basis of the revenues associated with the reduction in income tax liability and that the parties agreed to this in the stipulation. Reedy Creek's mistake, if any, was a unilateral one.

The Commission staff's failure to detect the miscalculations only compounded the matter, but we find that to be merely a matter of oversight. The evidence is substantial and supports the Orders.

We turn now to the finality of Order No. 9456, and whether or not the Commission erred in amending that order two and a half months later.

Petitioner makes two arguments. First, it points out that under the Commission's own F.A.C. Rule 25-2.64, any request for reconsideration of an order must be made within 15 days after the order is issued. *253 Consequently, the argument runs, the amended order issued in the case at bar, two and a half months later, was void. Petitioner urges that this rule applies to the Commission itself, as the Commission is a party to the proceedings.

[2][3] We find this position untenable. The Commission is a quasi-judicial body. Sitting in the capacity that it does, it is empowered to promulgate rules which apply to those under its jurisdiction and subject to its regulation. These rules do not apply to the Commission itself, but to those who appear before it. Notwithstanding the almost adversarial stance it must take at times, it is not a "party" at that level.

[4] Petitioner's final argument deals with the time lapse between orders and the doctrine of "administrative finality." The power of the Commission to modify its orders is inherent by reason of the nature of the agency and the functions it is empowered to perform. This inherent authority to modify is not without limitation. In *Peoples Gas System v. Mason*, 187 So.2d 335

(Fla.1966), this Court set forth the rule that:

The effect of these decisions is that orders of administrative agencies must eventually pass out of the agency's control and become final and no longer subject to modification. This rule assures that there will be a terminal point in every proceeding at which the parties and the public may rely on a decision of such an agency as being final and dispositive of the rights and issues involved therein. This is, of course, the same rule that governs the finality of decisions of courts. It is as essential with respect to orders of administrative bodies as with those of courts.

Id. at 339. This Court reaffirmed that rule in *Austin Tupler Trucking, Inc. v. Hawkins*, 377 So.2d 679 (Fla.1979).

Furthermore, in *Peoples Gas System v. Mason*, we recognized the unique function that a regulatory commission serves and the necessity that it be granted a certain degree of latitude in order to effectively carry out that function, and we said:

We understand well the differences between the functions and orders of courts and those of administrative agencies, particularly those regulatory agencies which exercise a continuing supervisory jurisdiction over the persons and activities regulated. For one thing, although courts seldom, if ever, initiate proceedings on their own motion, regulatory agencies such as the commission often do so. Further, whereas courts usually decide cases on relatively fixed principles of law for the principal purpose of settling the rights of the parties litigant, the actions of administrative agencies are usually concerned with deciding issues according to a public interest that often changes with shifting circumstances and passage of time. Such considerations should warn us against a too doctrinaire analogy between courts and administrative agencies and also against inadvertently precluding agency-initiated action concerning the subject matter dealt with in an earlier order.

Id. at 339.

Peoples Gas System and *Austin Tupler* dealt with orders amended four years and two years respectively after their inception and "administrative finality" had attached. The instant case deals with a period of two and a half months. The Commission erred in its Order No. 9456 in approving a refund in terms of the actual tax reduction received by the utility but it sought to

correct that error by issuing Order No. 9456-A. While it may have been better procedurally to notify the utility of the proposed changes in order to have afforded the utility the opportunity to request a hearing, nevertheless a full evidentiary hearing was held on Reedy Creek's petition for reconsideration.

[5][6] The Commission is charged with the statutory duty of regulating and supervising public utilities with respect to their rates. When the Commission determined that it had erred to the detriment of the using public, it had the inherent power and the statutory duty to amend its order to protect the customer.

*254 An underlying purpose of the doctrine of finality is to protect those who rely on a judgment or ruling. We find that Reedy Creek did not change its position during the lapse of time between orders, and suffered no prejudice as a consequence.

A change in a tax law should not result in a "windfall" to a utility, but in a refund to the customer who paid the revenue that translated into the tax saving.

The orders under review are hereby affirmed.

It is so ordered.

ALDERMAN, C. J., and ADKINS, BOYD, OVERTON and SUNDBERG, JJ., concur.

McDONALD, J., dissents.

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Supreme Court of Florida.

UNITED TELEPHONE COMPANY OF
FLORIDA, et al., Petitioners,

v.

Robert T. MANN, et al., Respondents.

No. 58647.

July 30, 1981.

Rehearing Denied Oct. 15, 1981.

Proceeding was instituted to review an order of the Public Service Commission directing a telephone utility to refund excess revenues collected during the pendency of a full scale rate-making proceeding. The Supreme Court, Boyd, J., held that discretion was vested in the Public Service Commission to determine the amount of revenues collected by telephone utility during interim period which were excessive so long as that amount did not exceed amount ordered subject to refund at interim hearing and, by pegging amount of refund to newly authorized rate of return, properly ordered a refund of all revenues collected that were in excess of newly authorized rate of return.

England, J., dissented and filed opinion in which Sundberg, C. J., concurred.

West Headnotes

[1] Public Utilities ⇐129
317Ak129 Most Cited Cases
(Formerly 317Ak7.10)

A regulated public utility is entitled to an opportunity to earn a fair or reasonable rate of return on its invested capital. West's F.S.A. § 364.14.

[2] Public Utilities ⇐129
317Ak129 Most Cited Cases
(Formerly 317Ak7.10)

A fair rate of return to which a regulated public utility is entitled should be sufficient to assure confidence in the financial integrity of the enterprise so as to maintain credit and to attract capital. West's F.S.A. § 364.14.

[3] Public Utilities ⇐129
317Ak129 Most Cited Cases
(Formerly 317Ak7.10)

The purpose of establishing a fair or reasonable rate of return for a public utility is to fairly compensate investors for the risks they have assumed. West's F.S.A. § 364.14.

[4] Public Utilities ⇐129
317Ak129 Most Cited Cases
(Formerly 317Ak7.10)

Debt, preferred stock, and common stock are the three main sources of investment capital upon which the rate of return is primarily based and, whereas the cost of the first two sources can be mathematically derived, the cost of common stock is a matter of economic judgment, with each of the costs expressed in terms of percentage then being multiplied by that particular source's capitalization ratio to achieve a weighted average. West's F.S.A. § 364.14.

[5] Public Utilities ⇐129
317Ak129 Most Cited Cases
(Formerly 317Ak7.10)

On calculating a rate of return based primarily upon cost of investment capital, the Public Service Commission can make further adjustments to account for such things as accretion, attrition, inflation, and management efficiency. West's F.S.A. § 364.14.

[6] Telecommunications ⇐335
372k335 Most Cited Cases

The Public Service Commission properly refrained from holding a comprehensive rate-making proceeding and, hence, from considering the extensive testimony pertaining to the appropriate

rate of return at the interim hearing the primary purpose of which was to fix temporary rates based upon known and easily measurable changes which had caused the telephone utility rates to be unjust and unreasonable. West's F.S.A. § 364.14.

[7] Public Utilities ⇐167
317Ak167 Most Cited Cases
(Formerly 317Ak17)

A formal hearing does not need to be held if there is no disputed issue of material fact or if waived by all the parties and, if during an informal proceeding a dispute arises as to a material fact and one of the parties insists upon a formal proceeding, there is nothing to prevent the **Public Service Commission** from making all of the evidence presented at the informal proceeding part of the record of the formal proceeding. West's F.S.A. § 120.57(1).

[8] Public Utilities ⇐120
317Ak120 Most Cited Cases
(Formerly 317Ak7.1)

Since the **Public Service Commission** is unable to determine at the time of the interim hearing the amount of the **utility's** revenues, if any, which are excessive, a determination which can be made only after a comprehensive rate-making proceeding has been held, and since a part of that determination is the rate of return which the **utility** should be authorized to earn during the pendency of the full rate-making proceeding, the **Commission** may base its **refund order** upon the newly established rate of return so long as the new rate is based upon data that existed before the **Commission** issued its interim order. West's F.S.A. §§ 120.57(1), 364.14.

[9] Telecommunications ⇐347
372k347 Most Cited Cases

The **Public Service Commission** was not required to **order** the telephone **utility** to **refund** all of its revenues collected during the pendency of the full rate-making hearing that were in excess of its previously established rate of return ceiling and was not required to allow **utility** to keep all the revenues collected that were not in excess of the newly authorized rate of return ceiling. West's F.S.A. §§ 120.57(1), 364.14.

[10] Public Utilities ⇐120
317Ak120 Most Cited Cases

(Formerly 317Ak7.1)

The existence of a rate of return range does not limit the authority of the **Public Service Commission** to adjust rates even though a **public utility's** rate of return may fall within the authorized range and, if a **public utility** is consistently earning a rate of return at or near the ceiling of its authorized rate of return range, the **Commission** may find that its rates are unjust and unreasonable even though the presumption lies with the **utility** that the rates are reasonable and just. West's F.S.A. §§ 120.57(1), 364.14.

[11] Telecommunications ⇐347
372k347 Most Cited Cases

Discretion was vested in the **Public Service Commission** to determine the amount of revenues collected by telephone **utility** during interim period which were excessive so long as that amount did not exceed amount **ordered** subject to **refund** at interim hearing and, by pegging amount of **refund** to newly authorized rate of return, properly **ordered** a **refund** of all revenues collected that were in excess of newly authorized rate of return. West's F.S.A. §§ 120.57(1), 364.14.

[12] Telecommunications ⇐347
372k347 Most Cited Cases

If there had been uncontroverted evidence that telephone **utility's** future earnings would be less than its authorized rate of return, **utility** would have been justified in earning more than its rate of return to offset that amount, but since this was not the case, the **Public Service Commission** properly **ordered** a **refund** of all revenues collected that were in excess of the newly authorized rate of return. West's F.S.A. §§ 120.57(1), 364.14.

*964 Jerry M. Johns, Gen. Counsel, Altamonte Springs, for United Tel. Co. of Florida.

Earl B. Hadlow and John T. Sefton of Mahoney, Hadlow & Adams, Jacksonville, William B. Barfield, Miami, and Robert W. Sterrett, Jr. and Fred A. Walters, Atlanta, Ga., for Southern Bell Tel. and Tel. Co.

Jack Shreve, Public Counsel, Michael McK. Wilson, Deputy Public Counsel, and Benjamin H. Dickens, Associate Public Counsel, Tallahassee, for the Citizens of the State of Florida,

cross-petitioners.

Arthur C. Canaday, Gen. Counsel, William S. Bilenky, Deputy Gen. Counsel and Virginia Daire Reber, Associate Gen. Counsel, Tallahassee, for the **Florida Public Service Commission**, respondents.

BOYD, Justice.

This cause is before us to review a **Public Service Commission (commission) order** directing United Telephone Company of Florida (United) to refund excess revenues collected during the pendency of a full scale rate making proceeding. We have jurisdiction. Art. V, s 3(b)(3), Fla.Const.

This case began when the public counsel petitioned for a show cause order and immediate rate making proceedings on September 29, 1978. Public counsel asserted that for the year preceding the filing of the petition United had been earning revenues in excess of the ceiling of its last authorized rate of return range of 9.0%-9.2%. [FN1] He requested the **commission order** United to show cause why its rates should not be reduced and to schedule interim rate making hearings. Before responding to this petition, the **commission** in **Order No. 8513** initiated a full scale rate making proceeding under section 364.14, **Florida Statutes (1977)**, establishing June 30, 1978 as the end of the test year, and in **Order Nos. 8742 and 8773** authorized other **utilities** to intervene, including Southern Bell Telephone and Telegraph Company (Southern Bell). On March 22, 1979, the **commission** issued **Order No. 8782** granting the public counsel's petition and ordering that an interim rate making proceeding be held on April 11. In this order the **commission** explained that if it found after the interim hearing that United's rates were excessive, the **commission** had the authority to either prescribe new rates which would effectuate the decrease or maintain the present rates with the excessive revenues being subject to refund. For purposes of this case we will not distinguish between these two methods of effectuating an interim rate decrease. Cf. *Askew v. Bevis*, 283 So.2d 337 (Fla.1973) (amount of rate relief granted by the **Public Service Commission** was placed under bond on condition that refunds be paid to customers if utility failed to improve its service).

FN1. This range was established by **Public Service Commission Order No. 7109** rendered February 18, 1976.

After the interim proceeding, the **commission** rendered **Order No. 8855** on May 1, 1979, finding that approximately 3.3 million dollars of United's annual gross revenues were in excess of the ceiling of its last authorized rate of return and were therefore unjust and unreasonable. The **commission ordered** United to set aside \$275,000 per month beginning May 1, which amount would be subject to refund upon the completion *965 of the comprehensive rate making proceeding.

The comprehensive rate making proceeding was concluded on January 14, 1980, when the **commission** rendered **Order No. 9208**, the subject of our review in this case. The **commission** found that United's rate of return should be 9.62% encompassed by a range of 9.16% to 10.07% and that the adjusted rate base for the test year ending June 30, 1978, was \$154,158,358. Despite the increase in United's allowable rate of return, the **commission** found that United was still earning an excess of \$2,803,093 on an annual basis. Therefore the **commission ordered** United to reduce its rates by that amount and refund the appropriate portion of excess revenues collected since May 1, 1979. ★

United filed a petition for writ of certiorari, in which Southern Bell joined. The two companies claimed that the **commission** lacks the statutory authority to hold interim rate decrease proceedings and that if the **commission** does have that authority it cannot order a refund of amounts of revenues collected that are not in excess of the newly authorized rate of return ceiling. The public counsel filed a cross brief [FN2] claiming that the **commission** does have the authority to reduce rates on an interim basis but that the amount to be refunded should be based on the previously, not the newly, authorized rate of return ceiling. In addition public counsel raised a new issue concerning the **commission's** calculation of a working capital allowance. [FN3] Naturally, in its answer briefs the **commission** defended the actions it had taken.

FN2. The **Public Service Commission** filed a motion to strike public counsel's brief as being untimely filed under Fla.R.App.P.

9.110(f). The commission's motion is premised upon the belief that public counsel is not a respondent to this proceeding. Since this premise is erroneous in light of Fla.R.App.P. 9.020(f), we deny the motion.

FN3. United filed a motion to strike portions of the public counsel's cross reply brief which were not limited to this issue. The contents of a cross reply are limited to "argument in response and rebuttal to argument presented in the answer brief." Fla.R.App.P. 9.210(e). This language indicates that the contents of a cross reply brief should be limited to issues initially raised by the cross appellee. We therefore grant the motion.

We will first consider the question of whether the commission has the authority to order interim rate decreases. Petitioners United and Southern Bell claim that the section which the commission proceeded under, section 364.14,[FN4] cannot be interpreted as giving the commission the implied authority to reduce rates on an interim basis. They point out that the statute specifically provides that upon finding that the rates are unjust or unreasonable, the commission must determine just and reasonable rates *966 "to be thereafter observed and in force...." s 364.14, Fla.Stat. (1977). They argue that calculating new rates after a full rate making proceeding and applying them to the interim period constitutes unlawful retroactive rate making. See *City of Miami v. Florida Public Service Commission*, 208 So.2d 249 (Fla.1968).

FN4. 364.14 Readjustment of rates, charges, tolls, etc.; hearing; order compelling facilities to be installed, etc.

(1) Whenever the commissioners shall find, after a hearing had upon their own motion or upon complaint, that the rates, charges, tolls, or rentals demanded, exacted, charged, or collected by any telegraph company or telephone company for the transmission of messages by telegraph or telephone, or for the rental or use of any telegraph line, telephone line, or any telegraph instrument, wire, appliance,

apparatus, or device or any telephone receiver, transmitter, instrument, wire, cable, apparatus, conduit, machine, appliance, or device, or any telephone extension or extension system, or that the rules, regulations, or practices of any telegraph company or telephone company affecting such rates, charges, tolls, rentals, or service are unjust, unreasonable, unjustly discriminatory, or unduly preferential, or in anywise in violation of law, or that such rates, charges, tolls, or rentals are insufficient to yield reasonable compensation for the service rendered, the commissioners shall determine the just and reasonable rates, charges, tolls, or rentals to be thereafter observed and in force, and fix the same by order as hereinafter provided.

(2) Whenever the commissioners shall find after such hearing that the rules, regulations, or practices of any telegraph company or telephone company are unjust or unreasonable, or that the equipment, facilities, or service of any telegraph company or telephone company are inadequate, inefficient, improper, or insufficient, the commissioners shall determine the just, reasonable, proper, adequate, and efficient rules, regulations, practices, equipment, facilities, and service to be thereafter installed, observed and used and fix the same by order or rule as hereinafter provided.

The commission and public counsel respond by arguing that the procedure used in this case is the reverse of the "make whole" procedure authorized by this Court in *Southern Bell Telephone and Telegraph Co. v. Bevis*, 279 So.2d 285 (Fla.1973). In that case we stated that if a company showed that its rate of return was below the minimum previously authorized by the commission, it made a prima facie case for approval of an interim rate increase. We also stated that if the commission was in doubt as to the propriety of the rate of return, it could grant the interim increase contingent upon the outcome of the full hearing and require the company to refund any part of the interim increase which was later found to be improper. We specifically stated that our decision in *City of Miami* was never meant to preclude the commission

from making interim increases contingent on the outcome of a full hearing. By the same token that decision does not preclude the **commission** from making interim decreases contingent upon the outcome of a full hearing. Since there is no logical reason for distinguishing between rate increase proceedings and rate decrease proceedings, we find that the **commission** is authorized to order interim rate decreases upon finding that a company is earning revenues in excess of its maximum allowable rate of return.

The question we are faced with now is how much money collected during the interim period should be refunded. United argues that it should have to refund only the amount of revenues collected that are in excess of 10.07%, the ceiling of the newly authorized rate of return range. Public counsel argues that the new rate of return should be applied prospectively and that the refund should be based upon 9.20%, the ceiling of the previous rate of return range. As mentioned earlier the **commission** took to the middle ground and ordered the refund of any collected revenues that were in excess of the newly authorized rate of return of 9.62%. To resolve this dispute we need to analyze the purpose of and method of calculating a public utility's rate of return.

[1][2][3] A regulated public utility is entitled to an opportunity to earn a fair or reasonable rate of return on its invested capital. *Gulf Power Co. v. Bevis*, 289 So.2d 401 (Fla.1974). A fair rate of return is for the benefit of the utility's investors. *Gulf Power Co. v. Bevis*, 296 So.2d 482 (Fla.1974). This amount "should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain credit and to attract capital." *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603, 64 S.Ct. 281, 288, 88 L.Ed. 333 (1944); see also *Bluefield Waterworks & Improvement Co. v. Public Service Commission*, 262 U.S. 679, 43 S.Ct. 675, 67 L.Ed. 1176 (1923). Therefore the purpose of establishing a fair or reasonable rate of return is to "fairly compensate investors for the risks they have assumed...." *Permian Basin Area Rate Cases*, 390 U.S. 747, 792, 88 S.Ct. 1344, 1373, 20 L.Ed.2d 312 (1968).

[4][5] The method of calculating a rate of return is primarily based upon calculating the cost of investment capital. There are three main sources of

investment capital: debt, preferred stock and common stock. The cost of the first two sources can be mathematically derived whereas the cost of common stock is a matter of economic judgment. Each of these costs expressed in terms of percentage is then multiplied by that particular source's capitalization ratio to achieve a weighted average. The sum of these weighted averages is the rate of return. After this figure is reached, the commission can make further adjustments to account for such things as accretion, attrition, inflation and management efficiency.

As an example we give the calculations used by the commission in deriving the 9.62% rate of return in this case:

	Amount	Capitalization Ratio	Cost Rate	Weighted Average
Common Equity	\$121,052,725	45.71%	13.25%	6.06%
Long Term Debt	112,909,200	42.63	8.34	3.56
Deferred Taxes	30,077,430	11.36	--	--
Investment Tax Credit	813,112	.30	--	--
	\$264,852,467	100.00%		9.62%

*967 The commission found there was insufficient evidence in the record to support any further adjustments. There are no calculations for preferred stock since all of it had been redeemed by June 30, 1978.

The main dispute in this case is the assessment of the cost of United's common stock. United's witness testified that the cost of common equity based upon the test year was 14.25%, whereas the public counsel's witness testified that the cost was between 11% and 12%. The commission felt that United was overstating the cost of common equity and that public counsel was understating it and therefore compromised the two positions by finding that the cost of common equity based on the test year was 13.25%. Although United presented supplemental testimony, the commission did not rely upon the additional evidence, but instead based its decision on data that was gathered and available before the interim hearing was held.

[6] The commission properly refrained from considering the extensive testimony pertaining to the appropriate rate of return at the interim hearing. To have done otherwise would have been tantamount to holding a comprehensive rate making proceeding. The purpose of the interim hearing is to fix temporary rates based upon known and easily measurable changes which have caused the utility's rates to be unjust and unreasonable.[FN5] Since changes in the cost of common equity are not easily calculable, they are not proper subjects for interim hearings.

FN5. One of the major problems the

commission faced at the interim hearing was the introduction of relevant evidence within a minimum amount of time. Much of the evidence was repetitious in that it had been presented at a previous informal proceeding which had apparently been attended by public counsel. Unfortunately the commission operated under the presumption that it could not consider that evidence nor base an interim order on it since it was obtained through an informal proceeding held pursuant to section 120.57(2), Florida Statutes (1978 Supp.). The commission erroneously concluded that it could only issue an interim order after holding a formal proceeding under section 120.57(1). A formal hearing does not need to be held if there is no disputed issue of material fact or if waived by all the parties. If during an informal proceeding a dispute arises as to a material fact and one of the parties insists upon a formal proceeding, there is nothing to prevent the commission from making all of the evidence that had been presented at the informal proceeding part of the record of the formal proceeding.

[7][8] That does not mean that the amount to be refunded must necessarily be calculated by the previously authorized rate of return. To hold so would defeat the purpose of allowing the utility to collect excess revenues subject to refund. The commission is unable to determine at the time of the interim hearing the amount of the utility's revenues, if any, which are excessive. Such a determination

can only be made after a comprehensive rate making proceeding has been held. A part of that determination is the rate of return which the utility should be authorized to earn during the pendency of the full rate making proceeding. Therefore the commission may base its refund order upon the newly established rate of return so long as the new rate is based upon data that existed before the commission issued its interim order.

[9][10] Thus the commission is not required to order United to refund all of its revenues collected during the pendency of the full rate making hearing that were in excess of its previously established rate of return ceiling of 9.2%. Nor is the commission required to allow United to keep all the revenues collected that were not in excess of the newly authorized rate of return ceiling of 10.07%. The figure of 10.07% merely establishes the top end of the rate of return range which was calculated to be 9.16% to 10.07%. By establishing a rate of return range in addition to establishing a specific rate of return, the commission is acknowledging *968 the economic reality that a company's rate of return will fluctuate in the course of a normal business cycle. Earnings in excess of the authorized rate of return could possibly be offset by lower earnings in later years. Thus the purpose of having a range is to give the commission some flexibility in deciding whether a public utility's rates should be changed. The existence of the range does not limit the commission's authority to adjust rates even though a public utility's rate of return may fall within the authorized range. For example, if a public utility is consistently earning a rate of return at or near the ceiling of its authorized rate of return range, the commission may find that its rates are unjust and unreasonable even though the presumption lies with the utility that the rates are reasonable and just. The commission's discretion in this matter is not annulled by the establishing of a rate of return range.

[11][12] We therefore hold that the commission has the discretion to determine the amount of revenues collected during the interim period which are excessive so long as that amount does not exceed the amount ordered subject to refund at the interim hearing. In this case we do not find that the commission abused its discretion. By pegging the amount of refund to the newly authorized rate of return, the commission was taking a neutral stance. If there had been uncontroverted evidence that United's future earnings would be less than its

authorized rate of return, then United would have been justified in earning more than its rate of return to offset that amount. Since this is not the case, the commission properly ordered a refund of all revenues collected that were in excess of the newly authorized rate of return.

We now come to public counsel's claim that the commission departed from the essential requirements of law in the method used in calculating United's working capital. At the hearing public counsel proposed a different method of calculating working capital. The commission found fault with both methods so it ordered a generic investigation into the matter. In the meantime it ordered that the traditional method proposed by United be utilized and that the amount of associated revenues be collected subject to refund. Thus this issue has not been adequately presented to us and we therefore refrain from commenting upon the matter.

We affirm the Public Service Commission's order in all its aspects.

It is so ordered.

ADKINS, OVERTON, ALDERMAN and
McDONALD, JJ., concur.

ENGLAND, J., dissents with an opinion in which
SUNDBERG, C. J., concurs.

ENGLAND, Justice, dissenting.

In the face of a clear statutory directive proscribing retroactive rate making [FN1] and uniform precedents both in and out of Florida construing precisely that legislative limitation against the commission's action in this case,[FN2] I must dissent from by colleagues' conclusion that the Public Service Commission had inherent authority to order a refund of any amounts collected by United Telephone Company between May 1, 1979, and January 23, 1980. The legislature recently chose to confer upon the commission the very authority it now claims to possess,[FN3] but because this statute has only *969 prospective effect, it does not govern this litigation. In the

absence of an applicable statute permitting the action taken here, I do not believe that we can substitute good motives or ostensibly equitable principles for legislative authorization.

FN1. Section 364.14(1), Florida Statutes (1979), provides that "the commissioners shall determine the just and reasonable rates ... to be thereafter observed and in force" (emphasis added).

FN2. *City of Miami v. Florida Pub. Serv. Comm'n*, 208 So.2d 249, 259-60 (Fla.1968) ; *Public Utils. Comm'n v. United Fuel Gas Co.*, 317 U.S. 456, 63 S.Ct. 369, 87 L.Ed. 396 (1943); *Pacific Tel. & Tel. Co. v. Public Utils. Comm'n*, 62 Cal.2d 634, 401 P.2d 353, 44 Cal.Rptr. 1 (1965); *Michigan Bell Tel. Co. v. Michigan Pub. Serv. Comm'n*, 315 Mich. 533, 24 N.W.2d 200 (1946).

FN3. Section 366.071(2)(b), Florida Statutes (1980), gives the commission the power to order collection and refund of revenues in a proceeding for interim decrease in rates. It became law in 1980. Ch. 80-35, s 8, Laws of Fla.

I recognize that the Court approved inherent authority to make interim rate increases in *Southern Bell Telephone and Telegraph Co. v. Bevis*, 279 So.2d 285 (Fla.1973), before specific legislation conferred express authority. [FN4] I also recognize that, conceptually, the authority for rate decreases and rate increases must flow from the same source, whether inherent or express. Nonetheless, I would not duck the problems of inherent authority simply by conceding that precedent from this Court provides the rationale to continue the "flip side" of an earlier practice.

FN4. Regarding the vitality of *Southern Bell* after legislative action, see *Maule Indus., Inc. v. Mayo*, 342 So.2d 63 (Fla.1976).

The evolution of more sophisticated rate making procedures in Florida is manifest in our laws. The legislature has taken giant strides in the regulatory arena in the last seven years. An advocate for the public has been created.[FN5] File and suspend rate making procedures now exist for the benefit of utility companies.[FN6] Public Service Commissioners have been removed from elective politics.[FN7] In short, the regulatory climate in Florida has undergone significant reform.

FN5. s 350.061, Fla.Stat. (1979).

FN6. s 366.06(4), Fla.Stat. (1979).

FN7. s 350.031, Fla.Stat. (1979).

This Court's *Southern Bell* decision, I submit, is a relic of a bygone era and should not be resurrected in this enlightened age. See *Citizens of Florida v. Mayo*, 333 So.2d 1, 6 n.12 (Fla.1976).

SUNDBERG, C. J., concurs.

403 So.2d 962

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STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of)
MICHIGAN PAY TELEPHONE ASSOCIATION)Case No. U-11756
et al., against **AMERITECH MICHIGAN** and) (After Remand)
GTE NORTH INCORPORATED.)
_____)

At the March 16, 2004 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. J. Peter Lark, Chair
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On August 10, 1998, the Michigan Pay Telephone Association (MPTA) filed a complaint regarding rates for the payphone services offered by Ameritech Michigan (now SBC Michigan [SBC]) and GTE North Incorporated (now, Verizon North Inc. [Verizon]). The MPTA's complaint sought a Commission determination that SBC and Verizon had failed to comply with certain provisions of the Michigan Telecommunications Act (MTA), MCL 484.2101 et seq., the federal Telecommunications Act of 1996 (FTA), 47 USC 151 et seq., and orders issued by the Federal Communications Commission (FCC). Specifically, the complaint sought Commission determinations concerning whether (1) prices for network services were consistent with the new services test (NST) adopted by the FCC; (2) respondents' payphone operations are required to pass an imputation test pursuant to Section 362 of the MTA, MCL 484.2362; and (3) payphone services respondents provide to independent payphone operators (IPPs) are discriminatory.

Following a contested case hearing, Administrative Law Judge Daniel E. Nickerson, Jr., issued his Proposal for Decision (first PFD) in which he concluded that SBC and Verizon had not complied with

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the NST. SBC and Verizon filed exceptions to those conclusions.

On March 8, 1999, the Commission issued an order in which it found that the MPTA had failed to meet its burden to show that SBC's and Verizon's payphone service rates did not comply with NST. The Commission further stated that it was not persuaded either that the NST required it to adopt the MPTA's approach, or that the results of that approach would be preferable to the rates then in place. The Commission specifically rejected the MPTA's assertion that the services sold to IPPs should be compared to the wholesale unbundled network elements (UNEs) sold to providers of basic local exchange service, which were priced in Cases Nos. U-11280 and U-11281. The Commission found that IPPs should be charged as business customers, not as wholesale customers.

The Commission further rejected the MPTA's position that the end-user common line (EUCL) charge must be deducted from rates imposed on IPPs. However, the Commission did find that Section 362 of the MTA, MCL 484.2362, required SBC and Verizon each to perform and file an imputation analysis and subsidy analysis regarding IPP services within 45 days of the date of the order.

The MPTA appealed the March 8, 1999 order to the Michigan Court of Appeals (Court of Appeals). On October 23, 2001, the Court of Appeals affirmed the Commission's determinations in an unpublished opinion in its Docket No. 219950.

Thereafter, the MPTA applied for leave to appeal to the Michigan Supreme Court. While that appeal was pending, on March 4, 2002, the FCC entered an order finding that the Commission's March 8, 1999 order appeared to be inconsistent with the FCC's order in In the matter of Wisconsin Public Service Commission, CCB/CPD No. 00-01, Memorandum and Opinion and Order, rel'd January 31, 2002 (Wisconsin Order). In April 2002, the MPTA and the Commission filed a joint motion before the Michigan Supreme Court to remand this matter back to the Commission for further consideration in light of the Wisconsin Order. On June 24, 2002, the Michigan Supreme Court vacated the Court of Appeals' decision and remanded this case back to the Commission. MPTA v MPSC, 466 Mich 883 (2002).

On July 10, 2002, the Commission set a briefing schedule for the remanded proceedings. However, in its October 3, 2002 order, after examining the filed briefs, the Commission found that the parties should be given the opportunity to supplement the record before the Commission decided how the

Wisconsin Order would affect this case and whether any refunds might be appropriate. Moreover, the Commission noted that the Wisconsin Order was then pending on appeal. The Commission reasoned that the extended time might allow for action to be completed on that appeal. The Wisconsin Order was affirmed in all respects by the United States Court of Appeals for the District of Columbia on July 11, 2003.

On November 5, 2002, a prehearing conference was held before Administrative Law Judge Barbara A. Stump (ALJ). The MPTA, SBC, Verizon, AT&T Communications of Michigan, Inc. (AT&T), MCI WorldCom (MCI), and the Commission Staff (Staff) participated in the proceedings. Evidentiary hearings for cross-examination were held on April 8 and 9, 2003. The record after remand consists of 772 pages of transcript.

Except for the Staff, all participants filed briefs and reply briefs on May 9 and 30, 2003, respectively. On June 30, 2003, the ALJ issued her Proposal for Decision (PFD) in which she concluded that the Commission's original findings and conclusions in this case were supported by the record and the law, and should be reaffirmed. She therefore recommended that the Commission deny the MPTA's complaint in its entirety.

On July 21, and August 4, 2003, the MPTA, SBC, Verizon, AT&T, and MCI filed exceptions and replies to exceptions, respectively.^[1]

On January 30, 2004, the MPTA filed supplemental authority for its position, which is comprised of a November 12, 2003 Proposed Interim Order of the Illinois Commerce Commission (ICC) involving similar issues as the present case. On February 23, 2004, Verizon filed a response to the MPTA's supplemental authority.^[2]

II.

LEGAL FRAMEWORK

Federal

Section 276 of the FTA, 47 USC 276 provides in part:

(a) . . . [A] Bell operating company that provides payphone service

(1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and

(2) shall not prefer or discriminate in favor of its payphone service.

(b) Regulations

(1) In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public, within 9 months after date of enactment of the Telecommunications Act of 1996, the [FCC] shall take all actions necessary . . . to prescribe regulations that

(A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphones, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation;

(B) discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on such date of enactment, and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of a compensation plan as specified in subparagraph (A);

(C) prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a), which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry III (CC Docket No. 90-623); . . .

In Section 276(c), Congress expressly provided that state requirements inconsistent with the FCC's regulations promulgated pursuant to this section are preempted.

In 1996, the FCC issued orders implementing 47 USC 276 in which, among other things, the FCC required Bell operating companies (BOCs) to comply with the NST when setting prices for network services sold to IPPs (collectively referred to as the Payphone Orders).^[3]

The NST requires that rates be set to recover the forward-looking direct cost of providing the service, plus a reasonable amount of overhead. In the Wisconsin Order, the FCC found that states setting payphone rates may use TELRIC or TSLRIC^[4] to determine forward-looking costs, with an added amount to recover overheads using UNE loading factors or, at the state's discretion, either the methodology explained in the FCC's Physical Collocation Order^[5] or that explained in its Open Network Architecture (ONA) Order.^[6]

Although the FCC found that it had no authority to require any provider other than the BOCs to comply with these structural safeguards, it encouraged state commissions to examine whether the same requirements could be applied to all local exchange companies that provide payphone service. In the FCC's view, the imposition of these requirements upon all providers would likely increase the number of, and competition between, payphone providers, which the FCC found would benefit the general

public.

State

Section 201 of the MTA, MCL 484.2201, provides the Commission jurisdiction to administer the MTA and all federal telecommunications laws, rules, orders, and regulations that are delegated to the state. That section further admonishes the Commission to exercise its jurisdiction and authority consistent with the MTA and applicable federal law.

Section 318 of the MTA, MCL 484.2318, prohibits a local exchange service provider from discriminating in favor of its, or an affiliate's, payphone service over a similar service offered by another provider. Further, that section requires each local exchange carrier in Michigan to comply with all nonstructural safeguards adopted by the FCC for payphone service.

III.

DISCUSSION

Effect of the Wisconsin Order

SBC and Verizon argued that the Wisconsin Order changed the NST such that if the Commission were to find SBC's rates fail to comply with the NST, it should do so on a prospective basis only. The MPTA argued that the Wisconsin Order merely clarified the FCC's previous orders concerning the NST. After reviewing the arguments, the ALJ rejected each of SBC's arguments and concluded that the Wisconsin Order did not change the NST, but merely clarified it.

SBC and Verizon except and argue that the NST has changed since its original formulation. They argue that the Wisconsin Order contains holdings that represent substantive changes in the NST. For example, they argue, the NST now requires that payphone rates, including overhead allocations, be established on the basis of forward-looking costs, and permits states to adopt TELRIC pricing. Another new issue, according to SBC, is the requirement that the subscriber line charge (SLC) be removed from payphone rates. Additionally, SBC argues, the Wisconsin Order states that local usage is now subject to the NST. Finally, SBC notes, rates for payphone services provided to IPPs may now include certain retail costs in calculating direct costs.

The Commission finds that the Wisconsin Order did not change existing law. Rather, it is a

reiteration of the requirements that the FCC set forth in its 1996 payphone orders, and merely restates and clarifies what the law according to the agency is and has been.

The Commission rejects the argument that the inclusion of forward-looking cost methodologies in calculations for purposes of the NST changed the substance of the NST. The ALJ correctly noted that the FCC had rejected this claim by finding that the FCC's "longstanding precedent shows that [the FCC has] used forward-looking cost methodologies where [it has] applied the [NST]." Wisconsin Order, ¶43.

The Commission further rejects the contention that permission to use TELRIC pricing modified the NST. In the Wisconsin Order, the FCC specifically found this portion of the Common Carrier Bureau's order clarified the NST, and did not create new standards. The FCC rejected the proffered interpretations of its previous orders that might indicate otherwise. See Wisconsin Order, ¶ 64.

Further, the Commission rejects the argument that requiring the payphone rate to be reduced by the SLC makes the Wisconsin Order new law, rather than a clarifying statement. On this issue, the FCC in the Wisconsin Order affirmed the Bureau's determination in the underlying order, which was explicitly based on longstanding FCC precedent in applying the NST. See FCC DA 00-347, rel'd March 1, 2000, ¶12. Thus, accounting for all revenue sources cannot be said to be a new requirement first stated in the Wisconsin Order.

Likewise, the Commission rejects the argument that submitting usage charges to the NST was new at the time of the Wisconsin Order. The Commission notes that the FCC specifically relied upon its prior Payphone Orders in finding that all charges for payphone service must be subjected to the NST, and rejected interpretation of those orders that argued otherwise.

Finally, the Commission finds that the FCC's comment that certain retail costs could be included in direct costs for providing payphone services does not render the decision new law. Rather, the FCC merely noted that those costs have never been precluded from recovery to the extent they are properly justified.

Applicability of the NST to Verizon

The ALJ found that the Commission had previously decided the issue concerning whether Verizon's payphone service rates must comply with the NST and that the issue was not among those remanded by the Michigan Supreme Court. Verizon excepts and argues that the Commission should reconsider its position in light of the FCC's finding that it did not have the authority to require local exchange carriers other than BOCs to comply with Section 276. It argues that the Wisconsin Order and the affirming appellate order recognize that Section 276 does not apply to non-BOCs, such as Verizon.

The Commission rejects Verizon's arguments that its payphone service rates should not be subjected to the NST. The Commission previously discussed this issue in the March 9, 1999 order in this case. That discussion and its conclusions are hereby reaffirmed. Moreover, the Commission's October 2, 2002 order stated that this issue would not be revisited on remand. *Id.*, pp. 4-5.

Compliance of Payphone Rates with the NST

On this set of issues on remand, the ALJ found that the MPTA failed to meet its burden of proof of the allegations that the payphone service rates of SBC and Verizon do not comply with the NST. Among other things, the ALJ concluded that the MPTA had failed to distinguish the retail services it purchases from the other retail offerings of these two local exchange carriers (LECs). Moreover, she stated that even if the Commission found that the Wisconsin Order modified the NST, that the IPP service rates for both providers are compliant with the NST. Specifically, the ALJ rejected the arguments that SBC and Verizon should be required to use the UNE methodology to calculate overhead allocations when setting rates for IPP services. The ALJ noted that the FCC has taken the view that methods to demonstrate compliance with the NST are not limited to TELRIC or TSLRIC, although states are permitted to use those methodologies. She found that the FCC approved three methods for demonstrating compliance with the NST, with no single method required or preferred for justifying the overhead allocation factors.

Finally, the ALJ found that both SBC and Verizon properly applied their respective methodologies to demonstrate that their IPP rates comply with the NST. She rejected the MPTA's argument that the EUCL must be subtracted from the IPP rates. The ALJ found that the EUCL charge is an intrastate charge that was not referenced in the Wisconsin Order and is beyond the FCC's jurisdiction.

The MPTA excepts to these findings and conclusions, and, backed by AT&T and MCI, argues that neither LEC has demonstrated that its IPP rates comply with the NST. On the other hand, SBC and Verizon support the ALJ's conclusion that the MPTA failed to meet its burden of proving that the IPP rates do not comply with the NST.

As reflected in the discussion below, the Commission finds that, except for the ALJ's treatment of the EUCL charge, the PFD's conclusion that SBC and Verizon sufficiently demonstrated that their respective IPP rates comply with the NST should be affirmed.

Permissible Considerations

A. Business Line Rates

In its first exception, the MPTA argues that the ALJ inappropriately compared the LECs' IPP and business rates when reviewing whether those rates complied with the NST. According to the MPTA, the FCC explicitly rejected the comparison of IPP rates to business rates when determining compliance with the NST. The MPTA quotes the following from the Wisconsin Order:

The LEC Coalition claims that BOCs are free to apply to payphone line service rates whatever markup over direct cost is incorporated in their business line rates, even though business line rates may include subsidies for other BOC services. The Coalition asserts that BOCs have virtually unlimited flexibility in determining the overhead component of payphone service rates because "the amount of overhead costs that are recovered in the rate does not affect whether the rate is based on costs." The LEC Coalition argues that any overhead loading a BOC might choose is "reasonable" for purposes of the [NST] so long as it is justified by "some plausible benchmark."

We reject the LEC Coalition's argument. . . We have not simply accepted any "plausible benchmark" proffered by a BOC.

Id. ¶¶55-56 (footnotes deleted). MPTA exceptions, p. 12 (emphasis deleted).

The MPTA argues that any reliance on the Commission's 1999 order in this proceeding is wrong, and the Commission should not follow the ALJ's "complete disregard" of the Wisconsin Order and the FCC's subsequent finding that the Commission's 1999 order appeared to be inconsistent with the Wisconsin Order.

SBC responds that the ALJ's comparison of IPP rates and services to those provided to business lines is a reasonable analysis under the circumstances, and that such comparison has not been foreclosed. It argues that the Wisconsin Order does not preclude that comparison. Moreover, SBC

argues, neither the Commission's 1999 order nor the PFD rely solely on a comparison of SBC's IPP rates to its business line rates, but rather rest on the totality of the record evidence. SBC argues that its original cost data and the supplemental comparative services analysis that it produced on remand amply support the ALJ's conclusion. SBC argues that even without the business line comparison, the Commission may adopt the ALJ's recommendations.

SBC further argues that the comparison of business line rates to IPP rates was not done as a substitute for the NST analysis, but rather as a response to the MPTA's claim that SBC must use a uniform overhead loading methodology based on UNE pricing. SBC notes that the business rate comparison was used as more of a reality check to explain why a deviation from the MPTA's suggested methodology is appropriate.

Verizon argues that this exception is a straw man argument that mischaracterizes the ALJ's observations that were based on the Commission's 1999 order by taking them out of context. It notes that the Commission's 1999 finding that IPPs are business customers means only that they are not entitled to purchase payphone services at wholesale or UNE rates. Verizon states that the FCC has repeatedly sustained that proposition, and it argues that there is no inconsistency between that conclusion and the Wisconsin Order.

The Commission is persuaded that it may compare business line rates with IPP rates as one factor to be examined in its assessment of whether the companies' IPP rates comply with the NST. Further, the Commission is still persuaded that IPPs are not telecommunications providers, which are entitled to obtain services provided by the LECs at UNE rates. However, the Commission does not conclude that IPPs should necessarily be treated the same as all other retail customers, because of legal constraints on payphone service rates outlined above. Rather, it is incumbent upon the Commission to determine whether the IPP rates of these two LECs meet the NST as expressed by the FCC in the Wisconsin Order. That analysis requires resolving the question whether IPP rates recover the direct costs of the services provided and a reasonable allocation of the LEC's overhead. As SBC notes, the Wisconsin Order does not prohibit looking at business line rates as a point of comparison. However, that order does require that the LECs provide more than evidence of such a comparison to justify their IPP rates.

B. Congressional Intent to Encourage Widespread Payphone Deployment

The MPTA argues that the ALJ failed to recognize a Congressional "mandate" for widespread deployment of payphones. It argues that the PFD is without any discussion concerning the impact of non-cost-based rates on the MPTA and the related decline in the number of payphones in Michigan during the period following April 15, 1997. It argues that the record reflects a drop of 21% in the number of payphones in Michigan from 1999 to 2001. The MPTA further argues that the Commission is obligated to enact policies and issue orders that encourage the widespread deployment of payphones. Increasing the cost of doing business, it argues, will not further that goal. According to the MPTA, adoption of its proposed TSLRIC-based rates will encourage additional payphone deployment.

SBC responds that the evidence in the record suggests that it is not IPP rates that are hurting the deployment of additional payphones. Rather, SBC argues, the industry has been affected by a combination of over-investment, aggressive business expansion, and large debt burdens, as well as the increased availability and affordability of wireless technology, with its mobility and convenience. SBC argues that a decrease in its IPP rates will not affect those factors.

Verizon adds that the MPTA's argument is both misplaced and moot. Verizon argues that the MPTA did not advance an argument in its initial or reply briefs concerning payphone deployment. It argues that the Commission should not fault the PFD for not addressing an argument that the MPTA did not raise.

There is little doubt that the Congress sought to encourage the deployment of payphones both in number and dispersion. Congress considered such deployment to be a benefit to the general public. Congressional belief that IPPs could be discouraged from deployment of payphones, if the LEC with which they competed was able to charge unreasonable prices for IPP service, is also apparent from the statute. Pursuant to state and federal mandates, the Commission cannot and will not permit the LECs to charge rates that are in excess of that permitted by the NST. However, the Commission agrees with SBC that there are many factors working against the viability of payphones in Michigan, perhaps the most important of which is the availability and popularity of wireless phone use.

Application of the NST

The MPTA argues that to reach her finding that the IPP rates for SBC and Verizon comply with the

NST, the ALJ ignored record evidence and employed a strained analysis to explain her findings.

Moreover, the MPTA argues, the ALJ accepts cost evidence that has been previously rejected by the Commission and that uses overhead methodologies that do not comply with the FCC prescribed methodologies. The MPTA argues that the Commission may not approve IPP rates that are based on cost studies that were rejected as being invalid.

A. SBC

As the complainant, the MPTA has the burden to demonstrate that SBC did not properly use the chosen method, or that proper use of the comparable services method would result in a finding that IPP rates do not comply with the NST.

MPTA attempts to meet this standard by arguing that SBC failed to adhere to the requirements of the comparable services analysis that it used to justify its rates. It argues that SBC did not perform any sort of method in its May 1997 compliance filing. Rather, the MPTA argues, SBC's witness Dr. Kent A. Currie presented his version of the comparative services analysis only after remand.

Further, the MPTA argues, SBC used an average overhead, which the FCC specifically rejected, when it held that the maximum overhead loading allowed cannot exceed the lowest overhead amount applied to any rate attributable to the comparable services. Citing ¶53 of the Wisconsin Order, the MPTA insists that SBC must identify on a rate element by rate element basis, the direct cost of the comparable service and determine the overhead loadings associated with that service. The appropriate overhead loading for any particular element is the lowest resulting overhead when costs are subtracted from rates for comparable services. In contrast, the MPTA argues, SBC's analysis results from aggregating revenues from at least eight different services or groups of services when constructing the revenue amount that is ultimately compared to SBC's costs.

The MPTA goes on to argue that SBC's proposed comparable services analysis ignores the actual costs incurred by SBC as verified by SBC. In fact, the MPTA argues, SBC's proposed direct costs vary significantly from those costs that SBC verified to the Commission that SBC incurs when providing payphone service to itself, as reflected in the imputation analysis submitted pursuant to the Commission's March 8, 1999 order. The MPTA argues that if SBC had used the costs from the

imputation analysis, the resulting overhead allocation percentage would be very close to that proposed by the MPTA, using SBC's approved TSLRIC costs and UNE overhead allocations. Moreover, the MPTA argues, Dr. Currie admitted that he ignored the EUCL charges in his analysis.

SBC responds that the ALJ properly rejected the MPTA's assessment of the direct cost studies that SBC relied upon, because that assessment is factually and legally erroneous. In SBC's view, the MPTA has misread the PFD and has mischaracterized the state of the law.

Further, SBC argues that the ALJ did not ignore the MPTA's arguments. Rather, it argues, the ALJ dismissed with explanation the MPTA's claim that the Commission had previously rejected the cost studies relied upon by SBC. SBC argues that the MPTA has erroneously used statements made by SBC and Verizon (that the Commission accepted SBC's and Verizon's earlier cost studies and supporting papers after requiring certain modifications) to support its contention that these parties admitted that the Commission previously rejected each of their respective cost studies.

SBC represents that it used the comparable services method as described in the FCC's Physical Collocation Order. SBC argues that it (1) used total direct costs for SBC's payphone operations using the TSLRIC cost-based studies submitted to the Commission in May 1997; (2) determined the total overhead margin recovered on those payphone operations by subtracting the direct costs from the aggregate revenues received; and (3) divided the total overhead margin by the direct costs to develop an overhead loading factor as a percentage of direct costs. SBC argues that because the overhead loading factor for its own retail payphone service exceeds the overhead loading factor for the service provided to IPPs, the latter meets the NST.

SBC argues that the MPTA did not present any new or additional evidence in this remand proceeding and did not change any of its theory, methodology, or application of the NST, and thus failed to meet its burden of demonstrating that SBC's IPP rates do not comply with the NST. Moreover, it argues, the MPTA did not respond to any of Dr. Currie's criticisms of the MPTA's proposed costs and methodology. Therefore, SBC submits, the MPTA did not meet its burden of proof as the complainant in this proceeding.

As to the MPTA's claim that the PFD relies on rejected direct costs, SBC argues that the previous cost studies were not rejected, but rather approved with modification. Moreover, it argues that, prior to

the remand of this proceeding, the Commission accepted the submitted costs from SBC's earlier cost studies and supporting papers, and, SBC argues, the decision to do so is not subject to re-litigation.

Thus, SBC argues, the MPTA's arguments on this issue are correctly identified in the PFD as beyond the scope of this proceeding.

SBC further argues that the MPTA would have the Commission adopt the cost data that is not based on the data used by SBC's cost witness in the original proceeding, but rather on the MPTA's attempt to estimate what SBC's costs should be. In contrast, SBC argues, the data provided by both its original witness and Dr. Currie, who testified in the remand proceeding, are based on actual SBC data and are more accurate than the data used by the MPTA's witness. Even so, SBC asserts, that data underestimates SBC's actual costs.

SBC further argues that the ALJ correctly concluded that its comparable services methodology complies with the FCC requirements and rejected the MPTA's arguments to the contrary. In SBC's view, the ALJ's findings are credible, reasonable, supported by the record, and should be upheld. It argues that contrary to the MPTA's argument, the comparable services analysis is intended to examine the costs and overhead allocation for complete comparable services, rather than individual rate elements. SBC argues that Dr. Currie demonstrated that SBC's IPP rates recover an overhead allocation that is less than that recovered through the comparable services test. Therefore, SBC argues, the Commission should affirm the ALJ's determination that the NST has been satisfied in relation to SBC's IPP rates.

SBC goes on to argue that Dr. Currie calculated average overhead allocations because (1) the comparable services in this case are in reality single services with a multitude of capabilities; (2) IPPs and SBC's payphone unit both compete on packages of services rather than individual services; (3) taken on an individual level, most of the individual services are not competitive comparable services; and (4) SBC simply did not have available any detailed information on each specific payphone location at issue or on the comparative rates paid by end users for different types of calls placed at SBC and IPP payphones. In performing the analysis, SBC argues, it did what the comparable services test requires to the greatest extent possible and it fully justified why slight deviations were necessary. Therefore, SBC argues, the MPTA's exceptions on this issue should be rejected.

The Commission finds that the ALJ properly rejected the MPTA's argument that the LECs should be required to use the UNE method for determining whether the IPP rates comply with the NST. The FCC provided in the Wisconsin Order three options for LECs to use for reaching that determination. The Commission is not aware of any authority, and the MPTA cites none, that would require a LEC to use one method over the others. Thus, the Commission concludes, each company may use the method best suited to its purposes to demonstrate that its IPP rates comply with the NST. If the provider's rates meet the NST through any appropriate analysis, the inquiry is at an end.

Further, the Commission accepts as appropriate SBC's use of aggregated costs and revenues to determine the overhead allocation applicable to IPP services. According to Dr. Currie, the competition it faces for payphone service is really for locations, and the costs vary from location to location as the incentives needed to win the location change. Dr. Currie stated that he did not have the costs broken down to a location level and so aggregated the costs and revenues of like services in order to determine what contribution to overhead SBC's own payphone services supply. It appears to the Commission that Dr. Currie did what made sense in order to use the comparable services method to demonstrate compliance.

The Commission further finds that toll service is an appropriate competitive comparable service for local usage. In so doing, the Commission rejects the MPTA's proposed analysis for usage because it is not structured in the same manner as rates for usage are structured. SBC's IPP rates do not include a call set-up charge that is separate from a duration charge. The Commission is satisfied that SBC's calculations are more appropriate for the manner in which IPP rates are charged.

The Commission further rejects the MPTA's argument that SBC's analysis used costs that the Commission previously rejected in SBC's TSLRIC cost study cases, Cases Nos. U-11280 and Case No. U-11831. According to Dr. Currie, he used approved costs from Case No. U-11280 for constructing his analysis. See, 17A Tr 2161.

Additionally, the Commission rejects the MPTA's argument that SBC understated its cost to provide payphone service because the costs it used do not match those costs presented in the company's imputation analysis filed with the Commission pursuant to the March 1999 order. Dr. Currie explained that the imputation analysis does not match the analysis presented in this case because the two answer

different questions. In the present proceeding, Dr. Currie focused on determining the costs to SBC to provide payphone service in Michigan. In the imputation analysis, SBC's expert focused on the costs and revenues associated with Ameritech Payphone Services (APPS), the unit of SBC that provides retail payphone service, among other things. The latter analysis used the rates charged APPS by SBC as the costs. An overestimation of costs for an imputation analysis does no harm, but inclusion of additional inappropriate costs would skew the results of an analysis intended to determine the overhead allocation factor.

Further, the Commission finds that the overhead loading factor as established by SBC's analysis is a reasonable one and complies with the NST, because it is lower than the overhead loading factor implicit in SBC's payphone operations.

However, the Commission finds that SBC's analysis is flawed in one respect, the failure to account for the EUCL charge. The FCC has made clear that non-cost based charges must be accounted for when determining whether the IPP rates comply with the NST. In the Wisconsin Order, the FCC required a credit for the federal SLC, and indicated that any other non-cost based charges must be accounted for as well. There is no dispute that the EUCL charge is not a charge based on the costs of providing IPP service. SBC argues that the FCC may not require elimination of the EUCL charge, an intrastate charge. However, the preemptive language of 47 USC 276 and the Legislature's directive in Section 318 of the MTA require the Commission to follow the reasoning of the FCC with regard to this charge. As the MPTA points out, SBC may still impose the EUCL charge as it always has, but it must account for it in setting lawful IPP service rates that are compliant with the NST. Therefore, to be compliant with the NST, SBC's rates must take into account the EUCL charge. To the extent that including the EUCL charge would render the IPP rates in excess of the reasonable allocation of the overhead SBC calculated, SBC's IPP rates do not comply with the NST. With this required adjustment, SBC's IPP rates comply with the NST.

B. Verizon

The MPTA argues that Verizon's proposed overhead allocation methodology is not consistent with the ONA/ARMIS^[7] methodology permitted by the Wisconsin Order. In fact, the MPTA argues that the

ONA/ARMIS methodology is not clear in any FCC order, and its expert was unable to duplicate the results reached by the FCC staff in its calculations pursuant to that methodology. With such lack of clarity from the source, the MPTA argues that the Commission cannot be assured that any analysis performed pursuant to that methodology is consistent with its requirements.

Additionally, the MPTA argues, Verizon did not use its own publicly available ARMIS data as contemplated by the Wisconsin Order. Rather, the MPTA asserts, Verizon used its confidential Uniform System of Accounts (USOA) data that is not available to the public or the complainants. The MPTA argues that use of confidential USOA data is not endorsed by either the Wisconsin Order or the ONA Tariff Order. In the MPTA's view, Verizon's "defiance of the explicit requirements is fundamentally fatal to the PFD's conclusion that Verizon's overhead allocations lead to rates that comply with the NST." The MPTA's exceptions, p. 28.

Further, the MPTA argues, Verizon's use of USOA data does not produce forward-looking cost studies. Rather, it relies on historical accounting information used by the FCC for its separations process. Thus, it identifies embedded rather than forward-looking costs.

Moreover, the MPTA argues, Verizon failed to submit any cost justification for its usage charges assessed on the IPPs. In the MPTA's view, the absence of discussion concerning the usage charges in the PFD makes its conclusions unsustainable.

Verizon responds that the MPTA has mischaracterized the PFD as not based upon the evidence when the PFD articulates its basis on the record evidence and refers the Commission to its brief and reply brief after remand.

In its brief after remand, Verizon notes that the Commission has already found Verizon's rates for IPP service compliant with the NST, which was affirmed by the Court of Appeals. It argues that a review of the Wisconsin Order provides no reason to reach a different outcome in the remand proceedings. It notes that in the original proceeding, its witness testified that he established a price floor at the direct costs of the service. To those direct costs, Verizon adds a 42.9% fully allocated overhead to the service as a reasonable estimate of overhead loadings to yield a price ceiling. It states that "[o]nce a floor and ceiling were established, a statewide composite average tariff rate was computed, using the COCOT [customer owned coin operated telephone] line rate and end user subscriber line charge

(EUSLC) and using the COPT [coin operated public telephone] coin line rate and EUSLC." Verizon brief after remand, p. 10. It asserted that no rates were below the floor and no rates were above the ceiling. Thus, it argues, no adjustment is necessary.

Verizon further argues that, viewed in light of the Wisconsin Order, the Commission's original order in this proceeding reached a correct conclusion. Verizon notes that the NST is a flexible test that does not mandate the use of any single methodology to justify overhead allocation factors. Verizon argues that it used the same data that is reported in its ARMIS filings, just at a more detailed level than the publicly reported ARMIS data.

The Commission finds the MPTA's objections to Verizon's method of demonstrating compliance with the NST should be rejected. Verizon used one of the options the FCC provided for in the Wisconsin Order, the ONA/ARMIS method from the ONA Tariff Order, and interpreted the requirements of that order in a reasonable manner. The MPTA's argument that Verizon did not correctly perform the analysis is undercut significantly by the MPTA's admission that it does not really understand that test and has not been able to duplicate its results. The FCC has indicated that the NST is a flexible test, and has provided different methods of determining whether the payphone service rates are compliant with it. Verizon legitimately chose one of those methods.

Further, the Commission finds that the record demonstrates that Verizon's analysis included usage as a part of the analysis and appropriately accounted for the EUSLC in its analysis of the COCOT rates. However, it appears that Verizon ignored the EUSLC in analyzing the coin line rates. See 12 Tr. (Confidential afternoon session), p. 21. Verizon must therefore recalculate that portion of the cost study. To the extent that the EUSLC places the total price for coin lines above the ceiling, Verizon's rates do not meet the NST. With that correction, the Commission finds that Verizon's use of the ONA/ARMIS methodology for demonstrating compliance with the NST is acceptable.

Finally, the Commission finds that the MPTA's objection to Verizon's use of TSLRIC figures that do not match the results of the Commission's orders in Cases Nos. U-11281 and U-11832 should be rejected. The approved figures were not available at the time that Verizon made its compliance filings in May 1997. The Commission's previous order approved the use of costs as projected by Verizon, and there is no reason now to second-guess those costs based on Commission orders after the fact.

Status as Telecommunications Carriers

The MPTA argues that the ALJ, relying upon the Commission's March 1999 order, mischaracterized its position and found that the MPTA's members were seeking wholesale rates as telecommunications carriers. The MPTA argues that it has never requested that its members be treated as telecommunications carriers in order to receive UNE rates. The MPTA argues that the NST requires a state commission to establish rates for payphone access services based upon the direct cost of the service, plus a cost-based just and reasonable overhead allocation to recover the provider's overhead costs. The MPTA argues that it merely maintained that the LEC's overhead allocation should be set at the same forward-looking UNE overhead allocation approved by the Commission in the LEC's respective cost cases.

The Commission finds that the result sought by the MPTA is the same as if it were a telecommunications carrier. That does not mean that it seeks to have its members defined as telecommunications carriers, with the attendant responsibilities that would entail.

Refunds

The MPTA argues that refunds must be required for charges in excess of rates that comply with the NST. It argues that it has provided the necessary data to enable the Commission to set NST compliant rates and to compute and order refunds for the period during which SBC and Verizon charged in excess of rates permitted by the NST. It argues that refunds are required by the FCC's Payphone Orders and are consistent with other FCC decisions and state commission decisions implementing the NST.

The MPTA points to Section 318(2) of the MTA and argues that the failure of SBC and Verizon to comply with the NST constitutes a violation of the MTA, which is compensable under Section 610 by refunding excessive rates. Additionally, the MPTA seeks attorney fees and costs. It points out that SBC and Verizon were required to comply with the NST no later than April 15, 1997. Thus, the MPTA argues, the obligation to refund excessive rates should commence on that date.

SBC responds that a Commission-ordered refund would constitute retroactive ratemaking and run afoul of the filed rate doctrine. It argues that the Commission is a statutory creature and is limited in its powers to that granted by the Legislature. SBC argues that those powers do not include granting

retroactive rate revisions and refunds.

SBC argues that any authority to order refunds under Section 601 of the MTA is dependent upon a finding that there was a violation of the MTA. SBC insists that no such finding has or can be made in this case, because it merely charged the IPPs according to its filed and accepted tariffs, which were approved by the Commission in the March 1999 order, which was affirmed by the Court of Appeals. SBC argues that this case does not involve a statutorily set rate that the carriers violated, as most of the cases cited by the MPTA had been.

SBC argues that even if Michigan law does not strictly prohibit refunds here, granting the MPTA's request for refunds is not appropriate because the amount of those refunds has not been established with any reasonable certainty. SBC critiques the MPTA's method and calculation of requested refunds.

Finally, SBC argues that the MPTA is not entitled to attorney fees and has failed to cite any authority for the Commission to grant its request. In fact, SBC argues, one of the cases that the MPTA relies upon to support its request was reversed by the Court of Appeals. In re MCTA Complaint, 239 Mich App 686 (2000). It points out that Section 601 was recently amended to permit the Commission to award attorney fees, and argues that only the relief available at the time the complaint was filed should be permissible. Moreover, SBC argues, this is an NST compliance proceeding, and not a MTA violation case. Because no MTA violations have been proved, no relief under Section 601 should be granted.

Verizon joins SBC in arguing that no refunds should be granted in this case. It argues that the testimony of the MPTA's witnesses is legally and factually incompetent. Verizon states that it had collected from its customers rates found in its lawfully established tariffs. Even if the Commission finds that Verizon's rates do not comply with the NST, Verizon argues, no refunds are necessary and any claim for a refund should be summarily dismissed.

Moreover, Verizon argues, the Commission may evaluate whether a LEC's IPP rates comply with the NST, but the federal statute does not permit the Commission to set IPP rates.

Finally, Verizon argues, the MPTA's request for refunds should not be granted because the proposed refund calculation is admittedly inaccurate. Verizon points to the testimony of the MPTA's witness that testified that the MPTA essentially relied upon one large customer in computing refunds it desired from Verizon. According to Verizon, that witness admitted that the customer was not typical or

representative of the MPTA members, which include small providers operating in small towns rather than large metropolitan areas.

To the extent that SBC and Verizon have charged IPP rates in excess of the ceiling imposed by the NST when the EUCL charge or EUSLC is taken into consideration, those companies have charged unlawful rates and a refund is due to their customers.

The Commission rejects the arguments of SBC and Verizon that claim refunds would violate the filed rate doctrine or the prohibition against retroactive ratemaking. Federal and state authority required that SBC's and Verizon's rates comply with the NST no later than April 15, 1997. SBC and Verizon should each file a report within 30 days of the date of this order in which they determine, pursuant to the terms of this order, the amount charged IPPs since that time that is in excess of the ceiling permitted by the NST when the EUCL charge (SBC) or the EUSLC (Verizon) is taken into account. The report shall include interest on the excess collected at the respective company's short-term borrowing rate computed on a quarterly basis. If no challenge to that filing is made within 15 days of its submission, SBC and Verizon shall issue refunds in accordance with those reports as soon as is practicable.

The Commission further finds that it has the authority to order these refunds pursuant to Section 601 of the MTA. To the extent that SBC and Verizon have collected excessive rates, there has been a violation of Section 318(2) of the MTA, which has resulted in economic damage to the MPTA members. Thus, refunds are authorized.

The Commission rejects SBC's characterization of this case as one that did not seek a finding of violation of the MTA, but sought justification of the IPP rates. This case began as a complaint in which the complainants sought remedies associated with the claim that the LECs had charged and were continuing to charge unlawful rates.

However, the Commission is not persuaded that it may award attorney fees in this case. At the time the complaint was filed and at the time of the March 1999 order, the Commission had no authority to grant attorney fees in this case. A subsequent amendment permitting the grant of attorney fees does not relate back to the beginning of this case. Moreover, even if granting attorney fees were permissible, the Commission would not find granting them appropriate in the present case.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 151 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.
- b. To the extent that their respective IPP rates exceed the ceiling calculated pursuant to the NST, SBC and Verizon have charged unlawful and excessive rates in violation of Section 318(2) of the MTA.
- c. SBC and Verizon shall each, within 30 days, file a report that details the amount by which their IPP rates exceeded the ceiling calculated pursuant to the NST when taking into account the EUCL charge or the EUSLC, and calculate the interest on those excess charges.
- d. If no objections to those reports are filed within 15 days of their submission, SBC and Verizon should issue the required refunds as soon as is practicable.
- e. Except for taking into account the EUCL charge in SBC's rates and the EUSLC in Verizon's rates, the complaint should be dismissed.

THEREFORE, IT IS ORDERED that:

- A. Within 30 days of this order, SBC Michigan and Verizon North Inc. shall file reports that detail the amount by which their rates, taking into account the end-user common line charge or the end-user subscriber line charge in their respective rates for service to independent payphone providers, exceed the ceiling calculated pursuant to the New Services Test, together with interest as set out in this order.
- B. If no objections to those reports are filed within 15 days of their submission, SBC Michigan and Verizon North Inc. shall issue refunds pursuant to those reports as soon as is practicable.
- C. Except for the relief granted, the complaint of the Michigan Pay Telephone Association is dismissed.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

000285

/s/ J. Peter Lark

Chair

(SEAL)

/s/ Robert B. Nelson

Commissioner

/s/ Laura Chappelle

Commissioner

By its action of March 16, 2004.

/s/ Mary Jo Kunkle

Its Executive Secretary

000286

end-user subscriber line charge in their respective rates for service to independent payphone providers, exceed the ceiling calculated pursuant to the New Services Test, together with interest as set out in this order.

B. If no objections to those reports are filed within 15 days of their submission, SBC Michigan and Verizon North Inc. shall issue refunds pursuant to those reports as soon as is practicable.

C. Except for the relief granted, the complaint of the Michigan Pay Telephone Association is dismissed.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

Chair _____

Commissioner _____

Commissioner _____

By its action of March 16, 2004.

Its Executive Secretary

000285

In the matter of the complaint of)

MICHIGAN PAY TELEPHONE ASSOCIATION)Case No. U-11756

et al., against **AMERITECH MICHIGAN** and) (After Remand)

GTE NORTH INCORPORATED.)

Suggested Minute:

"Adopt and issue order dated March 16, 2004 finding that SBC Michigan and Verizon North Inc. collected excessive rates from independent payphone providers and providing a process for refunding the excessive rates, as set forth in the order."

[1] In the exceptions and replies to exceptions filed by AT&T and MCI, these parties state their general concurrence with the MPTA's filings. This order reflects arguments raised by these parties only when they specifically discuss them in those filings.

[2] The Illinois decision is based on a different record and a different state statute. It is not binding on this Commission, and has little or no persuasive effect in this case.

[3] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, First Report and Order, 11 FCC Rcd 20541 (9/20/1996), Order on Reconsideration, 11 FCC Rcd 21233 (11/8/1996), aff'd in part and remanded in part, Illinois Pub Telecommunication Assoc v FCC, 117 F3d 555 (CA DC, 1997), Second Report and Order, 13 FCC Rcd 1778 (10/9/1997), vacated and remanded in part, MCI Telecommunications Corp v FCC, 143 F3d 606 (CA DC, 1997), Third Report and Order and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545 (2/4/1999), aff'd American Public Communications Counsel v FCC, 215 F3d 51 (CA DC, 2000).

[4] TELRIC refers to total element long run incremental cost. TSLRIC refers to total service long run incremental cost. Both are forward-looking costs often used to set prices for unbundled network elements.

[5] In the matter of Local Exchange Carriers' Rates, Terms and Conditions for Expanded interconnection Through Physical Collocation for Special Access and Switched Transport, CC Docket No. 93-162, Second Report and Order, FCC 97-208, 12 FCC Rcd 18730 (1997).

[6] In the matter of Open Network Architecture Tariffs of Bell Operating Companies, CC Docket No. 92-91, FCC Order 93-532, 9 FCC Rcd 440 (1993).

[7] ARMIS refers to Automated Reporting Management Information System, a federal mandatory reporting system, the data from which is publicly available.

GCL

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Florida Public)
Telecommunications Association)
for Expedited Review of BellSouth)
Telecommunications, Inc.'s Tariffs)
with respect Rates for Payphone)
Line Access, Usage, and Features.)

Docket No.: DN 030300-TD

May 3, 2004

FLORIDA PUBLIC TELECOMMUNICATIONS ASSOCIATION, INC.
RESPONSES TO BELL SOUTH'S SECOND SET OF
INTERROGATORIES (NOS. 37-45) AND SECOND REQUEST
FOR PRODUCTION OF DOCUMENTS (NOS. 9-10)

Florida Public Telecommunications Association, Inc. ("FPTA"), pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.340 and 1.280, Florida Rules of Civil Procedure, hereby files the following Responses to the Bellsouth Telecommunications, Inc. Second Set of Interrogatories (Nos. 37-45) and Second Request for Production of Documents (Nos. 9-10), dated April 15, 2004.

FPTA incorporates herein by reference all of its general and specific objections filed on April 22, 2004. Any responses provided by FPTA in response to this discovery are provided subject to and without waiving any of FPTA's previously filed objections.

FILED
MAY - 4 2004
FLORIDA PUBLIC SERVICE COMMISSION
THE FLORIDA CAPITAL

000289

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
BellSouth's 2nd Set of Interrogatories/Requests for Production
Item No. 38
Page 1 of 1

Request: Please supplement your response to Staff's First Set of Interrogatories, Item No. 4.

Response: FPTA cannot respond this Interrogatory at this time as it is awaiting information requested in discovery from BellSouth which is necessary to formulate a response. FPTA will supplement this response upon receipt of BellSouth's responses to the discovery propounded on it by FPTA.

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
BellSouth's 2nd Set of Interrogatories/Requests for Production
Item No. 39
Page 2 of 2

It is clear that BellSouth currently does not, and in the past has not, computed its overhead loadings in compliance with the methodologies outlined in the *Wisconsin Orders*, to-wit: the methodology outlined by the FCC in the *ONA Tariff Order*; the methodology set forth in the *Physical Collocation Tariff Order*; or, the UNE overhead loading factors. FPTA asserts that, if this Commission had the benefit of the *Wisconsin Orders'* clarification at the time it issued prior Orders, then it would have found BellSouth's PTAS rates to be non-compliant.

Additionally, this Commission did not address in Order Nos. PSC-98-1088-FOF-TL and PSC-99-0493-FOF-TL BellSouth's inclusion of SLC or EUCL charges in its PTAS rates. It is beyond dispute that inclusion of SLC and EUCL for PTAS was improper and permitted a double-recovery of costs. Yet, this Commission's Orders found that BellSouth's PTAS rates, which included EUCL, were compliant with the new services test.

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
BellSouth's 2nd Set of Interrogatories/Requests for Production
Item No. 41
Page 1 of 2

Request: Please supplement your response to Staff's First Set of Interrogatories, Item No. 23.

Response: (a) Yes.

(b) The South Carolina Public Service Commission (Docket No. 97-124-C - Order No. 1999-285) and the Tennessee Regulatory Authority (Docket No. 00409) have ordered refunds. The Kentucky Public Service Commission (Administrative Case No. 361), consistent with the request of the Kentucky Payphone Association, ordered "credits or refunds back to April 15, 1997."

(c) The amount ordered to be refunded by the South Carolina PSC equaled the "difference between the rates adopted herein and those rates PSPs actually paid, including any SLC and PICC, from April 15, 1997, until the date BellSouth places its new rates into effect" (p. 29-30 of the Order cited in part (b) above). According to the TRA Order (p.28 of the Order cited in part (b) above), "the Directors voted unanimously to require the LECs to pay as reimbursement any overpayment since April 15, 1997 adjusted to account for both inflation and the time value of money." In a footnote, the TRA defined "overpayments" as "the cumulative difference between the existing tariffed rates and the rates established in this proceeding." The Kentucky PSC ordered refunds or credits equal to the difference between the cost-based rates that it adopted and BellSouth's "existing tariffed rates." FPTA does not know the total amount ultimately refunded in each state.

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
BellSouth's 2nd Set of Interrogatories/Requests for Production
Item No. 42
Page 1 of 1

Request: Please supplement your response to BellSouth's First Set of Interrogatories, Item No. 2.

Response: FPTA cannot respond this Interrogatory at this time as it is awaiting information requested in discovery from BellSouth which is necessary to formulate a response. FPTA will supplement this response upon receipt of BellSouth's responses to the discovery propounded on it by FPTA.

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
BellSouth's 2nd Set of Interrogatories/Requests for Production
Item No. 44
Page 1 of 1

Request: Please supplement your response to BellSouth's First Set of Interrogatories, Item No. 12.

Response: FPTA cannot respond this Interrogatory at this time as it is awaiting information requested in discovery from BellSouth which is necessary to formulate a response. FPTA will supplement this response upon receipt of BellSouth's responses to the discovery propounded on it by FPTA.

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
BellSouth's 2nd Request for Production of Documents
Item No. 9
Page 1 of 1

Request: Please supplement your response to Staff's First Request for Production of Documents, Item No. 8.

Response: To the extent that documents responsive to this Request for Production were previously produced to BellSouth as part of FPTA's supplemental responses to Staff's 1st Discovery Requests, please refer to said production.

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition of Florida Public)
Telecommunications Association)
for Expedited Review of BellSouth)
Telecommunications, Inc.'s Tariffs)
with respect Rates for Payphone)
Line Access, Usage, and Features.)

Docket No.: DN 030300-TD

May 5, 2004

FLORIDA PUBLIC TELECOMMUNICATIONS ASSOCIATION, INC.
RESPONSES TO STAFF'S SECOND SET OF INTERROGATORIES (NOS 26-40)
AND
SECOND REQUEST FOR PRODUCTION OF DOCUMENTS (NOS 10-16)

Florida Public Telecommunications Association, Inc. ("FPTA"), pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.340 and 1.280, Florida Rules of Civil Procedure, hereby files the following Responses to the Florida Public Service Commission Staff Second Set of Interrogatories (Nos. 26-40) and First Request for Production of Documents (nos. 10-16), dated April 15, 2004.

FPTA incorporates herein by reference all of its general and specific objections filed on April 22, 2004. Any responses provided by FPTA in response to this discovery are provided subject to and without waiving any of FPTA's previously filed objections.

000303

Request: For purposes of the following requests, please refer to FPTA's response to Staff's First Set of Interrogatories, No. 1(c).

(a) Please identify where, through existing discovery and record information in this proceeding, this Commission is able to identify the number of applicable payphone lines in service since April 15, 1997 and the appropriate cost-based rate needed to determine the amount of any refund.

(b) For the period April 15, 1997 to date, please identify by month, FPTA's members who may be entitled to refunds.

(c) For each entity and period identified in response to (b), please identify the number of each member's payphone lines in service for which refunds would be applicable.

(d) For each entity and period identified in response to (b), please identify the monthly rate paid per payphone line.

(e) Please identify where, through existing discovery and record information in this proceeding, this Commission is able to identify the applicable payphone billing data since January 19, 1999, and the appropriate cost-based rates needed to determine the amount of any refund.

(f) For the period January 19, 1999, please identify by month, FPTA's members who may be entitled to refunds.

(g) For each entity and period identified in response to (f), please identify each member's pertinent billing data for which refunds would be applicable.

(h) For each entity and period identified in response to (f), please identify the monthly rates by element.

Request: For purposes of the following requests, please refer to FPTA's response to Staff's First Set of Interrogatories, No. 1(e).

(a) Does the FPTA have a specific proposal as to how and when any refunds should be implemented, collected, and distributed?

(b) If the response to (a) is affirmative, please describe in detail the FPTA's proposal regarding the implementation, collection, and distribution of any refunds in this proceeding.

(c) If the response to (b) is negative, please identify on what basis this Commission could render findings regarding the implementation, collection, and distribution of any refunds in this proceeding.

Response: (a) FPTA is open to any reasonable procedure to implement the requested refund, in accordance with past Commission practice. The FPTA is willing to consider use of the same process as the refund most recently effected in the settlement of the new services test case in North Carolina. In that settlement, the North Carolina Payphone Association and BellSouth cooperated to deliver the refund the applicable payphone service providers. The North Carolina Payphone Association gathered the information necessary to calculate the applicable refund and presented an invoice to BellSouth. BellSouth then requested documentation to support the refund claim, which information was provided by the association. Ultimately, BellSouth paid the refund amount to the North Carolina Payphone Association which then distributed the applicable amount to payphone service providers. It is the FPTA's understanding that the processing of the refund amount was completed successfully without any complaints or problems. FPTA is willing to facilitate any such refunds in this proceeding in a similar fashion.

(b) FPTA incorporates its response to Staff Interrogatory 28(a) above. Additionally, the FPTA previously provided this Commission with the Settlement Agreement effectuated in North Carolina and filed with the North Carolina Public Service Commission. FPTA believes that the North Carolina settlement can provide the framework for the reasonable implementation of a refund in these proceedings.

Request: For purposes of the following requests, please refer to FPTA's response to Staff's First Set of Interrogatories, No. 4(d), where it is indicated that the 1998 Florida Order is in conflict with the *Wisconsin Order*, and must be corrected "ab initio." Since the Wisconsin Order was not confirmed by the courts until 2003, and thus its findings presumably binding after that time, please explain why the FPSC's 1998 Order must be "corrected ab initio."

Responses: Section 276(c) of the Telecom Act specifically provides that "To the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements." The fact that the Wisconsin Orders were confirmed by the appellate court in 2003 does not alter the fact that these orders were merely confirming the FCC's "long standing policy," which was intended to be implemented in the original new services test orders and effective from the dates of those orders. Those orders pre-dated this Commission's 1998 Order and were the orders that this Commission's 1998 Order intended to implement. Thus, the 1998 Order was flawed when adopted and must be modified and given proper effect (under the preemptive provisions of Section 276 of the Telecom Act), now that the error has become confirmed by the federal court's upholding of the *Wisconsin Orders*. This result is buttressed by the twin mandates of Section 276 of the Telecom Act: (i) the widespread deployment of payphones for the benefit of the general public and (ii) the promotion of fair competition.

Response provided by: Bruce W. Renard

Request: For purposes of the following requests, please refer to FPTA's response to Staff's First Set of Interrogatories, No. 23.

(a) To the extent not provided in response to FPTA's forthcoming response to Interrogatory No. 23, please identify all states in which, to your knowledge, the state payphone association similar to that of the FPTA, is requesting refunds for prior period SLCs or EUCLs.

(b) For each state identified in response to (a), please indicate the proceeding and the status or outcome of the proceeding.

Response: (a) FPTA incorporates its response to Staff Interrogatory 23. Additionally, to FPTA's best knowledge, state payphone associations in each of the following states have requested refunds for prior periods of SLC or EUCL and those cases are currently pending: Connecticut, Massachusetts, Mississippi and Vermont.

(B) Each of those proceedings is pending:

Connecticut Department of Public Utility Control Docket No. 03-11-16

Massachusetts Department of Telecommunications & Energy
Docket DPU/DTE 97088197-18

Mississippi Public Service Commission. FPTA has not been able to locate a docket number for this proceeding.

Vermont Public Service Board Docket #6882

Response provided by: Bruce W. Renard
Don J. Wood

Request: For purposes of the following request, please refer to FPTA's response to BellSouth's First Set of Interrogatories/Admissions, No. 5.

(a) Please identify "all available" evidence that demonstrates BellSouth's payphone costs have declined over time.

(b) Please identify each PTAS rate element that BellSouth's PTAS study demonstrates that costs "have significantly reduced [sic]."

Response: (a) FPTA does not understand the question. However, FPTA will use its best effort to provide Staff with a response. BellSouth's "payphone costs," or its cost to provide payphone service, are not at issue in this proceeding. Rather, its cost to provide PTAS services are at issue. BellSouth utilizes the same service elements to provide PTAS service that it utilizes to provide other local exchange services, including UNEP elements. Attached to these responses is an analysis showing the reduction in BellSouth's network costs over time.

(b) The monthly PTAS line charge.

Response provided by: Don J. Wood

BellSouth Florida PTAS TSLRIC Cost Study Comparison

Cost Category	2003	1997
Loop	\$14.06	\$16.23
Termination	\$1.10	\$3.28
Usage	\$0.89	\$4.58
Blocking and Screening	\$0.15	\$0.26
TOTAL DIRECT COSTS	\$16.19	\$24.35

000315

Request: For purposes of the following request, please refer to FPTA's response to BellSouth's First Set of Interrogatories/Admissions, No. 33.

(a) Please identify the specific "series of cost results for local loops, switched line ports, and the various components of local usage" to which reference is made and upon which the FPTA presumably relies for its assertion that "BellSouth has presented conflicting direct cost results."

(b) Has BellSouth identified the documents on which it relies to yield its overhead loading factor?

(c) If the response to (b) is affirmative, please explain why the FPTA has not requested such documents.

Response: (a) FPTA incorporates its response to Staff Interrogatory Request 33.

(b) Yes.

(c) FPTA does not understand this request and will provide a response once it receives clarification from Staff.

Response provided by:

Don J. Wood

000317

Request: For purposes of the following request, please refer to FPTA's response to Staff's First Set of Interrogatories, No. 19. On what occasion(s) has BellSouth acknowledged, "that its business line rates subsidize its residential rates?" Provide docket number(s) and cite(s) if applicable.

Response: In paragraph 55 of the *Wisconsin Order* the FCC stated: "the LEC coalition claims that BOCS are free to apply to payphone line service rates whatever markup over direct costs is incorporated in their business line rates, even though business line rates may include subsidies for other BOC services." (emphasis added) The LEC Coalition, thus, admitted in its reply to the FCC in the *Wisconsin Order* proceedings that business line rates may include subsidies. Additionally, BellSouth has admitted in other state new services test proceedings that it uses its business rates generally, as a matter of policy, to recover most common costs and prices residential access rates at or below costs. See Direct Testimony of Sandy E. Sanders dated April 7, 1999 filed in Docket No. U-22632 before the Louisiana Public Service Commission. In her testimony, Ms. Sanders specifically states that "In the past, the Commission has chosen to recover most common costs from business and access services with all residence basic local exchange priced at or below costs." Moreover, after stating that PTAS is just another "business service," Ms. Sanders goes on to state: "The PSP rates in Louisiana were established in the context of Universal Service where business rates were priced above cost to support basic residential rates at low levels, frequently below costs." The context of Universal Service and subsidizing residential rates through business rates has historically been the policy of this Commission, similar to the Louisiana Commission.

Response provided by: Don J. Wood

Request: For purposes of the following request, please refer to BellSouth's response to Staff's First Set of Interrogatories, No. 1(c).

(a) Should the "offsets" that BellSouth references have any effect on the potential refunds the FPTA is seeking in this proceeding?

(b) If the response to (a) is affirmative, what impact would the "offsets" have? Be specific.

If the response to (a) is negative, please explain why.

Response: (a) No. BellSouth negotiated a business transaction in which it agreed that in consideration for any payphone service provider agreeing to utilize BellSouth to provide PTAS service for a minimum number of lines and either a one or two year commitment, BellSouth would provide certain discounts off the tariffed PTAS rate. BellSouth received the benefit of its bargain because the payphone service provider utilized BellSouth to provide PTAS services to those PTAS lines for the agreed period of time. BellSouth should not now receive an "offset" against refunds that must be made as a result of BellSouth's failure to charge PTAS rates in compliance with federal law.

(b) FPTA incorporates its response to Staff Interrogatory Request (a) above.

Response provided by: Bruce W. Renard
David S. Tobin, Esq.

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No: 030300-TP
Staff's 2nd Request for Production of Documents
Item No. 10
Page 1 of 1

Request: Please provide all documents that support your response to Interrogatory No. 31.

Response: FPTA has previously provided documents responsive to this requests. Additionally, FPTA is unsure what documents Staff is requesting from pending state proceedings and does not possess any documents responsive to this requests.

000323

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
Staff's 2nd Request for Production of Documents
Item No. 12
Page 1 of 1

Request: Please provide all documents that support your response to Interrogatory No. 34.

Response: FPTA is providing the FCC's Report and Order adopted by the FCC in Docket No. 96-128, *In the Matter of The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, on September 30, 2003.

000325

I. INTRODUCTION

1. In this Order, we adopt new payphone compensation rules that place liability on the facilities-based long distance carrier to compensate payphone service providers (PSPs) for payphone-originated calls that are completed on that facilities-based long distance carrier's platform. This facilities-based long distance carrier is the switch-based reseller (SBR) or interexchange carrier that completes the call on a switch that it owns or leases.¹ We also establish a payment mechanism for SBRs to compensate PSPs for this liability. In satisfying its liability obligation to a PSP, the SBR must establish its own call tracking system, have a third party attest that the system accurately tracks payphone calls to completion, and pay a PSP directly based on the SBR's own call tracking data. Other facilities-based long distance carriers in the call path, if any, must provide reports to the PSPs of payphone-originated calls switched to another facilities-based carrier's platform.

2. We adopt these rules to ensure that PSPs are "fairly compensated" for all SBR completed calls made from their payphones under section 276 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.² These rules satisfy section 276 by identifying the party liable for compensation and establishing a mechanism for PSPs to be paid. The rules we adopt today are based on what the Commission has learned from input over the past seven years from the payphone and SBR industries, and from experience in implementing section 276 in various orders addressing problems raised by the parties over the years.

3. This Order is the result of a court remand of an earlier attempt by the Commission to remedy problems in the payphone compensation rules. In January 2003, on a petition for review, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated and remanded this proceeding's *Second Order on Reconsideration*³ on the grounds that parties were not afforded proper notice and opportunity for comment.⁴ The D.C. Circuit held that the Commission violated the Administrative Procedure Act (APA) when it modified its rules without proper notice.⁵ The D.C. Circuit vacated the Commission's order, but stayed its mandate and its

¹ A "switch-based reseller" is a facilities-based long distance carrier that switches long distance traffic using a switch that it owns or leases. In those instances where the payphone-originated call is local, our rules apply to the local exchange carrier that completes the payphone call on a switch that it owns or leases. For purposes of this Order, we will refer to any carrier that completes a payphone call as the SBR. We note that the obligations of switchless long distance resellers are not altered by this Order.

² We refer to the Communications Act of 1934, as amended by the Telecommunications Act of 1996 and other statutes, as the Communications Act, or the Act. See 47 U.S.C. §§ 151 *et seq.* We refer to the Telecommunications Act of 1996 as the 1996 Act. See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

³ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Second Order on Reconsideration, 16 FCC Rcd 8098 (2002) (*Second Order on Reconsideration*); remanded sub nom., *Sprint Corp. v. FCC*, 315 F.3d 369 (D.C. Cir. 2003) (*Sprint*).

⁴ *Sprint*, 315 F.3d at 372, 378.

⁵ *Id.*

has examined various methods of: (1) identifying the party responsible for compensation; and (2) ensuring that PSPs are paid based on accurate data for every completed call.

6. In the *First Payphone Order*,¹¹ the Commission determined that "the primary economic beneficiary of payphone calls should compensate the PSPs."¹² In our prior orders, the Commission has identified three categories of such entities, depending on whether such entity completed the payphone originated call: (1) facilities-based long distance carriers (usually the interexchange carriers); (2) switchless long distance resellers; and (3) SBRs. In instances where interexchange carriers complete calls, the Commission concluded that the primary economic beneficiary was the interexchange carrier and required "all interexchange carriers that carry calls from payphones [. . .] to pay per-call compensation."¹³

7. In the case of switchless long distance resellers, the Commission recognized that although they are the primary economic beneficiary for calls made by their customers, they do not have the facilities to track calls.¹⁴ In the interests of lower costs and administrative convenience, the Commission placed the responsibility on the entity with control over the tracking data, the underlying facilities-based long distance carrier, to compensate the PSPs on the switchless reseller's behalf.¹⁵ The underlying facilities-based long distance carrier could then recover payphone compensation from its switchless reseller customers.¹⁶

(Continued from previous page)

(1990). Section 226(c)(1)(B), enacted in TOCSIA, provides that a telephone "aggregator" (an entity such as a PSP or a hotel that makes public telephones available using an OSP) must "ensure that each of its telephones . . . allows the consumer to use "800" and "950" access code numbers to obtain access to the provider of operator services desired by the consumer." 47 U.S.C. § 226 (c)(1)(B). This provision is implemented by the Commission's regulations at section 64.704(a), "Call blocking prohibited." 47 C.F.R. § 64.704(a). The proscription has the effect of also precluding PSPs from blocking calls to subscriber 800 numbers, because when toll-free numbers are dialed, no distinction exists between subscriber 800 calls and toll-free number access code calls. See *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, Second Report and Order, CC Docket No. 91-357, FCC Rcd 3251 (1992).

¹¹ *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-388, Report and Order, 11 FCC Rcd 20541 (1996) (*First Payphone Order*).

¹² *Id.* at 20584, para. 83.

¹³ *Id.* n. 293 In the *First Payphone Order*, for purposes of the payphone compensation rules, the Commission defined interexchange carriers to include LECs (both incumbent and non-incumbent) to the extent that LECs carry compensable payphone calls.

¹⁴ *Id.* at 20586, para. 86.

¹⁵ *Id.*

¹⁶ *Id.* (finding that facilities-based carriers could "impose the payphone compensation amounts on these [reseller] customers"); see also *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order on Reconsideration, 11 FCC Rcd 21233, 277, para. 92 (1996) (*Order on Reconsideration*) ("If a carrier does not maintain its own switching capability, then, as set forth in the [*First Payphone Order*], the first underlying carrier remains obligated to pay compensation to the PSP in lieu of its [reseller] customer that does not maintain a switching capability.").

locate the SBR responsible for payment and because the interexchange carriers were not maintaining call completion data for payphone originated calls.²⁴ In a *Petition for Clarification* of the payphone compensation rules, a coalition of PSPs argued that the rules were still unclear as to which carriers were responsible for compensating the PSPs.²⁵ The PSPs stated that interexchange carriers would not identify which SBRs were responsible for compensation.²⁶ More importantly, the PSPs contended that, in many instances, neither the interexchange carrier nor the SBR maintained call tracking data for payphone originated calls.²⁷ In the *Second Order on Reconsideration*, the Commission agreed that PSPs were suffering shortfalls in compensation when calls were routed from an interexchange carrier to a SBR.²⁸ The Commission was "persuaded by APCC's arguments that the failure in the compensation regime results from insufficient information about the reseller being made available to the PSP" and that SBRs have little incentive to come forward voluntarily with payments.²⁹

12. The Commission attempted to remedy the carriers' lack of accountability in self-identifying and call tracking. First, the Commission required the "first underlying facilities-based interexchange carrier to whom the LEC directly delivers the call to compensate the PSP,"³⁰ presumably because the PSPs would be able to identify the interexchange carrier even if it did not come forward. The interexchange carrier could then seek reimbursement from the SBR.³¹ Second, to address the issue of deficient call tracking data, the Commission conducted an examination of which entity in the call path was best situated to determine if a payphone originated call was answered by the called party.

13. At that time, the Commission concluded that a SBR was unable to determine whether a call originated from a payphone.³² In the *First Payphone Order*, the Commission required the local exchange carriers (LECs) to transmit with every payphone call the Automatic Number Identification (ANI) digits for each payphone, including each LEC payphone, to enable a facilities-based carrier to recognize in its call tracking system that a call had originated with a

²⁴ See *Petition for Clarification*, CC Docket No. 96-128, NSD File No. L-99-34, filed by RBOC/GTE/SNET Payphone Coalition (collectively the RBOC Payphone Coalition) (Feb. 26, 1999) (*RBOC Payphone Coalition Petition*).

²⁵ *Id.*

²⁶ *Further Notice*, 18 FCC Rcd at 11008, para. 9.

²⁷ *Id.*; see also OCMC Comments at 2-3.

²⁸ *Second Order on Reconsideration*, 16 FCC Rcd at 8103, para. 8.

²⁹ *Id.* at 8105, para. 15.

³⁰ *Id.*

³¹ *Id.* at 8106, para. 18.

³² *Id.* at 8105, para. 16.

16. In the *Further Notice*, the Commission tentatively concluded that, prior to the adoption of the *Second Order on Reconsideration*'s amendments to the payphone compensation rules, the "PSPs were not receiving fair per-call compensation."³⁹ The Commission further observed that:

a major source of [payphone compensation] shortfall resulted from the lack of information available to PSPs and that fact that PSPs [were] in the position of being dependent on switch-based resellers to identify themselves voluntarily as responsible for paying dial around compensation (which the Commission concluded [in the *Second Order on Reconsideration*] that resellers have little incentive to do.)⁴⁰

The Commission then invited comment on how it should amend the payphone compensation rules to remedy these problems.⁴¹

17. Comments filed in response to the *Further Notice* include filings from interexchange carriers, PSPs, SBRs, trade associations and industry groups.⁴² Although all commenters agree that the statute requires the Commission to "ensure that payphone service providers are fairly compensated" for every completed coinless call, opinions as to how to ensure execution of this requirement diverge. The facilities-based long distance carriers, many of which are also SBRs, generally oppose readoption of the rules promulgated in the *Second Order on Reconsideration* because, these commenters argue, they place obligations on them to guarantee debts owed by another party and in many instances require them to overcompensate the PSPs.⁴³ In addition, the SBR commenters generally oppose readoption of those rules because they would prefer to pay PSPs directly in order to avoid paying the interexchange carriers compensation for tracking the data and collecting payphone compensation on behalf of the PSPs.⁴⁴ On the other hand, the PSPs that filed as the American Public Communications Council (APCC) and the RBOC Payphone Coalition (RBOC Coalition) argue that the Commission should readopt the payphone compensation rules promulgated in the *Second Order on Reconsideration* for the reasons set

³⁹ *Further Notice*, 18 FCC Rcd at 11010, para. 14.

⁴⁰ *Id.*, at 11009-10, para. 13 (citing *Second Order on Reconsideration*, 16 FCC Rcd at 8105, para. 15).

⁴¹ *Further Notice*, 18 FCC Rcd at 11010-11, paras. 15-17.

⁴² Appendix A lists the commenters in this proceeding.

⁴³ IDT Corporation (IDT) Comments at 2-9; IDT Reply Comments at 1-2; Sprint Corporation (Sprint) Comments at 8-10; AT&T Comments at 17-19; WilTel Corporation, LLC (WilTel) Comments at 1-2; Global Crossing Comments at 8-10.

⁴⁴ Joint Comments of ASCENT, FOCAL, and US LEC (ASCENT Joint Comments) at 2.

20. As noted above, the *Second Order on Reconsideration* attempted to resolve these problems by making the interexchange carriers the collection agents for the PSPs. Because, after two years of experience with these rules, we find that this approach, although preferable to the rules that preceded it, did not optimally ensure fair compensation, we are adopting new rules today to replace it. The *Second Order on Reconsideration's* approach was predicated on the Commission's finding that only interexchange carriers had the capability to track payphone calls to completion.⁵⁰ In that order, the Commission found that the interexchange carriers could either (1) use existing technology to determine whether calls switched to a SBR's platform were completed by that SBR; or (2) use their bargaining power to negotiate contracts with SBRs whereby the SBRs would track calls switched to their platforms to completion and provide this call completion data to the interexchange carrier.⁵¹ Based on the record in this proceeding, we now agree with commenters that the interexchange carriers do not have the technology to track SBR directed calls to completion.⁵² Moreover, for the reasons discussed in more detail in sections C and D below, the interexchange carriers have generally not been able to negotiate reliable call tracking contracts with the SBRs.⁵³ Thus, since the implementation of that order's rules in 2001, the interexchange carriers have not been able to implement a means of tracking calls to completion, either through a technical solution or via contract.⁵⁴ As discussed further below, based on the current record, we now find that only the SBRs have the ability to track accurately payphone calls completed on their platforms because only SBRs possess all of the relevant call completion data.⁵⁵

21. Depending on how the interexchange carriers and the SBRs agreed to fulfill their respective payment obligations, PSPs may have been under or overcompensated. We find that the *Second Order on Reconsideration's* requirement making the interexchange carriers

⁵⁰ *Second Order on Reconsideration*, 16 FCC Rcd at 8105, para. 16.

⁵¹ *Id.*

⁵² See, e.g., AT&T Comments at 14, Attach. A, Declaration of Diane Parisi (AT&T Parisi Declaration) at para. 12 (stating that it is technically impossible for an interexchange carrier to determine whether a SBR completes a call after it is switched to the SBR's platform); Sprint Comments at 13 (asserting that SS7 signaling network does not possess data that would permit an interexchange carrier to track calls once they are switched to a SBR's platform); see also MCI Comments at 12-13; IDT Comments at 15; Letter from John E. Benedict, Senior Attorney, Sprint, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-128 (Aug. 14, 2003)(Sprint Aug. 14 *Ex Parte*), at 5.

⁵³ AT&T states that, after one and a half years, it has been able to negotiate only a handful of call completion tracking agreements with SBRs. AT&T Parisi Declaration at para. 18. We discuss, *infra*, why these call tracking agreements have proved unworkable.

⁵⁴ AT&T Comments at 14; Letter from Teresa Marrero, Senior Attorney, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-128 (Sept. 5, 2003) (AT&T Sept. 5 *Ex Parte*), at 1; Sprint Comments at 13; Sprint Aug. 14 *Ex Parte* at 5; MCI Comments at 12; IDT Comments at 15.

⁵⁵ See section C *infra* for a detailed discussion; see also Letter from James H. Lister, Attorney, CommuniGroup of K.C., Inc., d/b/a GCI, CommuniGroup of Jackson, Inc., Transtel Communications, Inc., NTS Communications, Inc., and Century Long Distance, LLC, (Sept. 12, 2003) (Joint SBR Sept. 12 *Ex Parte*) (stating that these SBRs have facilities to track calls to completion).

next bill.⁶³ In turn, the interexchange carriers would deduct this true-up from their next payment to the PSPs. In many cases, the PSPs and the interexchange carriers challenge the accuracy of SBR data and the incentives of SBRs to pay PSP compensation.⁶⁴ In this manner, the true-up process may arguably have resulted in undercompensation to the PSPs. Because the rules did not provide any methods to verify SBR data, however, it is impossible to make a conclusion in this regard.

23. In addition, because the guarantor requirement effectively compels SBRs to use interexchange carriers as collection agents, the interexchange carriers typically add surcharges to each payphone call to recover tracking and collection expenses.⁶⁵ Although the record indicates that many SBRs desire to pay PSPs directly to avoid this added expense,⁶⁶ the rules set forth in the *Second Order on Reconsideration* provide PSPs no incentive to do so, as they prefer to receive payment from the interexchange carrier instead.⁶⁷ Thus, the Commission's policy objective, articulated in the *Second Order on Reconsideration*, to encourage parties to enter into private contractual arrangements, has been frustrated by the way the rules have altered industry incentives.

24. In sum, applying two years experience with our rules, we find that although the *Second Order on Reconsideration* made significant progress towards remedying many problems associated with PSP compensation shortfalls, it did not optimally resolve other fairness issues. Thus, as described below, we adopt new rules that squarely place liability on the primary economic beneficiary of the PSP services, i.e., that carrier from whose switch a payphone call is completed. We further require carriers to provide PSPs more detailed information concerning the identity of that carrier when it is a SBR. Although, the new rules we adopt today more effectively address these concerns than do the rules adopted in the *Second Order on Reconsideration*, we also find it appropriate to adopt the rules from the *Second Order on Reconsideration* on a strictly interim and temporary basis – that is, until the transition period to the new rules has expired. We find that, they still ensure a better flow of compensation and information to the PSPs than did the rules that preceded them. As explained below, the rules we adopt today will result in better tracking of calls and more accurate amounts of compensation being paid. In the interim, however, the rules adopted in the *Second Order on Reconsideration* are the only tested way that we have of ensuring that PSPs are compensated during the short, additional time that will be needed to put the more effective system in place.

⁶³ AT&T Parisi Declaration at para. 19 ("Often 50 percent or more of the delivered calls [from AT&T to the SBR's platform] are identified as not completed during the true-up process.").

⁶⁴ See AT&T Comments at 16; Qwest Aug. 26 *Ex Parte* Attach.

⁶⁵ IDT Comments at 22-23; IDT Reply Comments at 12-13; Telstar Comments at 6.

⁶⁶ Joint SBR Sept. 12 *Ex Parte* at 2 (objecting to surcharges imposed by interexchange carriers).

⁶⁷ IDT Comments at 38.

C. SBR Liability

27. We conclude that, because SBRs are the primary economic beneficiaries of coinless payphone calls transferred to their switch and because they possess the most accurate call completion information for such calls, it is appropriate as both a legal and policy matter to assign them liability under section 276 to fairly compensate the PSPs.⁷³ Given the ambiguity of section 276 regarding which party is responsible for compensating the PSP, we look at the context in which the provision is applied. As noted above, we are guided by section 276's directive that PSPs receive "fair compensation" for each and every completed call. We continue to believe that the best way to implement this directive is to assign liability to the entity that is the primary economic beneficiary and the entity that possesses the most accurate data necessary to determine whether a payphone call has been completed. We conclude that for calls routed to a SBR switch for completion, this entity is the SBR.⁷⁴

28. *Primary economic beneficiary.* We find that SBRs are the primary economic beneficiaries receiving PSP services. The Commission first employed the phrase "primary economic beneficiary" in the *First Payphone Order* as a means of identifying the party responsible for compensating the PSPs under section 276.⁷⁵ Subsequently, the Commission held in the *Order on Reconsideration*, that SBRs were the "primary economic beneficiaries" of payphone calls and thus, responsible to pay PSP compensation.⁷⁶ Notably, even in the *Second Order on Reconsideration*, which was vacated on other grounds, the Commission did not reconsider its prior findings regarding which entities were the primary economic beneficiaries of payphone calls, but merely adopted a new mechanism for payphone compensation that the Commission then believed would resolve PSP difficulties in terms of call completion and compensation.⁷⁷

29. We find that an interexchange carrier is not the primary economic beneficiary when it is not the last carrier in the call path that completes a payphone call.⁷⁸ To illustrate, the SBR's

⁷³ See IDT Sept. 12 *Ex Parte* at 1 (maintaining that SBRs, as the primary beneficiary of toll free calls, must be responsible for their per call compensation).

⁷⁴ Bulletins requests that the Commission classify wireless and enhanced service providers as primary economic beneficiaries under our payphone compensation rules. Bulletins Comments at 15. We decline to do so because our *Further Notice* did not raise the issue of wireless and enhanced service providers, and the other commenters in this proceeding did not address this issue. The more appropriate means for Bulletins to bring this issue to the Commission's attention would be a petition for a rulemaking or a declaratory ruling.

⁷⁵ *First Payphone Order*, 11 FCC Rcd at 20584, para. 83

⁷⁶ *Order on Reconsideration*, 11 FCC Rcd at 21277, para. 92.

⁷⁷ *Second Order on Reconsideration*, 16 FCC Rcd at 8106, para. 18.

⁷⁸ AT&T Comments at 17; IDT Sept. 12 *Ex Parte*; Global Crossing Comments at 9 (arguing that responsibility should be assigned to the carrier that derives revenues from end-user payphone calls). *But see* Letter from Aaron M. Panter, Counsel, RBOC Payphone Coalition, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-128, (Sept. 22, 2003) at 1.

Circuit has held that section 276 does not permit us to use administrative convenience as a basis to require the larger interexchange carriers to pay payphone compensation owed by smaller carriers.⁸⁴ In addition, the D.C. Circuit affirmed our discretion not to require certain companies to pay the compensation owed by other delinquent companies.⁸⁵ Accordingly, we now find that the Commission overemphasized alleged administrative convenience in the *Second Order on Reconsideration* compared to the goal of ensuring fair compensation.

32. To the extent that APCC's argument is based on ease in collecting owed debts, the D.C. Circuit, in upholding the reasonableness of the Commission's decision in *APCC v. FCC* found that the PSPs had remedies to recover this debt from the delinquent carriers.⁸⁶ A failure to pay in accordance with the Commission's payphone rules, such as the rules expressly requiring such payment that we adopt today, constitutes both a violation of section 276 and an unjust and unreasonable practice in violation of section 201(b) of the Act.⁸⁷

33. We are not persuaded by APCC's argument that shifting collection responsibility to the PSPs would be more burdensome.⁸⁸ Specifically APCC contends that, under a "SBR pays" rule, the PSP would face greater difficulties than the interexchange carriers that pass the call in obtaining cooperation, call data, and compensation from the SBR, because interexchange carriers have a business relationship that provides "leverage" over the SBR.⁸⁹ We disagree that the interexchange carriers necessarily have such "leverage." Interexchange carriers will, in many cases have already paid a PSP by the time a SBR might dispute the amount claimed by the interexchange carrier. Therefore, despite the terms of their service agreements, an interexchange carrier has no particular leverage to collect amounts owed to it. Indeed, the record indicates that the Commission should not assume that interexchange carriers can simply disconnect SBRs as the burden on the interexchange carrier doing so may be significant.⁹⁰ Therefore, whatever

(Continued from previous page)

Assoc.)). See also Sprint Comments at 8 (contending that current payphone rules make Sprint responsible for SBRs' bad debt).

⁸⁴ *Illinois Public v. Telecom Assoc.*, 117 F.3d at 566.

⁸⁵ *APCC v. FCC*, 215 F.3d 51, 56 (2000) (upholding Commission decision declining to include debt owed to the PSPs by third parties in the per-call rate for coinless payphone calls).

⁸⁶ See, e.g., Letter from Albert H. Kramer, Robert F. Aldrich, Attorneys for APCC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 91-128, (Sept. 22, 2003)(APCC Certification and Audit *Ex Parte*) at 1; see also *APCC v. FCC*, 215 F.3d at 57.

⁸⁷ See 47 U.S.C. §§ 201(b), 276.

⁸⁸ APCC Reply Comments at 4. See APCC July 22 *Ex Parte* at 2-3.

⁸⁹ APCC Reply Comments at 4-5, 24-27; APCC Reply Comments, Declaration of Allan C. Hubbard, paras. 4-7; APCC July 22 *Ex Parte* at 2-3; see also APCC Comments at 8, 10-15.

⁹⁰ Sprint and other commenters point out that "disconnecting SBRs over nonpayment of payphone surcharges is a drastic, disruptive, expensive and dangerous step that invites litigation, and magnified disputes." Sprint Reply Comments at 5. Moreover, the facilities-based long distance carrier's "experience has been made worse by the Commission's [past] failure to expressly empower [facilities-based interexchange carriers] to require cooperation or (continued....)

the SBR has access to the most accurate data as the only party whose switch receives answer supervision from the called party, the SBR is the carrier best able to track payphone calls to completion.⁹⁷ Because we wish to promote the transfer of accurate data between parties, in order to ensure that PSPs are "fairly compensated," we find it reasonable to assign SBRs the compensation obligation. To facilitate the SBR's execution of its compensation responsibilities, we require each facilities-based long distance carrier in the call path to transmit the call-origination data, the information digits and the ANI information, with each call that is switched to another facilities-based long distance carrier's platform.⁹⁸

D. Compensation Regime

36. We conclude, based upon the record developed in our *Further Notice*, that the Commission's efforts in the *Second Order on Reconsideration* to implement clear and effective payphone compensation rules can be improved upon. Therefore, in this Order, we strengthen the compensation regime by:

- requiring the SBR on whose platform the coinless payphone call terminates to implement a call tracking system and pay the PSP directly;⁹⁹
- requiring the interexchange carrier that passes the call to provide more of the information it currently collects to the PSP;
- expanding the group of carriers in the call path that must report data to the PSP; and
- expanding the types of information that carriers in the call path must report to the PSP.

These requirements will ensure that payment is based upon accurate call tracking data, and provide the PSPs with the information they need to obtain and verify payment, as well as further reduce the ability of SBRs to avoid detection and payment.¹⁰⁰

37. As we have noted, section 276 does not set forth a compensation regime – it simply states that the Commission must prescribe regulations ensuring that all PSPs are fairly compensated for every completed intrastate and interstate call.¹⁰¹ Thus, in the *Second Order on*

⁹⁷ See Joint SBR Sept. 12 *Ex Parte* at 2 (noting that SBRs have capability to track payphone calls to completion).

⁹⁸ We note that MCI states that interexchange carriers are already transmitting this information with switched calls. MCI Comments at 11-12; see also OCMC Comments at 4-5; OCMC Reply Comments at 3-5.

⁹⁹ See Sprint Aug. 14 *Ex Parte* at 8 (stating that SBRs seeking direct arrangements with PSPs, must do so with all PSPs).

¹⁰⁰ See APCC Sept. 22 Certification and Audit *Ex Parte* at 2; see also Letter from Frank W. Krogh, Attorney, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-128 (Sept. 26, 2003) (OCMC Sept. 26, 2003 *Ex Parte*) at 2.

¹⁰¹ 47 U.S.C. § 276.

of the SBR System Audit Report to its interexchange carriers and PSPs. Under this procedure, we relieve the interexchange carrier of any indemnification obligations set forth in the *Second Order on Reconsideration* or subsequent orders interpreting the *Second Order on Reconsideration*. However, as described below, the interexchange carrier must continue to provide the PSP with the critical tracking and identification information to identify all coinless payphone calls addressed to the particular SBR, at the time of scheduled quarterly compensation payment.¹⁰⁷ Moreover, for a short, interim period, the interexchange carriers must continue to provide compensation under the rules from the *Second Order on Reconsideration*, readopted here on a temporary basis.¹⁰⁸

39. We conclude that the SBR may use the technology of its choice to track coinless payphone calls to completion, provided that its system permits an independent third-party auditor to verify the accuracy of the data so that the PSP is assured that it is properly compensated. We require that the audit follow standards established by the American Institute for Certified Public Accountants (AICPA) and that the SBR permit the PSP to inspect the independent third-party auditor's certification criteria.¹⁰⁹ The AICPA standards require the auditor to perform an "examination engagement" and issue an opinion regarding the accuracy and reliability of the SBR's call tracking system.¹¹⁰ We note that, because the concept of materiality governs this type of audit, the independent auditor's report will conclude whether the SBR complied in all material respects with the factors set forth below regarding the required call tracking system.¹¹¹

40. We require SBRs to obtain an independent audit to ensure the SBR complied with the following criteria: (1) whether the SBR's procedures accurately reflect the Commission's rules, including the attestation reporting requirements we adopt today; (2) whether the SBR has a person or persons responsible for tracking, compensating, and resolving disputes concerning payphone completed calls; (3) whether the SBR has effective data monitoring procedures; (4) whether the SBR adheres to established protocols to ensure that any software, personnel or any

¹⁰⁷ See discussion of "Carrier Reporting Duties," section E, *infra*. MCI Comments at 27, 28. MCI argues that the data reports will ensure that PSPs will be able to compare the number of calls sent to each of the SBR's toll free numbers from each of a PSP's payphones, with the payments received from the SBR for each completed payphone call associated with a particular PSP. MCI claims that these reports will allow the PSP to determine whether compensation payments appear reasonable on their face, or whether they will need to request additional information. See also AT&T Comments at 2-3 ("[T]he proper resolution of these issues requires a flexible solution that combines private agreements supplemented with mandatory regulations for instances where voluntary efforts fail").

¹⁰⁸ See discussion of interim rules in section B, *infra*.

¹⁰⁹ A 100% compliance rate on each of the criteria set forth below is not required to satisfy the audit. Instead, the independent third-party auditor should ensure, based upon a representative sample of data, that the tracking system is accurate and reasonably capable of accounting for and resolving discrepancies between PSP and SBR data.

¹¹⁰ See American Inst. of Certified Pub. Accountants, STATEMENTS ON STANDARDS FOR ATTESTATION ENGAGEMENTS NO. 10, at § 6.30 (Jan. 2001) (AICPA ATTESTATION STANDARDS).

¹¹¹ *Id.* at §§ 6.36 (explaining concept of materiality), 6.64 (explaining reporting issues related to material noncompliance).

41. Upon the effective date of the rules we adopt today, the SBR shall file its audit report with the Commission's Secretary for its compliance during the previous year.¹¹⁴ Consistent with AICPA standards for attestation engagements, the auditor report shall consist of: (1) the SBR's representation concerning its compliance; and (2) the independent auditor's opinion concerning the SBR's representation compliance. As part of this audit report, we require the SBR to represent (and the auditor to verify) the SBR's network protocols that are designed to identify compensable phone calls and the SBR's business rules for implementing and paying payphone compensation. As noted above in the specific compliance criteria, the SBR's representation must disclose its criteria for identifying calls originating from payphones, its criteria for identifying compensable payphone calls, its criteria for indentifying incomplete or otherwise noncompensable calls, and its criteria used to determine the identities of the PSPs to which the SBR owes compensation.¹¹⁵ In addition, we recognize that SBRs sometimes use clearinghouses to compensate the PSPs.¹¹⁶ Thus, we require the SBR to indicate the clearinghouses, if any, that the SBR will use to make compensation payments and set forth the types of information that the SBR needs from PSPs in order to compensate the PSPs.¹¹⁷ The independent auditor's opinion will specify whether the SBR's representation is complete and accurate and, to the extent the SBR failed to comply with any of the requirements specified herein, the auditor's opinion will disclose such noncompliance.

42. To make the audit process minimally burdensome for SBRs, yet provide PSPs with adequate assurance of payment accuracy, we require that, in the years subsequent to a SBR's initial audit, the independent auditor either (1) verify that no material changes have occurred concerning the SBR's compliance with the criteria of the prior year's System Audit Report,¹¹⁸ or (2) if a material change has occurred concerning the Completing Carrier's compliance with the prior year's System Audit Report, verify that the material changes do not affect compliance with the audit criteria set forth in paragraph 40 above. To the extent any material changes have occurred, the SBR must disclose those changes¹¹⁹ and the auditor must verify that those changes comply with the audit criteria set forth in paragraph 40 above. If the SBR states in its

¹¹⁴ We recognize that for the initial audit, the SBR will not have had a tracking system in place for a full year. Thus, the initial audit report should be based on the SBR's compliance from the date that the tracking system is implemented and deployed through the date of the audit.

¹¹⁵ We note that, under Part 64 of our rules, LECs and PSPs must claim ownership of payphones for which they are due compensation.

¹¹⁶ We note that clearinghouses serve an important role in compilation, payment and disbursement. See *Fifth Order on Reconsideration*, 17 FCC Rcd 21305, at para. 91; see also APCC Aug. 12 *Ex Parte* at 1, 2.

¹¹⁷ We believe that this requirement will address PSPs' concerns that they do not have sufficient information about SBRs.

¹¹⁸ To the extent that the SBR's network has not materially changed after the first audit, this annual review should not be burdensome. Moreover, this annual review should be less burdensome if the SBR uses the same auditor. See APCC Sept. 12 Certification and Audit *Ex Parte* at 3, 4.

¹¹⁹ In this regard, we note that the SBR has an affirmative obligation to fully disclose any material changes concerning its call tracking system in its representation to the auditor.

44. Once these documents have been filed, we require payment be made quarterly. At the time the SBR compensates the PSP directly, the SBR must include with its payment a sworn declaration from its Chief Financial Officer certifying that the payment amount is accurate and is based on 100 percent of actual calls completed.¹²⁴ To support this certification, the SBR shall send to the PSP, in computer readable format, a report that includes the following information:

- A list of the toll-free and access code numbers dialed from each of that PSP's payphones and the ANI for each payphone;
- The volume of calls for each number that were completed;
- The name, address, and phone number of the person or persons responsible for handling the SBR's payphone compensation; and
- The carrier identification code ("CIC") of all facilities-based long distance carriers that routed calls to the SBR, categorized according to the list of toll-free and access code numbers.

These requirements will provide PSPs with further certainty that call completion data is accurate and further visibility into the basis for compensation.¹²⁵ To the extent that the SBR payments are late or incomplete, the Commission may impose forfeitures or even revoke section 214 authorization, if we find that SBRs have been lax in fulfilling their obligations. We note that the current base penalty for failure to file required forms or information with the Commission is \$3,000; however, we have discretion to impose substantially higher forfeitures based on the factors listed in our rules.¹²⁶ In addition, late payment or non-payment to PSPs could result in substantial forfeitures: up to \$120,000 for a single non-payment and up to \$1.2 million for a continuing violation. In egregious cases, we may issue an Order to Show Cause why we should not revoke a SBR's section 214 authority, and possibly bar the company's principals from participation in interstate telecommunications business activities without first obtaining explicit permission from the Commission.¹²⁷

¹²⁴ We note that this is a variation of Qwest's proposal that the Commission adopt an annual corporate officer certification of payphone data. Qwest Aug. 26 *Ex Parte*, Attach. To the extent that the SBR does not have a Chief Financial Officer, we require that the Chief Financial Officer of any of the SBR's affiliated companies to file the required certification. The SBR may not avoid this requirement by asserting that it does not have a Chief Financial Officer. See also Letter from Adam Kupetsky, Director of Regulatory Affairs, Wiltel, to Marlene H. Dortch, CC Docket No. 96-128 (Sept. 8, 2003) (Wiltel Sept. 8 *Ex Parte*) at 8; APCC Sept. 22 Certification and Audit *Ex Parte* at 3-4.

¹²⁵ As discussed below, a SBR and a PSP may agree to other compensation and reporting requirements.

¹²⁶ See 47 C.F.R. § 1.80(b)(4).

¹²⁷ See, e.g., *NOS Communications, Inc., Affinity Network Incorporated and NOSVA Limited Partnership*, Order to Show Cause and Notice of Opportunity for Hearing, FCC 03-75 (rel. Apr. 7, 2003); *Business Options, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, FCC 03-68 (rel. Apr. 7, 2003).

the record indicates that many SBRs already have call tracking systems in place and in some instances need only obtain an attestation letter from an independent third-party auditor.¹³² MCI points out that 39% of its SBR customers claim to have reliable systems, but fail to provide MCI data, as agreed, on a monthly basis.¹³³ However, MCI contends that these SBRs' call tracking system may be quickly verified and qualified to track completed calls on a quarterly basis, as we would require in our new rules.¹³⁴ Accordingly, we find that these SBRs' compensation systems would similarly permit accurate compensation directly to the PSP well before the 120 to 150 day OMB review period concludes.

48. We further conclude that SBRs and PSPs may negotiate other mechanisms for payment other than those set forth in our rules.¹³⁵ Specifically, we find that the SBR may enter into any other compensation arrangement voluntarily agreed to by the relevant parties.¹³⁶ By adopting rules that require SBRs to develop tracking systems, we do not intend here to nullify current or future contractual arrangements if the parties wish to continue them. For example, a PSP and a SBR may agree by contract that the SBR may rely upon the interexchange carrier to track data and compensate the PSP directly in exchange for SBR payment for all calls that pass to the SBR's platform, completed or otherwise.¹³⁷ Accordingly, we permit SBRs to rely upon any

¹³² MCI August 19 *Ex Parte*, at 17. For example, MCI points out that 12 percent of its SBR customers currently provide timely data in usable formats to meet quarterly compensation obligations.

¹³³ MCI Comments at 24.

¹³⁴ *Id.* See also IDT Sept. 12 *Ex Parte* at 2 (contending that PSPs and SBRs should have "considerable freedom to contract, if both parties voluntarily choose to do so.").

¹³⁵ As AT&T points out, such private agreements are "perfectly consistent" with section 276. AT&T Comments at 10. In the context of a private contract, we expect a PSP to preserve its right in such an agreement to obtain sufficient information to verify the accuracy of the compensation received. We note that private agreements may also appropriately designate a court, rather than the Commission, as the forum for enforcement. See AT&T Sept. 5 *Ex Parte* at 2; see also IDT Sept. 12 *Ex Parte* at 2.

¹³⁶ MCI states that 49% of its SBR customers have agreed to pay a surcharge for all calls sent to their SBR platforms rather than invest in call tracking technologies or provide call completion data. These generally are the smallest SBR customers that do not find it economical to invest in payphone compensation tracking systems. Accordingly, our new rule permitting such arrangements, with the agreement of the PSP and the interexchange carrier, will permit SBRs the choice of investing in the required assets. MCI Comments at 24. See also Sprint Sept. 5 *Ex Parte* at 1 (the large majority of Sprint's SBR customers do not currently provide their own call tracking data); see also OCMC Comments at 10. See Letter from Larry Fenster, Senior Economist, MCI, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-128 (Aug. 20, 2003); Letter from Teresa Marrero, Senior Attorney, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-128 (Sept. 5, 2003) (AT&T September 5 *Ex Parte*), at 2. AT&T states that prior to the *Second Order on Reconsideration*, approximately 40% of AT&T's SBR customers opted to pay for all calls delivered to their platforms. We agree with AT&T that under our new rules, it is likely that some SBRs (those with high call completion rates) will opt into voluntary agreements with AT&T, while other SBRs (those with low call completion rates) will opt instead to pay PSPs directly. AT&T Sept. 5 *Ex Parte* at 2.

¹³⁷ We note, however, that if such contracts are not entered into by the effective date of our rules, SBRs are required to have in place an established call tracking system that complies with our new rules. See AT&T Comments at 2-3 ([T]he proper resolution of these issues requires a flexible solution that combines private agreements supplemented with mandatory regulations for instances where voluntary efforts fail").

rules, and could possibly be subject to an enforcement action.¹⁴³ We also note that if the PSP suffers harm from such an improper attestation, the PSP may have remedies at law.¹⁴⁴

E. Carrier Reporting Duties

51. We adopt new reporting obligations for all facilities-based long distance carriers in the call path that own or lease a switch and transfer payphone-originated calls to other facilities-based long distance carriers. We refer to these carriers for purposes of these rules as the "Intermediate Carriers" to distinguish them from the last facilities-based long distance carrier that completes the call on a switch that it owns or leases.¹⁴⁵ Specifically, we require these "Intermediate Carriers" to maintain, and provide to the PSP a quarterly report,¹⁴⁶ in computer readable format, that includes, for each facilities-based long distance carriers to which the Intermediate Carrier switched a toll-free or access code call:

- A list of all the facilities-based long distance carriers to which the Intermediate Carrier switched toll-free and access code calls;
- A list of all the toll-free and access code numbers that all LECs have delivered to the Intermediate Carrier and that the Intermediate Carrier switched to the identified facilities-based long distance carriers;
- The volume of calls for each toll-free and access code number, e.g., "800" and "888" numbers, that the Intermediate Carrier has received from each of that PSP's payphones, identified by their ANIs, and switched to the facilities-based long distance carrier;¹⁴⁷ and
- The name, address, telephone number and other identifying information for the person or persons for each of the facilities-based long distance carriers that serve as the Intermediate Carrier's contact at each listed facilities-based long distance carrier.

Moreover, for the same reasons discussed in section D above, to ensure that the PSPs have access to necessary data in the event of disputes with the SBRs, we will require the Intermediate Carrier

¹⁴³ *Id.*

¹⁴⁴ Furthermore, we disagree with commenters that assert that our rules must anticipate all of the enforcement issues that may arise. See RBOC Payphone Coalition Sept. 22 *Ex Parte* at 4; see also APCC Reply at 14-15.

¹⁴⁵ We note that with respect to these new reporting obligations, we do not include LECs that transfer calls to the first facilities-based long distance carrier.

¹⁴⁶ We expect that SBRs that choose not to compensate the PSP directly, but enter into some other compensation arrangement with the long distance carrier and/or PSPs, will include in such agreements the terms and conditions of payment, including frequency of payment and "true-up."

¹⁴⁷ See APCC Sept. 22 Data Requirements *Ex Parte* at 3.

53. Furthermore, we find that these new reporting obligations will have no adverse impact on small carriers. The record in this proceeding indicates that facilities-based long distance carriers in the call path already collect the data necessary to comply with these reporting requirements as part of their own call tracking and billing systems.¹⁵⁴ Thus, we do not impose any new collecting responsibilities; rather we require additional *reporting* obligations.¹⁵⁵ And, we note that, to the extent that a PSP affirmatively declines the need for such information, the PSP is free to negotiate alternative arrangements with the relevant carriers.¹⁵⁶

54. We conclude that the rules we adopt today resolve two principle concerns: (1) the inability of PSP to obtain information about the identity of the SBR, and the number of completed calls; and (2) the incentive of the SBR to avoid detection and paying the PSP. First, our new rules require the SBRs to establish a verifiable call tracking system that must enable the SBR to produce accurate, timely data that is passed along to the PSP. We find that this requirement significantly improves on the *Second Order on Reconsideration's* efforts to meet the statutory obligation of providing "fair compensation to the PSP" because it assists the PSP by providing additional, accurate information that it could not obtain under our previous rules; and it assists the SBR by ensuring that it pays only for completed calls rather than all calls that pass to the SBR platform. Second, by imposing an affirmative duty on the SBR to compensate the PSP, our new rules target those SBRs that have attempted to avoid detection.¹⁵⁷ Accordingly, we conclude that our new compensation regime substantially improves upon our earlier payment regimes.

F. Interim Rules

55. Due to information collection and exchange requirements pursuant to OMB procedures, and the need to provide carriers time to transition to our new rules, the new rules will not take effect immediately. On average, OMB approval requires as few as 120 and up to 150

(Continued from previous page)

the auditor attest to this, will ensure that every completed call is compensated. Moreover, we reject the proposed web site publication requirements because we find the rules can achieve the same goals without risking violations of confidentiality or creating competitive disclosure problems. We require PSPs to use this additional information for compensation purposes only, and prohibit all entities from sharing such information with their internal divisions that compete with the interexchange carriers. *See also* Sprint Sept. 5 *Ex Parte*; APCC Sept. 22 Data Requirements *Ex Parte* at 2-3; OCMC Sept. 26 *Ex Parte*; IDT Sept. 26 *Ex Parte* at 1-2.

¹⁵⁴ MCI Comments at 31.

¹⁵⁵ APCC Comments at 22-25. *See* Letter from John E. Benedict, Senior Attorney, Sprint, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-128, (Sept. 3, 2003) (Sprint Sept. 3 *Ex Parte*) at 1. Sprint opposes Qwest's certification and data reporting requirements, arguing that it would impose on all carriers massive data and reporting requirements that are disproportionate to any need for the information. However, as stated above, the record indicates that facilities-based long distance carriers already collect the data necessary to comply with these reporting requirements as part of their tracking and billing system.

¹⁵⁶ *See* Sprint Aug. 14 *Ex Parte* at 6 (proposing that the reporting requirements be conditioned on an affirmative request by a PSP); Sprint Sept. 5 *Ex Parte* at 1.

¹⁵⁷ APCC Reply at 4; AT&T Comments at 14-16; MCI Comments at 14, 25.

address these problems, and the court presumably stayed issuance of the mandate in order to forestall another period of serious under-compensation. For the same reason, we now take steps to forestall another period of under-compensation and the consequent economic hardship imposed on PSPs. Accordingly, we find that there is good cause to make the interim compensation rules effective immediately upon publication in the Federal Register. Doing so will place no irremediable burden on the interexchange carriers. As interexchange carriers have been operating under those very rules for the past two years, they do not need additional time in which to prepare to comply. Moreover, there is little likelihood of any monetary harm to the interexchange carriers as the interim rules permit them to recover from their resellers all compensation that the interexchange carriers must pay for a call handled by the reseller, plus a charge for overhead. The potential for great harm to PSPs from postponing the effectiveness of the interim rules far outweighs the minimal potential harm to interexchange carriers.

B. Final Paperwork Reduction Act Analysis

58. This Report and Order contains conclusions that have been analyzed as required by the Paperwork Reduction Act of 1995, Public Law No. 104-13, and contains collections of information subject to Office of Management and Budget (OMB) review. The information collection requirements in this item are contingent upon approval by OMB.

C. Final Regulatory Flexibility Analysis

59. *Interim Rules.* The Regulatory Flexibility Act of 1980, as amended (RFA),¹⁶² requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."¹⁶³ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹⁶⁴ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁶⁵ A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹⁶⁶ We certify that, under the Regulatory Flexibility Act, 5

¹⁶² The RFA, *see* 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

¹⁶³ 5 U.S.C. § 605(b).

¹⁶⁴ 5 U.S.C. § 601(6).

¹⁶⁵ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

¹⁶⁶ 15 U.S.C. § 632.

tracking system; (2) have a third party attest that the system accurately tracks payphone calls to completion; and (3) pay PSPs directly based on the SBR's own call tracking data. Moreover, the rules require other facilities-based long distance carriers in the call path, if any, to provide reports to PSPs of payphone-originated calls switched to another facilities-based carrier's platform.

63. The overall objective of this Report and Order is to ensure that PSPs receive fair per-call compensation pursuant to section 276 of the Act. In this regard, the new rules ensure that PSPs are "fairly compensated" for all SBR completed calls made from their payphones, and satisfy section 276 of the Act, by identifying the party liable for compensation and establishing a mechanism for PSPs to be paid.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

64. There were no comments raised that specifically addressed the in the IRFA. Nonetheless, the agency considered the potential impact of the rules proposed in the IRFA on small entities and reduced the compliance burden for all small entities (as discussed in paragraphs 20-21) in order to reduce the economic impact of the rules enacted herein on such entities.

3. Description and Estimate of the Number of Small Entities to Which the Actions Taken Will Apply

65. *Final Rules.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.¹⁷³ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹⁷⁴ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁷⁵ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹⁷⁶

66. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific definition of small providers of incumbent local exchange services. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers.

¹⁷³ 5 U.S.C. §§ 603(b)(3), 604(a)(3).

¹⁷⁴ *Id.* § 601(6).

¹⁷⁵ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register."

¹⁷⁶ *Id.* § 632.

engaged in the provision of either competitive access provider services or competitive local exchange carrier services.¹⁸⁴ Of these 349 competitive access providers and competitive local exchange carriers, 297 reported that they have 1,500 or fewer employees and 52 reported that, alone or in combination with affiliates, they have more than 1,500 employees.¹⁸⁵ Of the 60 other local exchange carriers, 56 reported that they have 1,500 or fewer employees and 4 reported that, alone or in combination with affiliates, they have more than 1,500 employees.¹⁸⁶ Consequently, the Commission estimates that there are 297 or fewer small entity CAPS and 56 or fewer other local exchange carriers that may be affected by the rules.

69. *Local Resellers.* SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.¹⁸⁷ According to the Commission's most recent *Telephone Trends Report* data, 87 companies reported that they were engaged in the provision of local resale services.¹⁸⁸ Of these 87 companies, 86 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees.¹⁸⁹ Consequently, the Commission estimates that there are 86 or fewer local resellers that may be affected by the rules.

70. *Toll Resellers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.¹⁹⁰ According to the Commission's most recent *Telephone Trends Report* data, 454 companies reported that they were engaged in the provision of toll resale services.¹⁹¹ Of these 454 companies, 423 reported that they have 1,500 or fewer employees and 31 reported that, alone or in combination with affiliates, they have more than 1,500 employees.¹⁹² Consequently, the Commission estimates that there are 423 or fewer toll resellers that may be affected by the rules.

71. *Payphone Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to payphone service providers (PSPs). The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers.

¹⁸⁴ Telephone Trends Report, Table 5.3.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ 13 C.F.R. § 121.201, NAICS code 517110.

¹⁸⁸ Telephone Trends Report, Table 5.3.

¹⁸⁹ *Id.*

¹⁹⁰ 13 C.F.R. § 121.201, NAICS code 517110.

¹⁹¹ Telephone Trends Report, Table 5.3.

¹⁹² *Id.*

such a business is small if it has 1,500 or fewer employees.²⁰² According to the Commission's most recent *Telephone Trends Report* data, 21 companies reported that they were engaged in the provision of prepaid calling cards.²⁰³ Of these 21 companies, 20 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees.²⁰⁴ Consequently, the Commission estimates that there are 20 or fewer local resellers that may be affected by the rules.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

75. *Final Rules.* The new rules we adopt will enable a PSP to identify SBRs that are not compensating it and to challenge the payments in instances where the PSP may believe that the data provided by other facilities-based long distance carriers are out of proportion to the data provided by the final SBR in the call path.²⁰⁵ The new rules will have no adverse impact on small carriers. Specifically, the new rules contain reporting obligations for an "intermediate carrier" (defined as any facilities-based long distance carrier in the call path that switches coinless payphone calls to another facilities-based long distance carrier). The new rules require each "intermediate carrier" to maintain, and provide to the PSP, a quarterly report that includes, for each facilities-based long distance carrier to which the intermediate carrier switched a toll-free or access code call: (1) a list of all the facilities-based long distance carriers to which the Intermediate Carrier switched toll-free and access code calls; (2) a list of all the toll-free and access code numbers that all LECs have delivered to the Intermediate Carrier and that the Intermediate Carrier switched to the identified facilities-based long distance carriers; (3) the volume of calls for each toll-free and access code number, e.g., "800" and "888" numbers, that the Intermediate Carrier has received from each of that PSP's payphones, identified by their ANIs, and switched to the facilities-based long distance carrier; and (4) the name, address, telephone number and other identifying information for the person or persons for each of the facilities-based long distance carriers that serve as the Intermediate Carrier's contact at each listed facilities-based long distance carrier.

76. Our rules also require a "completing carrier" (defined as an interexchange carrier, a switch-based long distance reseller, or a local exchange carrier that completes a coinless access code or subscriber toll-free payphone call) to establish a call-tracking system, subject to an auditing requirement to ensure accuracy, to track coinless access code or subscriber toll-free payphone calls to completion, and to compensate the PSP for these calls on a quarterly basis. The completing carrier also must submit quarterly reports to the PSP, which must include the following information: (1) a list of the toll-free and access numbers dialed from each payphone and the ANI for each payphone; (2) the volume of calls for each listed number that the

²⁰² 13 C.F.R. § 121.201, NAICS code 517110.

²⁰³ Telephone Trends Report, Table 5.3.

²⁰⁴ *Id.*

²⁰⁵ See *supra* para. 52.

80. **Report to Congress:** The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.²¹¹ In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.²¹²

V. ORDERING CLAUSES

81. Accordingly, pursuant to authority contained in sections 1, 4, 201-205, 215, 218-220, 226, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§151, 154, 201-205, 215, 218-220, 226, and 276, IT IS ORDERED that the policies, rules, and requirements set forth herein ARE ADOPTED.

82. IT IS FURTHER ORDERED that part 64 of the Commission's rules, 47 C.F.R. Part 64, IS AMENDED by revising sections 64.1300(a) and (b), 64.1310(a), (b), (c), and (g), and 64.1320(a), (b), (c), (d), (e), (f), and (g), as set forth in Appendix C of this Report and Order.

83. IT IS FURTHER ORDERED that for good cause found above, the interim rules set forth in Appendix B ARE EFFECTIVE upon their publication in the Federal Register and that the portions of this Report and Order pertinent to them are effective at the same time.

84. IT IS FURTHER ORDERED that the remainder of this Report and Order and the rules set forth in Appendix C ARE EFFECTIVE on the first day of the first calendar-year quarter following approval by the Office of Management and Budget of the information collections contained herein. The Commission will publish a document in the Federal Register announcing the effective date of these rules.

²¹¹ See 5 U.S.C. § 801(a)(1)(A).

²¹² *Id.* § 604(b).

APPENDIX A – LIST OF COMMENTERS

Comments

American Public Communications Council
Association of Communications Enterprises, Focal
Communications Corp. & US LEC Corp.
Bulletins
CommuniGroup of K.C., Inc., et al. (Joint Switched-
Based Resellers
Global Crossing North America, Inc.
IDT Corporation
Illinois Public Telecommunications Association
OCMC, Inc.
AT&T Corp.
Qwest Communications International, Inc.
RBOC Payphone Coalition
Sprint Corporation
Telstar International, Inc. & International
Prepaid Communications Association
WiTel Communications, LLC
WorldCom, Inc.

Abbreviation

APCC
ASCENT, Focal & US LEC
Joint SBRs
Global Crossing
IDT
Illinois PTA
OCMC
AT&T
Qwest
Sprint
Telstar & IPCA
WiTel
WorldCom

Replies

American Public Communications Council
Bulletins
CommuniGroup of K. D., Inc., et al.
Global Crossing North America, Inc.
IDT Corporation
OCMC, Inc.
Qwest Communications International Inc.
RBOC Payphone Coalition
Sprint Corporation
WorldCom, Inc.

APCC
Global Crossing
IDT
OCMC
Qwest
Sprint
WorldCom

APPENDIX C - FINAL RULES

Part 64 of the Code of Federal regulations is amended as follows:

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority for part 64 remains unchanged.

2. Section 64.1300 is amended by revising paragraph (a), adding a new paragraph (b), and redesignating prior paragraphs (b) and (c) as (c) and (d) to read as follows:

§ 64.1300 Payphone compensation obligation.

(a) For purposes of this subpart, a Completing Carrier is a long distance carrier or switch-based long distance reseller that completes a coinless access code or subscriber toll-free payphone call or a local exchange carrier that completes a local, coinless access code or subscriber toll-free payphone call.

(b) Except as provided herein, a Completing Carrier that completes a coinless access code or subscriber toll-free payphone call from a switch that the Completing Carrier either owns or leases shall compensate the payphone service provider for that call at a rate agreed upon by the parties by contract.

3. Section 64.1310 is amended by revising paragraphs (a), (b), and (c), redesignating prior paragraphs (c), (d) and (e) as (d), (e) and (f) to read as follows, and adding a new paragraph (g):

§ 64.1310 Payphone compensation procedures.

(a) Unless the payphone service provider agrees to other compensation arrangements, each Completing Carrier identified in section 64.1300(a) shall compensate the payphone service provider as follows:

(1) Each Completing Carrier shall establish a call tracking system that accurately tracks coinless access code or subscriber toll-free payphone calls to completion..

(2) Each Completing Carrier shall pay compensation to payphone service providers on a quarterly basis for each completed payphone call identified in the Completing Carrier's quarterly report required by section 64.1310(a)(4).

(3) At the conclusion of each quarter, the chief financial officer of the Completing Carrier shall submit to each payphone service provider to which compensation is tendered a sworn statement that the payment amount for that quarter is accurate and is

(g) Each Completing Carrier and each Intermediate Carrier must maintain verification data to support their subparagraph (a)(4) and subparagraph (c) quarterly reports for 18 months after the close of that quarter. This data must include the time and date that each call identified in subparagraph (a)(4) and subparagraph (c) was made. This data must be provided to the payphone service provider upon request.

4. Section 64.1320 is amended by revising the Title, paragraphs (a) and (b), and by adding paragraphs (c), (d), (e), (f), and (g) to read as follows:

§ 64.1320 Payphone Call Tracking System Audits.

(a) As a precondition to tendering payment pursuant to section 64.1310(a), all Completing Carriers must undergo a system audit of their section 64.1310(a)(1) tracking system by an independent third party auditor whose responsibility shall be, using audit methods approved by the American Institute for Certified Public Accountants, to determine whether the call tracking system accurately tracks payphone calls to completion.

(b) By the effective date of these rules, each Completing Carrier in paragraph (a) must file an audit report from the auditor (the "System Audit Report") regarding the Completing Carrier's compliance with section 64.1310(a)(1) as of the date of the audit with the Commission's Secretary in CC Docket No. 96-128 and with each payphone service provider for which it completes calls and with each facilities-based long distance carrier from which it receives payphone calls.

(c) The Completing Carrier must comply with, and the third-party auditor must verify, the Completing Carrier's compliance with the following factors in establishing a call tracking system pursuant to section 64.1310(a)(1):

- (1) Whether the Completing Carrier's procedures accurately track calls to completion;
- (2) Whether the Completing Carrier has a person or persons responsible for tracking, compensating, and resolving disputes concerning payphone completed calls;
- (3) Whether the Completing Carrier has effective data monitoring procedures;
- (4) Whether the Completing Carrier adheres to established protocols to ensure that any software, personnel or any other network changes do not adversely affect its payphone call tracking ability;
- (5) Whether the Completing Carrier has created a compensable payphone call file by matching call detail records against payphone identifiers;

and proprietary information, the Completing Carrier shall provide, upon request, to the payphone service provider for inspection any documents, including working papers, underlying the System Audit Report.

BELLSOUTH TELECOMMUNICATIONS, INC.**DIRECT TESTIMONY OF SANDY E. SANDERS****BEFORE THE LOUISIANA PUBLIC SERVICE COMMISSION****DOCKET NO. U-22632****APRIL 7, 1999**

Q. PLEASE STATE YOUR NAME AND ADDRESS.

A. My name is Sandy E. Sanders and my business address is 675 W. Peachtree Street, N.E., Atlanta, Georgia.

Q. BY WHOM ARE YOU EMPLOYED?

A. I am employed by BellSouth Telecommunications, Inc. (hereinafter referred to as "BellSouth" or "the Company") as a Manager - Federal Regulatory.

Q. PLEASE STATE YOUR EDUCATIONAL BACKGROUND AND COMPANY EXPERIENCE.

A. I graduated from Campbell University in 1969 with a Bachelor of Arts degree in Social Science. I was initially employed by the Company in the North Carolina Operator Services Organization. Following a military leave of two years, I held various assignments in the Company's Traffic Facilities, Corporate Planning, Rates and Tariffs, Regulatory, Pricing and Interconnection Services

1 tariff filing submitted by a local exchange carrier...that introduces a new service
2 or restructured unbundled basic service element (BSE)...must be accompanied
3 by cost data sufficient to establish that the new service or unbundled BSE will
4 not recover more than a just and reasonable portion of the carrier's overhead
5 costs", and "will generate a net revenue increase". An example of overhead
6 costs would be administrative costs such as accounting. These provisions in
7 Parts 61.49(f)(1) and (2) are what is commonly referred to as the "new services"
8 test.

9
10 The "new services" test was adopted in 1991. It applies to all FCC tariff filings by
11 local exchange carriers, which introduce a new service or a restructured
12 unbundled basic service element. Section 276 of the Telecommunications Act of
13 1996 includes certain mandates for payphone services, which were implemented
14 by the FCC in the form of new rules and regulations. On September 20, 1996,
15 the FCC adopted a Report and Order, FCC 96-388, in CC Docket No. 96-128,
16 Implementation of the Pay Telephone Reclassification and Compensation
17 Provisions of the Telecommunications Act of 1996, implementing Section 276 of
18 the Telecommunications Act of 1996. The full Commission subsequently issued
19 an Order on Reconsideration, FCC 96-439, on November 8, 1996, in that same
20 docket. Two waiver orders issued by the Chief of the Common Carrier Bureau
21 on April 4, 1997, and April 16, 1997, in that docket stated that footnote 492 of the
22 Commission's November 8, 1996 Order on Reconsideration requires that
23 intrastate tariffed rates for payphone services be in compliance with the "new
24 services" test to further the goals and aims of the Telecommunications Act of
25 1996. These orders are collectively referred to as the "Payphone Orders".

1 A. Existing rates for PTAS and SmartLine® service were set by this Commission
2 and have been in effect for several years. The Commission approved these
3 rates in a rate-of-return regulatory environment as part of a comprehensive rate
4 structure as being just and reasonable. As stated previously, PTAS and
5 SmartLine® service are business services. PTAS was first tariffed in 1985 and
6 SmartLine® service in 1996. Rates for these services have remained virtually
7 the same or have even decreased slightly since their initial implementation.
8 Historically, business rates, including those for PTAS and SmartLine® service,
9 have been priced in the context of Universal Service. In other words, business
10 services have generally been priced to recover direct and overhead costs, to
11 provide a return on investment and to provide Universal Service support for basic
12 residential services, which are often priced below cost.

13
14 Q. WHAT IS THE CENTRAL ISSUE IN THIS PROCEEDING AND WHAT PRICING,
15 STANDARDS SHOULD THE COMMISSION USE IN DECIDING THAT ISSUE?

16
17 A. The purpose of this proceeding is for the Commission to determine if BellSouth's
18 existing rates for PTAS and SmartLine® service meet the pricing requirements of
19 Section 276 of the Act. Specifically, the issue is whether the current rates for
20 PTAS and SmartLine® service meet the FCC's "new services" test. The FCC
21 determined in its Payphone Orders that pricing standards for Unbundled Network
22 Elements (UNEs) identified in Sections 251 and 252 of the Act are not
23 appropriate when pricing Section 276 payphone services. Section 276
24 establishes certain requirements designed to promote competition among PSPs,
25 and to promote the widespread deployment of payphone services for the benefit

overhead loadings required, as supported by prior FCC rulings. (See Second Reconsideration Order, CC Docket Nos. 89-79 and 87-313, FCC Rod 5235 (rel. August 6, 1992) ¶ 3; Memorandum and Order, CC Docket No. 97-140, 12 FCC Rod 17996, FCC 97-392, (rel. October 29, 1997) ¶¶ 12 and 13).

In several FCC orders, cited later in my testimony, the FCC stated its intention that in implementing its "new services" test, LECs have flexibility in pricing and that there are no uniform overhead loadings for new services. Because there are no mandates requiring uniform overhead loadings, the Commission may apply its own best judgment in determining the proper loading factor for all of BellSouth's services, including its payphone services. In this case, the Commission must review BellSouth's PSP rates within these broad guidelines and the pricing standards in Section 276 of the Telecommunications Act to determine if these rates meet the "new services" test.

Q. DO BELLSOUTH'S TARIFFED RATES FOR PTAS AND SMARTLINE® SERVICE IN LOUISIANA MEET THE REQUIREMENTS OF THE FCC'S "NEW SERVICES" TEST?

A. Yes. BellSouth's rates for PTAS and SmartLine® service are priced at levels that meet the "new services" test. These rates are set forth in Section A7.4.5 of BellSouth's General Subscriber Service Tariff for PTAS lines and in Section A7.8.2 of the General Subscriber Service Tariff for SmartLine® service.

1 "encourages LECs to develop improved versions of existing services and risky
2 new innovative services, (as well as) inhibits predatory pricing". (Second
3 Reconsideration Order, ¶ 2)
4

5 Q. DO YOU HAVE EXAMPLES OF COST/PRICE RATIOS THAT HAVE BEEN
6 APPROVED BY THE FCC?
7

8 A. Yes. In deciding whether a service meets the "new services" test, the FCC
9 considers cost/price ratios for the services in question. The cost/price ratios of
10 BellSouth's PSP services are within the cost/price ratios previously accepted by
11 the FCC. As I stated earlier, the "new services" test has been in effect since
12 1991 and applies to a wide range of services. One example of a cost/price ratio
13 approved by the FCC is reflected in FCC 97-392 Order at ¶ 10, 11, fn.39 where
14 the FCC found that Bell Atlantic's revised ratios for payphone features as high as
15 3.4 times the direct costs are not unreasonable and meet the "new services" test
16 and also found that another rate which exceeded direct costs by 38 percent met
17 the "new services" test. Further, in DA 97-1396 the FCC found that a rate that
18 exceeded direct costs by 100 percent was reasonable and did not raise
19 questions of lawfulness under the "new services" test. (CC Docket No. 97-140,
20 13 FCC Rcd 4241, DA 97-1396 (rel. July 2, 1997) ¶¶ 5,7)
21

22 There is no uniform overhead loading required to meet the "new services" test.
23 (FCC 97-392 Order at ¶ 12) It is and has been recognized by the FCC that
24 certain services may recover more or less overhead costs than other services
25 (FCC 97-392 Order at ¶ 13) The question then becomes whether BellSouth has

1 A. Yes. The estimated cost/price ratio for single party business (1FB) service is
2 similar to the cost/price ratio for PTAS.

3

4 Q. HOW CAN IT BE DETERMINED WHETHER THE CONTRIBUTION TO
5 SHARED AND COMMON COSTS AND TO UNIVERSAL SERVICE IN THE
6 PRICES OF PTAS AND SMARTLINE® SERVICE IS "REASONABLE" AS THE
7 "NEW SERVICES" TEST REQUIRES?

8

9 A. Noting first that PTAS and SmartLine® service are used to provide competitive
10 payphone services, the reasonable level of contribution included in their prices
11 should be determined by market forces. In competitive markets, prices are the
12 result of the interaction of buyers and sellers. Those prices go up or down as
13 demand or supply conditions change. Since contribution is simply the difference
14 between the service's TSLRIC and the prevailing price, the level of that
15 contribution fluctuates with the level of the price. As competitive market forces
16 determine what the price will be, it automatically determines the level of
17 contribution as well. Being based on the free interaction of buyers and sellers,
18 this level of contribution can be considered to be reasonable for the purposes of
19 the "new services" test.

20

21 Q. IS THE CURRENT COST/PRICE RATIO REASONABLE FOR PTAS AND
22 SMARTLINE® SERVICE?

23

24 A. As previously described, the "new services" test allows for significant discretion
25 by the Louisiana Commission. The current rates for PTAS and SmartLine®

1 This proceeding is not a proceeding to set rates, but is a proceeding by which
2 the Commission must determine if the existing rates for PTAS and Smartline®
3 service meet the "new services" test. The pricing standards to be used in
4 determining whether BellSouth's PSP services rates meet the "new services" test
5 are those under Section 276 of the Act and not those under Sections 251 and
6 252 of the Act. The existing rates that this Commission approved for PTAS and
7 SmartLine® service were established with an understanding that they would
8 make a contribution to residential service, i.e., an implicit subsidy. This
9 Commission previously approved as being just and reasonable the PSP rates at
10 issue in this proceeding in a rate-of-return regulatory environment as part of a
11 comprehensive rate structure. BellSouth has issued tariffs for business and
12 residence services in Louisiana over a long period of time. Thus, the rates
13 included in these tariffs are of varying vintages. These rates are reflections of an
14 evolutionary trend, from a rate-of-return to a market-driven rate setting process.
15 BellSouth is now in the transition period from a monopolistic to a competitive
16 world, but because of implicit contractual obligations forged under regulation,
17 rate adjustments are limited for the time being. BellSouth is asking the
18 Commission to continue to allow it to charge its existing PSP rates. This case is
19 not a traditional rate case in which the Commission must determine what the
20 appropriate rates for certain services are. The primary purpose of this docket is
21 to determine if BellSouth's existing payphone rates, previously approved by this
22 Commission, meet the "new services" test.

23 Additionally, the issues of Universal Service and rate rebalancing have yet to be
24 decided by this Commission, and until these important issues are resolved, it is
25 premature to consider changing payphone rates in a vacuum. It would be

1 payphone services, features and functions. BellSouth is in compliance with the
2 "new services" test parameters.
3

4 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

5

6 A. Yes.

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A5691-524 April 14

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

1301 K STREET, N.W.

SUITE 1000 WEST

WASHINGTON, D.C. 20005-3317

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April 10, 1997

Ex Parte Filing

Mary Beth Richards
Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

In re Implementation of the Pay Telephone
Reclassification and Compensation Provisions
of the Telecommunications Act of 1996,
CC Docket No. 96-128

Dear Mary Beth:

I am writing on behalf of the RBOC Payphone Coalition to request a limited waiver of the Commission's intrastate tariffing requirements for basic payphone lines and unbundled features and functions, as set forth in the Commission's Orders in the above-captioned docket. I am also authorized to state that Ameritech joins in this request.

As we discussed yesterday, and as I explained in my Letter of April 3, 1997, none of us understood the payphone orders to require existing, previously-tariffed intrastate payphone services, such as the COCOT line, to meet the Commission's "new services" test. It was our good faith belief that the "new services" test applied only to new services tariffed at the federal level. It was not until the Bureau issued its "Clarification of State Tariffing Requirements" as part of its Order of April 4, 1997, that we learned otherwise.

In most States, ensuring that previously tariffed payphone services meet the "new services" test, although an onerous process, should not be too problematic. We are gathering the relevant cost information and will be prepared to certify that those tariffs satisfy the costing standards of the "new services" test. In some States, however, there may be a discrepancy between the existing state tariff rate and the "new services" test; as a result, new tariff rates may have to be filed. For example, it appears that, in a few States, the existing state tariff rate for the COCOT line used by independent PSPs may be

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Mary Beth Richards
April 10, 1997
Page 3

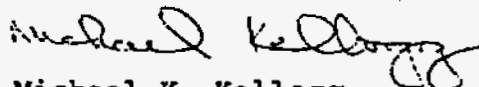
(consistent with state regulations) to provide a credit or other compensation to purchasers back to April 15, 1997.

The requested waiver is appropriate both because special circumstances warrant a deviation from the general rule and because the waiver will serve the public interest. Because the federal "new services" test has not previously been applied to existing state services -- and because the LECs did not understand the Commission to be requiring such an application of the test until the Commission issued its clarification order just a few days ago -- special circumstances exist to grant a limited waiver of brief duration to address this responsibility. In addition, granting the waiver in this limited circumstance will not undermine, and is consistent with, the Commission's overall policies in CC Docket No. 96-128 to reclassify LEC payphone assets and ensure fair PSP compensation for all calls originated from payphones. And competing PSPs will suffer no disadvantage. Indeed, the voluntary reimbursement mechanism discussed above -- which ensures that PSPs are compensated if rates go down, but does not require them to pay retroactive additional compensation if rates go up -- will ensure that no purchaser of payphone services is placed at a disadvantage due to the limited waiver.

Accordingly, we request a limited waiver, as outlined above, of the Commission's intrastate tariffing requirements for basic payphone lines and unbundled features and functions.

We appreciate your urgent consideration of this matter. Copies of this letter have been served by hand on the APCC, AT&T, MCI and Sprint.

Yours sincerely,


Michael K. Kellogg

cc: Dan Abeyta	Christopher Heimann	Brent Olson
Thomas Boasberg	Radhika Karmarkar	Michael Pryor
Craig Brown	Regina Keeney	James Schlichting
Michelle Carey	Linda Kinney	Blaise Scinto
Michael Carowitz	Carol Matthey	Anne Stevens
James Casserly	A. Richard Metzger	Richard Welch
James Coltharp	John B. Muleta	Christopher Wright
Rose M. Crellin	Judy Nitsche	
Dan Gonzalez		

000393

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

Mary Beth Richards
April 11, 1997
Page 2

I hope this clarification is helpful. Copies of this letter have been served by hand on the APCC, AT&T, MCI and Sprint.

Yours sincerely,


Michael K. Kellogg

cc: Dan Abeyta	Linda Kinney
Thomas Boasberg	Carol Matthey
Craig Brown	A. Richard Metzger
Michelle Carey	John B. Muleta
Michael Carowitz	Judy Nitsche
James Casserly	Brent Olson
James Coltharp	Michael Pryor
Rose M. Crellin	James Schlichting
Dan Gonzalez	Blaise Scinto
Christopher Heimann	Anne Stevens
Radhika Karmarkar	Richard Welch
Regina Keeney	Christopher Wright

000395

Florida Public Telecommunications Association, Inc.
Florida Public Service Commission
Docket No. 030300-TP
Staff's 2nd Request for Production of Documents
Item No. 16
Page 1 of 1

Request: Referring to FPTA's response to BellSouth's First Set of Interrogatories/Admissions, No. 35, please provide all work papers and supporting documents that yield the \$10.91 recommended rate.

Response: FPTA refers Staff to FPTA response to BellSouth's Interrogatory Request 35.

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OPENING PRESENTATION

DOCKET NO. 030300-TP

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET

NO. 030300-TP EXHIBIT NO. 4

COMPANY/ BST

WITNESS. Opening Presentation

DATE: 5-12-04



May 22, 1998

Ms. Laura V. King
Planning and Research Economist
Division of Communications
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

—VIA FACSIMILE—

Post-Net Fax Note	7871	Date	5/22/98
To	Nancy Sims	From	Angela Green
Co./Dept		On	
Phone #		Phone #	
Fax #	222-8640	Fax #	

Re: Docket No. 970281-TL

Dear Ms. King:

We appreciate the time we have been afforded to study the filings that have been made by the various local exchange companies (LECs) in this docket and to discuss these matters with the companies at length. No formal settlement, as such, has been reached as a result of our review and discussions, although a number of operational issues have been addressed and the tariffs and supporting documents have been studied in detail.

At this time, the Florida Public Telecommunications Association (FPTA) believes it would be appropriate for staff to present a recommendation to the Commission for proposed action on the tariffs that have been filed. Given the number of studies and reports staff must now prepare as a result of recent legislation, we simply do not believe it is the best use of staff's time and resources to proceed directly to hearing in the absence of an identified and specific factual dispute. We believe a notice of proposed agency action would serve to sharpen everyone's focus and clearly identify whether there are any remaining disputed issues once staff has issued its recommendation.

Again, we appreciate the consideration we have been shown and look forward to bringing this matter to closure.

Sincerely,

Angela B. Green
General Counsel

cc: Ann Shelfer, Supervisor
all local exchange companies

125 South Goddard Street, Suite 200, Tallahassee, Florida 32301-1525 • (850) 222-5050 FAX (850) 222-1355

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Establishment of
intrastate implementation
requirements governing
federally mandated deregulation
of local exchange company
payphones.

DOCKET NO. 970281-TL
ORDER NO. PSC-98-1088-FOF-TL
ISSUED: August 11, 1998

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION ORDER
APPROVING FEDERALLY MANDATED INTRASTATE TARIFFS
FOR BASIC PAYPHONE SERVICES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. BACKGROUND

To date, the Federal Communications Commission (FCC) has issued several orders in CC Docket No. 96-128, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (the Act). The Payphone Order, FCC 96-388, CC Docket Nos. 96-128 and 91-35, released September 20, 1996, and the Order on Reconsideration, FCC 96-439, CC Docket Nos. 96-128 and 91-35, released November 8, 1996, adopted new rules and policies governing the payphone industry (both orders together are

ORDER NO. PSC-98-1088-FOF-TL
DOCKET NO. 970281-TL
PAGE 2

known as the Payphone Reclassification Proceeding)¹. Two later FCC orders, DA 97-678 and DA 97-805, CC Docket No. 96-128, issued April 4, 1997, and April 15, 1997, respectively, granted incumbent local exchange companies (LECs) waivers for specific interstate and intrastate tariff filing requirements.

Paragraph 162 of the Order on Reconsideration states:

. . . as required in the Report and Order, LECs must provide tariffed, nondiscriminatory basic payphone services that enable independent providers to offer payphone services using either instrument-implemented "smart payphones" or "dumb" payphones that utilize central office coin services, or some combination of the two in a manner similar to the LECS. LECs must file those tariffs with the state. In addition, as required by the Report and Order, any basic network services or unbundled features used by a LEC's operations to provide payphone services must be similarly available to independent payphone providers on a nondiscriminatory, tariffed basis.

¹We note that Section 276(c) of the Telecommunications Act of 1996 states that "(t)o the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's requirements on such matters shall preempt such State requirements."

The tariffs for a LEC's payphone service offerings must be: 1) cost-based, 2) consistent with the requirements of Section 276 of the Act, and 3) nondiscriminatory (FCC 96-439 at ¶163). In addition, states are to apply the Computer III guidelines² for tariffing such intrastate services. Where LECs have already filed intrastate tariffs for these services, states may, after considering the requirements of the Payphone Reclassification Proceedings and Section 276 of the Act, conclude: 1) that existing tariffs are consistent with the requirements noted above and 2) that in such case no further filings are required. All intrastate tariffs were to be effective no later than April 15, 1997. LECs must comply with the above requirements, as well as others discussed in the Payphone Reclassification Proceedings, before the LECs' payphone operations are eligible to receive dial-around compensation for completed intrastate and interstate calls originated by its payphones.

In previous proceedings involving payphone services, we required the tariffing of basic phone lines ("smart" and "dumb") and various blocking and screening options (such as billed number screening and operator screening) to prevent fraud. Small LECs, however, were not required to tariff the "smart" line until they received a bona fide request from a payphone provider. It is clear, however, that the FCC's Payphone Reclassification Proceedings Orders require that the small LECs tariff the "smart" line regardless of whether a request had been made. (See FCC 96-388 at ¶144.)

Since tariffs for the various payphone services (access lines and the unbundled features) were in place, we were in agreement with the position of several of the LECs that the Computer III tariffing guidelines (also known as, "the new services test") were applicable to existing intrastate tariffs. On April 15, 1997, the FCC, however, issued Order No. DA 97-805 (Intrastate Waiver Order). This order granted LECs a limited waiver until May 19, 1997, to file or amend intrastate tariffs for payphone services to be consistent with "the new services test". This FCC order makes it clear that the new services test is applicable to all new and existing tariffed payphone services. (See DA 97-805 at ¶1.)

²This requires application of the FCC's "new services test".

On April 30, 1997, our staff sent a memorandum to each incumbent LEC with a copy of the FCC's Intrastate Waiver Order attached. The memorandum asked each LEC to provide a detailed explanation and any supporting documentation if it believed its current intrastate payphone tariffs met the FCC's new services test. Furthermore, a staff workshop was held on December 9, 1997, to discuss application of the FCC's new services test. During the workshop it was suggested that the Florida Public Telecommunications Association (FPTA) and the LECs meet to determine if the various issues remaining in this docket could be resolved through stipulation of the parties. A hearing was scheduled for September 3, 1998, but has since been canceled. We allowed the parties several months to study the filings and to discuss these matters. On May 22, 1998, we received a letter from the FPTA advising that no formal settlement had been reached, although a number of operational issues had been addressed, and the tariffs and supporting documents had been studied in detail. This Order sets forth our decision on whether current intrastate tariffs meet the FCC's new services test and related filing requirements.

II. DISCUSSION

The Computer III guidelines require the application of the FCC's "new services" test. This test was developed to prevent LECs from setting excessively high rates and to protect against unreasonably discriminatory pricing. In the Order on Reconsideration at Paragraph 163, Note 492, the FCC refers to the "new services" test required in the Report and Order as codified in Section 61.49(g)(2) of Title 47 of the Code of Federal Regulations. This section states:

Each tariff submitted by a local exchange carrier specified in §61.41(a)(2) or (3) of this part that introduces a new service or a restructured unbundled basic service element (BSE) that is or will later be included in a basket must be accompanied by cost data sufficient to establish that the new service or unbundled BSE will not recover more than a reasonable portion of the carrier's overhead costs.

In addition, Note 492 also refers to Amendments of Part 69 of the FCC's Rules Relating to the Creation of Access Charge Subelements

for Open Network Architecture, CC Docket No. 89-79. It is stated in Paragraph 42 that a LEC introducing a new service will be required to submit its engineering studies, time and wage studies, or other cost accounting studies to identify the direct costs of providing the new service, absent overheads, and must also satisfy the net revenue test³. Therefore, it appears that the federal "new services" test requires that the rates for the services not recover more than a reasonable portion of the carrier's overhead cost, and the costs must be supported by a cost study.

While we required cost information for wholesale payphone offerings to be filed on March 31, 1997, by Order PSC-97-0358-FOF-TP, there were only three LECs (BellSouth, GTEFL, and Sprint) that had this information available. The majority of the information was filed under confidential cover. We have reviewed the information provided and believe that when viewed in the aggregate the existing rates for payphone services are appropriate. This aggregate level assessment considers both required and typically purchased features and functions. Moreover, based on our review of these studies, we believe that these LECs' current tariffed rates for intrastate payphone services are cost-based and thus meet the "new services" test.

The small LECs did not have cost studies to submit, and we believe it would be unduly burdensome and costly to require such studies to be developed. In most cases, the small LECs have mirrored the rates of the large LECs. It should be noted that rates for the "smart" and "dumb" line and many of the unbundled features and functions (such as billed numbered screening and operator screening) are the result of one or more of our proceedings in which costs were considered.

³The net revenue test is described in FCC 90-314, CC Docket 87-313, n. 416. It requires that the proposed service increase net revenue (with the increase occurring within a certain time frame), and detailed information must be provided, including demand, cost, and revenues.

In comparison with other states, it appears that Florida is unique in that this state's LECs have had tariffs in place for many years to provide various payphone services to independent pay telephone providers. In addition, we have held many proceedings regarding various aspects of the pay telephone market. As stated at page 30 in Order No. PSC-93-0289-FOF-TL:

No market has received as much attention, scrutiny, and evaluation, from this Commission as the pay telephone market. Since 1985, we have held three full evidentiary hearings, approved or modified two stipulations, and have addressed a myriad of other pay telephone-related issues. We have endeavored to insure that NPATS have the ability to enter and exit the market and to compete with LPATS. Since 1985, we have approved four rate reductions for interconnection . . .

III. CONCLUSION

Upon consideration, we do not believe there has been a significant change in circumstances within the pay telephone industry regarding the wholesale services offered to payphone providers by LECs. As previously discussed, many of the rates and services have been in place in the existing tariffs for many years. The wholesale services offered in the existing LEC tariffs are not discriminatory, since all payphone providers (LEC and non-LEC) now purchase services out of the same tariff, at the same rates.

We have considered the requirements of the FCC Orders and Section 276 of the Act and find the existing tariffs for LEC payphone services are appropriate. We will require further filings, however, that are necessary to tariff coin line ("smart" line) service by Indiantown, Quincy, and Vista-United by August 18, 1998. While we are aware that these companies have not received a bona fide request for the "smart" line, we believe these tariffs must be filed to meet the FCC's guidelines and must be in place before these companies are eligible to receive per-call, dial-around compensation. A tariff whose rates and terms mirror those of a tariff previously approved by this Commission will be presumed to have satisfied the "new services test" and will be handled administratively.

ORDER NO. PSC-98-1088-FOF-TL
DOCKET NO. 970281-TL
PAGE 7

We note again that in most cases the existing tariffs are the result of one or more of our payphone-related proceedings in which costs were considered. All payphone providers (LEC and non-LEC) will be purchasing the same wholesale services at the same rates from the existing tariffs; therefore, the tariffs are not discriminatory. Accordingly, we find that the existing LEC tariffs for payphone services are cost-based, consistent with Section 276 of the Act, and nondiscriminatory; therefore, no further filings are necessary to modify existing tariffs.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that existing incumbent local exchange company tariffs for smart and dumb line payphone services are cost-based, consistent with Section 276 of the Telecommunications Act of 1996, and nondiscriminatory. It is further

ORDERED that Indiantown Telephone Systems, Inc., Quincy Telephone Company, and Vista-United Telecommunications shall file smart line tariffs as prescribed by this Order by August 18, 1998. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 11th day of August, 1998.

/s/ Blanca S. Bayó
BLANCA S. BAYÓ, Director
Division of Records and Reporting

ORDER NO. PSC-98-1088-FOF-TL
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PAGE 8

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

WPC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 1, 1998.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing

ORDER NO. PSC-98-1088-FOF-TL
DOCKET NO. 970281-TL
PAGE 9

fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Establishment of
intrastate implementation
requirements governing
federally mandated deregulation
of local exchange company
payphones.

DOCKET NO. 970281-TL
ORDER NO. PSC-99-0493-FOF-TL
ISSUED: March 9, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDER CLOSING DOCKET
AND REINSTATING ORDER NO. PSC-98-1088-FOF-TL

BY THE COMMISSION:

On July 9, 1998, our staff filed a recommendation addressing whether the local exchange companies' (LECs') current tariffs for the basic payphone services and any basic network services and unbundled features satisfy the FCC's requirements, and whether further filings are required, consistent with Section 276 of the Telecommunications Act of 1996. At the July 21, 1998, Agenda Conference, we determined that "[e]xisting incumbent local exchange company tariffs for smart and dumb line payphones services are cost-based, consistent with Section 276 of the Telecommunications Act of 1996, and nondiscriminatory." (Order No. PSC-98-1088-FOF-TL at 6, issued August 11, 1998.)

On September 1, 1998, Florida Public Telecommunications Association (FPTA) filed a petition protesting Proposed Agency Action (PAA) Order No. PSC-98-1088-FOF-TL, requesting that the matter be set for hearing. On December 31, 1998, the FPTA, however, filed a notice of withdrawal of its September 1, 1998, petition.

Accordingly, on January 19, 1999, we approved a staff recommendation to close the docket due to the FPTA's withdrawal of its protest. Our staff's recommendation, however, indicated that the effective date of PAA Order No. PSC-98-1088-FOF-TL, the protested Order, would be September 1, 1998, the date the PAA Order would have become final had it not been protested by the FPTA. The September 1, 1998, effective date was incorrect.

Therefore, by this Order, we seek to close this docket and reinstate Order No. PSC-98-1088-FOF-TL with the correct effective date. In light of the FPTA's December 31, 1998, notice of withdrawal of its petition, there is nothing further for us to address in this docket. Hence, this docket is closed, hereby making Order No. PSC-98-1088-FOF-TL final, effective the date that we originally approved the staff recommendation to close this docket, January 19, 1999.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that this docket is closed. It is further

ORDERED that Order No. PSC-98-1088-FOF-TL is reinstated as a final order, effective January 19, 1999.

By ORDER of the Florida Public Service Commission this 9th day of March, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: /s/ Kay Flynn
Kay Flynn, Chief
Bureau of Records

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

WPC

ORDER NO. PSC-99-0493-FOF-TL
DOCKET NO. 970281-TL
PAGE 3

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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).

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

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.*

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 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 276¹² 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

¹¹ See Letter to Joseph P. Mettner, Chairman, Public Service Commission of Wisconsin, from Kathryn C. Brown, Chief, Common Carrier Bureau, 13 FCC Rod 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

make a determination as to the maximum permissible rate and to require the incumbent LEC to 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

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.

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).

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 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.

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

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).

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 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

Yog R. Varma
Deputy Chief
Common Carrier Bureau

Bureau/CPD No. 00-01

⁵ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, First Report and Order, 11 FCC Rcd 20541 (Sept. 20, 1996) (*First Payphone Order*), Order on Reconsideration, 11 FCC Rcd 21233 (Nov. 8, 1996) (*Payphone Reconsideration Order*), *aff'd in part and remanded in part*, *Illinois Pub. Telecomms. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997); Second Report (continued....)

Coalition's application for review, we deny the Coalition's request to withdraw or stay the *Bureau Order*.⁶

2. After careful review of section 276 and its legislative history, we conclude that Congress enacted section 276 to "promote competition among payphone service providers and promote the widespread deployment of payphone service to the benefit of the general public."⁷ To advance these pro-competitive statutory goals, Congress directed the Commission to "terminat[e] the current system of payphone regulation" and "eliminate all discrimination between [Bell Operating Company (BOC)] and independent payphones and all subsidies or cost recovery for BOC payphones."⁸ In compliance with this statutory mandate, we affirm the Bureau's conclusion that section 276 requires BOCs to set their intrastate payphone line rates in compliance with the Commission's cost-based, forward-looking "new services" test.⁹ Although the administrative record for this matter shows disparate applications of the new services test in various state proceedings,¹⁰ we believe that this *Order* will assist states in applying the new services test to BOCs' intrastate payphone line rates in order to ensure compliance with the *Payphone Orders* and Congress' directives in section 276.

3. Payphones are an important part of the nation's telecommunications system. They are critical not only for emergency communications, but also for those Americans who cannot afford

(...continued from previous page)

and Order, 13 FCC Rcd 1778 (Oct. 9, 1997) (*Second Payphone Order*), vacated and remanded, *MCI Telecomms. Corp. 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 (Feb. 4, 1999) (*Third Payphone Order*), *aff'd*, *American Pub. Communications Counsel v. FCC*, 215 F.3d 51 (D.C. Cir. 2000). The *First Payphone Order* and the *Payphone Reconsideration Order* are collectively known as the *Payphone Orders*.

⁶ LEC App. at 1-2.

⁷ 47 U.S.C. § 276(b).

⁸ H.R. Rep. No. 104-204, at 88 (1995) (emphasis added).

⁹ *Payphone Reconsideration Order*, 11 FCC Rcd at 20614, para. 146. See also *infra* note 26 and accompanying text.

¹⁰ State payphone association filings in this proceeding, and related proceedings before this Commission, have described diverse state public service commission approaches to the requirements of the *Payphone Orders* in more than a dozen states. See Reply Comments of the Ind. Payphone Ass'n (Oct. 23, 2000); Reply Comments of the Midwest Independent Coin Payphone Ass'n (Oct. 23, 2000) (discussing Missouri Public Service Commission proceedings); Reply Comments of the Independent Payphone Ass'n of N.Y., Inc. (Oct. 23, 2000); Reply Comments of the Northwest Payphone Ass'n (discussing Oregon Public Utility Commission proceedings); Joint Reply Comments of Atl. Payphone Ass'n and Central Atl. Payphone Ass'n (filed Oct. 23, 2000) (discussing proceedings in Maryland, Virginia, and Washington, DC); Reply Comments of the Illinois Pub. Telecomms. Ass'n, Michigan Pay Tele. Ass'n, Payphone Ass'n of Ohio, and the Kentucky Payphone Ass'n (filed Oct. 23, 2000). See also North Carolina Payphone Ass'n, Petition for Expedited Review, File No. CCB/CPD No. 99-27 (filed Aug. 13, 1999); Michigan Pay Tele. Ass'n, Petition for Declaratory Ruling, File No. CCB/CPD No. 99-35 (filed Nov. 12, 1999). See also Public Serv. Comm'n of S.C., *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*, Docket No. 97-124-C, Order Setting Rates for Payphone Lines and Associated Features, Order No. 1999-285 (April 19, 1999), reconsideration denied, Order No. 1999-497 (July 19, 1999); Tennessee Regulatory Auth., *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, Interim Order (Feb. 1, 2001).

their own telephone service.¹¹ Thus, despite evidence that payphones are losing market share to wireless services,¹² the basic pay telephone remains a vital telecommunications link for many Americans.

II. BACKGROUND

A. OVERVIEW OF SECTION 276

4. Before addressing the *Bureau Order*, we summarize the applicable statutory and regulatory provisions. We also review the *Payphone Orders*, other Commission orders, and the procedural history of this matter.

5. *The Requirements of Section 276.* Section 276(a) prohibits any BOC from: (1) subsidizing "its payphone service directly or indirectly from its telephone exchange operations or its exchange access operations;" and (2) preferring or discriminating "in favor of its payphone service" after the effective date of rules prescribed under section 276(b).

6. Section 276(b)(1) requires the Commission to prescribe regulations to "promote competition among payphone service providers and promote the widespread deployment of payphone services for the benefit of the general public."¹³ The statute sets out five requirements to meet these goals. First, section 276(b)(1)(A) requires the Commission to "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone." Second, under section 276(b)(1)(B), the Commission must promulgate regulations that "discontinue the intrastate and interstate carrier access charge payphone service elements and payments . . . and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues." Third, section 276(b)(1)(C) directs the Commission to "prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of paragraphs (1) and (2) of subparagraph (a), which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90-623) proceeding."¹⁴ Fourth, pursuant to section 276(b)(1)(D), the Commission shall "provide for Bell operating company payphone service providers to have the same right that independent payphone providers have to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry interLATA calls from their payphones." Finally, section 276(b)(1)(E) directs the Commission to "provide for all payphone service providers to have the

¹¹ See Liza Mundy, *Hearing the Call*, The Wash. Post Magazine, Sept. 2, 2001, at 26. See also Raymond McCaffrey, *For the Phone Booth, It's Last Call*, The Wash. Post, Sept. 17, 2001, at B3.

¹² *Hearing the Call*, *supra* note 11, at 12, 25. We find nothing in section 276 that would authorize intervention into competitive issues as between the wireless and payphone services markets. Nevertheless, we acknowledge the concerns expressed in many letters to Congress and the Commission about competition from wireless services.

¹³ 47 U.S.C. § 276(b)(1).

¹⁴ See *In the Matter of Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards*, CC Docket No. 90-623, Report and Order, 6 FCC Rcd 7571 (Dec. 20, 1991) (*Computer III*).

right to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry interLATA calls from their payphones."

7. *Preemption.* Section 276(c) states that, "[t]o the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements."

8. *Definition of "Payphone Service."* Section 276(d) broadly defines the term "payphone service" as the "provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services."

B. THE PAYPHONE ORDERS AND RELATED COURT CHALLENGES

9. *The First Payphone Order.* We addressed the statutory requirements of section 276(b)(1) in the *First Payphone Order*.¹⁵ To implement section 276(b)(1)(A)'s "fair compensation" plan requirements, we directed interexchange carriers (IXCs) that carry calls originating from payphones to compensate the payphone service provider (PSP).¹⁶ Previously, PSPs received no revenue for originating certain calls (such as subscriber 800 and other toll-free number calls) and were prohibited from blocking callers from making some of those calls (such as access code calls).¹⁷ We concluded that PSPs must be compensated for all such calls and determined that IXCs, as the primary beneficiaries of those calls, should be responsible for providing that compensation.¹⁸

10. We decided that the best way to ensure fair competition was to allow the market to set the price for each call.¹⁹ Because no market existed for so-called "dial around" coinless calls, we first adopted a market-based surrogate – the price of a local coin call at a typical deregulated payphone of \$0.35. In selecting this regime, we stated that "the cost[s] of originating the various types of payphone calls are similar."²⁰

11. To discontinue access charges and subsidies under section 276(b)(1)(B), we concluded that, in order to receive compensation for completed calls originating from its payphones, a LEC PSP "must be able to certify" that it has complied with several requirements, including the institution of "effective intrastate tariffs reflecting the removal of charges that recover the costs of payphones and any intrastate [payphone] subsidies."²¹ We also required that all incumbent LEC payphones be treated as deregulated and detariffed customer premises

¹⁵ *First Payphone Order*, 11 FCC Rcd at 20543-45, paras. 1-8.

¹⁶ *Id.* at 20566, para. 48.

¹⁷ *In the Matter of Bell Atlantic-Dela. v. Frontier Comms. Servs., Inc.*, No. E-98-48/49, Mem. Opinion and Order, 14 FCC Rcd 16050, 16053-54, para. 5 (Sept. 24, 1999).

¹⁸ *Id.*; *First Payphone Order*, 11 FCC Rcd at 20584, para. 83.

¹⁹ *First Payphone Order*, 11 FCC Rcd at 20577, para. 70.

²⁰ *Id.*

²¹ *Payphone Reconsideration Order*, 11 FCC Rcd at 21293, para. 131 (summarizing certification requirements).

equipment (CPE).²²

12. To implement the nonstructural safeguards requirement of section 276(b)(1)(C), we stated that all BOCs must comply with the nonstructural safeguards from our *Computer III* order.²³ We stated that such safeguards will "ensure that BOCs do not discriminate or cross-subsidize in their provision of payphone service."²⁴ We concluded that, to comply with *Computer III*, LECs must unbundle payphone line services and file tariffs with the Commission for such services using the price cap "new services" test.²⁵ The new services test is a cost-based test that sets the direct cost of providing the new service as a price floor and then adds a reasonable amount of overhead to derive the overall price of the new service.²⁶ The Commission has applied this test to new interstate access service proposed by LECs subject to price cap regulation.²⁷

13. Finally, subsections 276(b)(1)(D) and (E) concern the ability of BOCs and independent PSPs to negotiate with location providers on the selection of presubscribed interLATA and intraLATA carriers, respectively.²⁸ In the *First Payphone Order*, we identified certain "market-distorting factors" affecting these negotiation rights, such as conflicting state rules and discriminatory access, but we stated that the nonstructural safeguards in *Computer III* would address our concerns.²⁹ Pursuant to the express authority provided under Section 276(c), we also preempted any intrastate rules that limited or affected these negotiation rights.³⁰

14. *The Reconsideration Order*. Acting on several petitions for reconsideration, we modified certain requirements for LEC tariffing of payphone services and unbundled network functionalities. We stated that LECs should file tariffs for basic payphone lines at the state level only. Unbundled features and functions provided by LECs to their own payphone operations or to others should be tariffed at both the state and federal levels.³¹ We confirmed that, even if LEC payphone tariffs were filed at the state level, they should nevertheless comply with section 276 as implemented by the Commission and, as such, should be cost-based, nondiscriminatory, and

²² *First Payphone Order*, 11 FCC Rcd at 20611, para. 142.

²³ *Id.* at 20640-41, paras. 199-200. See *supra* note 14.

²⁴ *Id.* at 20640, para. 199.

²⁵ *Id.* at 20614, para. 146.

²⁶ 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 and Order on Further Reconsideration and Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 4524 (July 11, 1991) (*Part 69/ONA Order*); *In the Matter of Telephone Company-Cable Television Cross-Ownership Rules*, CC Docket No. 87-266, Mem. Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 10 FCC Rcd 244, 340-47, paras. 209-22 (Nov. 7, 1994) (defining new services test) (*Video Dialtone Reconsideration Order*).

²⁷ 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).

²⁸ *First Payphone Order*, 11 FCC Rcd at 20644, para. 208, and 20667, para. 253.

²⁹ *Id.* at 20644, para. 208, and 20660, para. 238.

³⁰ *Id.* at 20669-70, para. 261.

³¹ *Payphone Reconsideration Order*, 11 FCC Rcd at 21307-09, paras. 162-65.

consistent with both section 276 and our *Computer III* tariffing guidelines.³² Thus, rates assessed by LECs for payphone services tariffed at the state level should satisfy the new services test.

15. In the interest of federal-state comity, we stated that we 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 276.³³ We noted, however, that state commissions that are unable to review these tariffs may ask incumbent LECs operating in their states to file such tariffs with the Commission.³⁴ We also preempted all state rules that were inconsistent with our nonstructural safeguards.³⁵

16. *Illinois Public Telecommunications Association v. FCC*. Various parties sought review of several portions of the *Payphone Orders*.³⁶ As an initial matter, the D.C. Circuit held that the Commission has jurisdiction to set purely intrastate local coin rates for payphones as part of a compensation plan under section 276(b)(1)(A).³⁷ The court also upheld those portions of the two challenged orders that deregulated local coin rates for payphones, set such rates according to the market, established a "carrier pays" compensation plan for toll-free payphone calls, and required IXCs to track calls from payphones.³⁸ The court remanded the coinless call rate determination to us, however, stating that we had overlooked record evidence that the costs of coin calls and coinless calls are not similar.³⁹

17. *MCI Telecommunications Corp. v. FCC*. On remand, we re-calculated the coinless call rate using a "top down" methodology.⁴⁰ Several parties challenged portions of the *Second Payphone Order* in the D.C. Circuit.⁴¹ The court invalidated the Commission's methodology for calculating the local coinless call rate and remanded the order for further proceedings.

18. *American Public Communications Counsel v. FCC*. On remand, the Commission developed and applied a "bottom up" methodology to calculate the local coinless call rate.⁴² The D.C. Circuit upheld the Commission's order, finding that the bottom up methodology was a reasonable exercise of the Commission's authority to establish per-call compensation rates.⁴³

³² *Id.* at 21308, para. 163.

³³ See Letter to Joseph P. Mettner, Chairman, Public Service Commission of Wisconsin, from Kathryn C. Brown, Chief, Common Carrier Bureau, 13 FCC Rcd 20865, 20866 (Oct. 28, 1998) (1998 CCB Letter).

³⁴ *Payphone Reconsideration Order*, 11 FCC Rcd at 21308, para. 163.

³⁵ *Id.* at 21328-29, paras. 218-220.

³⁶ *Illinois Pub. Telecomms. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997) (*IPTA v. FCC*)

³⁷ *Id.* at 562.

³⁸ *Id.* at 562-67.

³⁹ *Id.* at 563-64.

⁴⁰ *Payphone Reconsideration Order*, 11 FCC Rcd 21233.

⁴¹ *MCI Telecomms. Corp. v. FCC*, 143 F.3d 606 (D.C. Cir. 1998).

⁴² *Third Payphone Order*, 14 FCC Rcd at 2577, para. 72.

⁴³ *American Pub. Communications Counsel v. FCC*, 215 F.3d 51 (D.C. Cir. 2000). Neither the top down nor bottom up methodology is at issue in this proceeding, but we include this discussion to provide context.

C. PROCEDURAL HISTORY OF THIS MATTER

19. In July 1997, the Wisconsin Pay Telephone Association filed a petition with the Wisconsin Commission "request[ing] that the [Wisconsin Commission] determine the cost basis for each network service provided by Wisconsin [LECs] to payphone providers under the federal New Services Test, determine whether the network services provided by LECs to payphone providers discriminate in favor of the LECs' own payphone operations, [and] determine whether LECs are subsidizing payphone operations with revenue from noncompetitive services."⁴⁴

20. Four months later, in November 1997, one month after the D.C. Circuit remanded the *Second Payphone Order* to the Commission, the Wisconsin Commission held that its ability 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."⁴⁵ 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."⁴⁶ The Wisconsin Commission concluded that it could not review the rates, terms, and conditions of basic payphone services for compliance with the requirements of section 276 and the Commission's rules.⁴⁷

21. On October 28, 1998, the Bureau sent a letter to the Wisconsin Commission stating that, in light of the Wisconsin Commission's decision, the Bureau would require the Wisconsin LECs to file with the Commission "tariffs that set forth the rates, terms, and conditions associated with pay phone services, along with the required supporting documentation."⁴⁸ The Bureau stated that its review of such rates would ensure that LEC payphone line service tariffs in Wisconsin complied with section 276 and the *Payphone Orders*.⁴⁹

22. On March 2, 2000, the Bureau issued an order directing Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin), GTE North Incorporated, Century Telephone Enterprises Inc., and Telephone Data Systems, Inc., to submit to the Commission copies of their companies' currently effective intrastate tariffs that set forth the rates, terms, and conditions associated with payphone line services in Wisconsin.⁵⁰ The *Bureau Order* also requested documentation demonstrating compliance with the requirements of section 276 and the Commission's rules.⁵¹

⁴⁴ Wisconsin Public Service Commission Letter Order, Docket No. 05-TI-156 (Nov. 6, 1997) (unpublished).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ See 1998 CCB Letter, 13 FCC Red at 20866.

⁴⁹ *Id.*

⁵⁰ *Bureau Order*, 15 FCC Red at 9980, para. 5.

⁵¹ *Id.*

1. Cost-Based Federal Pricing Standards

23. The *Bureau Order* summarized the guidelines to be applied under *Computer III* and other Commission proceedings concerning the application of the new services test and cost-based ratemaking principles to services that incumbent LECs offer to competitors.⁵² The Bureau explained that, to satisfy these requirements, an incumbent LEC must demonstrate that the proposed payphone line rates do not recover more than the direct costs of the service, plus “a just and reasonable portion of the carrier’s overhead costs.”⁵³ Costs must be determined by an appropriate forward-looking, economic cost methodology that is consistent with the principles articulated in the *Local Competition Order*.⁵⁴

24. The *Bureau Order* confirmed our longstanding policy that the new services test requires the use of consistent methodologies in computing direct costs for related services.⁵⁵ As a result, the *Bureau Order* stated, cost study inputs and assumptions used to justify payphone line rates should be consistent with the cost inputs used in computing rates for comparable services offered to competitors.⁵⁶

2. Just and Reasonable Overhead Allocations

25. The *Bureau Order* stated that overhead allocations must be based on cost and may not be set artificially high in order to subsidize or contribute to other services.⁵⁷ The *Bureau Order* required the Wisconsin LECs to justify the methodology used to determine such overhead costs.⁵⁸ Absent justification, the *Bureau Order* stated, the Wisconsin LECs may not recover a greater share of overheads in rates for the service under review than they recover for comparable services.⁵⁹ The Bureau concluded that, for purposes of justifying overhead allocations, unbundled network elements (UNEs) appear to be “comparable” to payphone line services because both provide critical network functions to a BOC’s competitors and are subject to a “cost-based” pricing requirement.⁶⁰ The Bureau stated its expectation that the Wisconsin LECs should explain any overhead allocations for payphone line services that depart significantly from overhead allocations approved for UNE services.⁶¹

⁵² *Id.* at 9981-82, paras. 7-12.

⁵³ *Id.* at 9981, para. 9.

⁵⁴ *Id.* See also *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499 (Aug. 8, 1996) (*Local Competition Order*).

⁵⁵ *Bureau Order*, 15 FCC Rcd at 9981-82, para. 10.

⁵⁶ *Id.* at 9982, para. 10.

⁵⁷ *Id.* at 9982, para. 11. See *Computer III*, 6 FCC Rcd at 7601, para. 64 n.108; *Part 69/ONA Order*, 6 FCC Rcd at 4532, para. 46.

⁵⁸ *Bureau Order*, 15 FCC Rcd at 9982, para. 11.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

26. Finally, the *Bureau Order* stated that any forward-looking cost studies required for an overhead allocation demonstration should produce cost estimates on an "unseparated" basis.⁶² The *Bureau Order* explained that, to avoid double recovery of costs, the BOC must demonstrate that in setting its payphone line rates it has taken into account other sources of revenue (e.g., subscriber line charges (SLC), presubscribed interexchange carrier charges (PICC), and carrier common line (CCL) charges).⁶³

27. The *Bureau Order* required that copies of tariffs and supporting documentation be filed by May 12, 2000.⁶⁴ On April 3, 2000, the LEC Coalition filed an application for review and request for stay of the Order. On April 10, 2000, the American Public Communications Council (APCC) and the Wisconsin Pay Telephone Association (WPTA) filed oppositions to the LEC Coalition's request for stay. On April 12, 2000, the Bureau, on its own initiative, deferred the date for the filings required by the *Bureau Order* until August 12, 2000, and issued a public notice requesting comment on the LEC Coalition's request for stay and application for review.⁶⁵ Oppositions to the request for stay and application for review were filed by APCC, WPTA, and several other state payphone associations on May 12, 2000. The LEC Coalition replied on May 30, 2000. On August 12, 2000, the Wisconsin LECs filed their tariff submissions pursuant to the March 2 Order. We requested comments and reply comments on those submissions, which were filed on October 2, 2000 and October 23, 2000, respectively.

28. The LEC Coalition argues that our application of the new services test to intrastate payphone line rates is improper.⁶⁶ The Coalition states that the new services test is flexible and need not be based on forward-looking costs.⁶⁷ The LEC Coalition also contends that the pricing regime of sections 251 and 252 does not apply to payphone services.⁶⁸ The Coalition states that overhead loading rates should not be based on those for UNEs.⁶⁹ Finally, the LEC Coalition argues that the Commission lacked the jurisdiction under section 276 to issue the *Bureau Order* in the first place and that, in any event, it violates the Tenth Amendment.⁷⁰

⁶² *Id.* at 9982, para. 12.

⁶³ *Id.*

⁶⁴ *Id.* at 9982, para. 13.

⁶⁵ *FCC Public Notice: Pleading Cycle Established for CCB/CPD No. 00-01*, 15 FCC Rcd 6238, 6238 (April 12, 2000).

⁶⁶ LEC App. at 5-7.

⁶⁷ *Id.* at 10.

⁶⁸ *Id.* at 11.

⁶⁹ *Id.*

⁷⁰ *Id.* at 20-22. Although the LEC Coalition did not challenge our jurisdiction to issue the *Payphone Orders*, see *infra* note 74, we believe that, by challenging the jurisdictional basis of the *Bureau Order* concerning federal review of intrastate payphone line rates, the LEC Coalition necessarily challenges those portions of the *Payphone Orders* on which the *Bureau Order* relies.

29. APCC and other payphone associations counter that we properly asserted jurisdiction in the *Payphone Orders* and in the *Bureau Order*.⁷¹ They argue that we cannot possibly fulfill Congress' directive to prevent the BOCs from discriminating against other PSPs if the underlying payphone line rate is not subject to a cost-based standard such as the new services test.⁷²

30. Before turning to the merits of the LEC Coalition's arguments concerning pricing and related issues from the *Bureau Order*, we first address the claim that the Commission lacks jurisdiction to require BOCs to set their intrastate payphone line rates in compliance with the new services test.⁷³

III. DISCUSSION

A. INTRASTATE JURISDICTION UNDER SECTION 276

31. The threshold question before the Commission is whether we have the authority to set the standard that states must apply in reviewing payphone line rate tariffs. Because these rates have been considered intrastate rates and thus traditionally handled by the states, the central issue is whether the Commission has jurisdiction over the intrastate component of payphone line rates. In the *First Payphone Order*, we asserted such authority and ordered that all LEC payphone line rates be cost-based, as measured by the new services test. Four years after the Commission first asserted jurisdiction over intrastate payphone line rates, the LEC Coalition now challenges our authority over intrastate payphone line rates.⁷⁴ For the reasons set forth below, we confirm the holding of our previous orders that we have jurisdiction over the intrastate payphone

⁷¹ Letter from A.H. Kramer and R.F. Aldrich, counsel for APCC, to Dorothy Attwood, Chief, Common Carrier Bureau (March 20, 2001).

⁷² *Id.*

⁷³ The LEC Coalition also makes three other arguments. First, it alleges that the *Bureau Order* violates the Bureau's delegated authority under 47 C.F.R. § 0.291(a)(2) as a "novel" assertion of federal power "without precedent." LEC App. at 10. As the discussion below shows, however, the *Bureau Order* adheres to the commands of section 276 and also is consistent with our prior orders concerning pricing and payphones. Accordingly, we conclude that the *Bureau Order* was within the Bureau's delegated authority. Second, the Coalition claims that the *Bureau Order* is a "legislative rule" that must go through notice and comment. *Id.* at 10. We disagree. The *Bureau Order* simply applies our existing authority. In any event, many parties, including the LEC Coalition and APCC, have submitted thorough *ex parte* comments on the jurisdictional issue. Finally, the Coalition contends that the *Bureau Order* violates the Tenth Amendment by "dictat[ing] the content of state law." *Id.* at 21. Section 276 simply sets a federal standard, and the Supreme Court has repeatedly validated "Congress' power to offer States the choice of regulating [an] activity according to federal standards or having state law pre-empted by federal regulation." *New York v. United States*, 505 U.S. 144, 167 (1992) (citations omitted). See also *FERC v. Mississippi*, 456 U.S. 742, 759 (1982).

⁷⁴ This new challenge is inconsistent with position taken by the BOC coalition in 1997, when it sought and obtained a 45-day waiver for compliance with the new services test, acknowledging in the process that the Commission *does* in fact have jurisdiction over intrastate payphone services. See *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order, 12 FCC Rcd 21370, 21375-76, paras. 13-14 (April 15, 1997). The Commission noted that the "RBOC Coalition concedes that the Commission's payphone orders . . . mandate that the payphone services a LEC tariffs at the state level are subject to the new services test and that the requisite cost-support data must be submitted to the individual states." *Id.* at 21378, para. 18 (emphasis added).

line rates charged by BOCs, but also hold that we do not have jurisdiction over such rates charged by non-BOC LECs. Nevertheless, as discussed below, states may find it appropriate to apply to all LECs the same cost-based requirement that they must apply to BOCs.

32. We must determine whether Congress through section 276 has granted us authority to regulate this traditionally intrastate matter. Our interpretation of section 276 is guided by section 2(b), which states that "nothing in this Act shall be construed to apply or give the Commission jurisdiction with respect to" intrastate services.⁷⁵ As a result of that interpretive rule, the Commission may regulate intrastate services when Congress has conferred intrastate jurisdiction in a manner that is "unambiguous or straightforward."⁷⁶ Thus, we will examine section 276 to determine whether it constitutes such a grant of authority.

33. We begin with the terms of the statute. Sections 276(a)(1) and (2) provide that any BOC that provides payphone service "shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations" and that a BOC "shall not prefer or discriminate in favor of its payphone service."⁷⁷ Those prohibitions necessarily apply to both intra- and interstate payphone service provided by BOCs because the statutory language is unqualified and contains no limitation whatsoever on the discrimination, subsidies, and preferences that are prohibited. Congress would not have directed the elimination of subsidies and discrimination if BOCs were free to subsidize and discriminate at the intrastate level. To the extent that it is "not possible to separate the interstate and the intrastate components" of telephone regulation, the Commission may ensure effective regulation of the federal component, despite section 2(b), by asserting jurisdiction over the state component as well.⁷⁸

34. Other provisions of section 276 support the conclusion that sections 276(a)(1) and (2) apply to intrastate service. In place of the subsidies that formerly supported the LEC-owned payphone system, Congress in section 276(b)(1)(A) substituted a "per call compensation plan" that applies to "each and every completed intrastate and interstate call." The D.C. Circuit held in *IPTA v. FCC* that this provision gives the Commission authority to deregulate the price charged to payphone users, which like the line rate had long been the subject of state regulation.⁷⁹ The compensation plan's explicit application to intrastate matters significantly indicates that Congress also intended to reach intrastate subsidies when it forbade BOCs from subsidizing payphone operations in section 276(a)(1). Similarly, Congress effectuated the anti-subsidy policy of section 276(a) through section 276(b)(1)(B), which directs the Commission to "discontinue the intrastate and interstate carrier access charge payphone service elements and payments . . . and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues." Thus, section 276(b)(1)(B) applies explicitly to both intrastate and

⁷⁵ 47 U.S.C. § 152(b).

⁷⁶ *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 377 (1986).

⁷⁷ 47 U.S.C. § 276(a)(1), (2).

⁷⁸ *Louisiana*, 476 U.S. at 375 n.4.

⁷⁹ *IPTA v. FCC*, 117 F.3d 555. The Commission previously determined that payphone line rates are the greatest single cost associated with providing payphone service. *Third Payphone Order*, 14 FCC Rcd at 2623-25, paras. 170-74, and 2632, para. 191. See also APCC, "New Services Test Presentation," Tab 1 at 1 (July 19, 2001).

interstate subsidies and by doing so strongly indicates that section 276(a)(1), the provision it effectuates, was also intended to apply to intrastate discrimination.⁸⁰

35. In addition to individual provisions of the statute indicating Congress' intent that the non-subsidy provision (and by implication the non-discrimination provision) apply to both intra- and interstate service, the statutory language and structure as a whole demonstrate that Congress so intended. Section 276 establishes a comprehensive federal scheme of payphone regulation, both intra- and interstate, to be administered by the Commission. The statute eliminates the subsidies that supported the old system and implements in its place a new market-oriented approach. Four of the five specific regulatory directives in the statute, contained in subsections A, B, D, and E of section 276(b)(1), refer directly to intrastate regulation.⁸¹ That focus on intrastate regulation alone indicates Congress' intent that the Commission occupy the field. This is not surprising. An overarching federal program is necessary to achieve Congress' goal of eliminating subsidies in order to "promote competition among payphone service providers and promote the widespread deployment of payphone services."⁸² The importance of federal control is driven home by section 276(c), which expressly preempts "any State requirements . . . inconsistent with the Commission's regulations" implementing the statute. Such a comprehensive plan also shows that Congress intended the BOC non-discrimination and non-subsidization provisions to apply to *all* BOC payphone activity, both intra- and interstate.⁸³

36. The legislative history of section 276 supports that interpretation of the statutory language. Congress intended to "terminat[e] the current system of payphone regulation" -- *i.e.*, the subsidization and state regulation that had long prevailed -- and to "eliminate *all* discrimination between BOC and independent payphones and *all* subsidies or cost recovery for BOC payphones from regulated interstate or intrastate exchange or exchange access revenue."⁸⁴ The Senate Committee Report similarly recognizes that BOCs have the "incentive and the potential for *all* the forms of discrimination, cross-subsidy, and leveraging of bottleneck facilities that both the divestiture and the Commission's regulatory regime for competitive [BOC] offerings are supposed to prevent."⁸⁵ Thus, Congress' stated intention to eradicate all forms of discrimination was made manifest in the broad mandate of section 276(a) to eliminate all subsidies and discrimination, intra- or interstate.

37. Subsection 276(b)(1)(C) is the only sub-part of section 276(b)(1) that does not use the term "intrastate" or otherwise refer directly to such service. But subsection C directs the

⁸⁰ Section 276(b)(1)(B) is somewhat broader than section 276(a)(1) because it applies to all LECs and is not limited to the BOCs, as is section 276(a)(1). That distinction explains why Congress included a separate directive to the Commission to eliminate subsidies.

⁸¹ Subsections D and E refer to intraLATA and interLATA services, which necessarily include intrastate service.

⁸² 47 U.S.C. § 276(b)(1).

⁸³ In that respect, section 276 is akin to section 251 in that it extends the Communications Act into an area previously controlled by the states. In those circumstances, the Supreme Court held, section 2(b) "may have less practical effect" than before Congress instituted a federal payphone policy. *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 381 n.8 (1999).

⁸⁴ H.R. Rep. No. 104-204, at 88 (emphasis added).

⁸⁵ S. Rep. No. 104-23, at 57-58 (March 30, 1995) (emphasis added).

Commission to impose nonstructural safeguards on BOC payphone operations in order to "implement the provisions of paragraphs (1) and (2) of subsection (a)," *i.e.*, sections 276(a)(1) and (2). If section 276(a) applies to intrastate payphone services, as we have shown it does, then section 276(b)(1)(C) necessarily applies to intrastate services, especially in light of the comprehensive regulatory scheme intended by Congress.

38. The preemption provision of section 276(c) comes strongly into play here. That provision preempts "any State requirement" that is "inconsistent with the Commission's regulations" implemented pursuant to section 276(b)(1). Nonstructural safeguards implemented under subsection C would, of course, be implemented pursuant to section 276(b)(1) and would fall within the scope of the preemption provision. Thus, a federal policy that payphone line rates be cost-based would be binding on the states. But if sections 276(a) and (b)(1)(C) do not apply to intra- as well as interstate matters, our broad preemption authority would greatly exceed our jurisdiction to issue rules in the first place. We find no evidence that Congress intended us to implement such a fractured regime.

39. In reviewing our authority in the matter before us, Congress' directive in section 276(b)(1)(C) to implement, "at a minimum," *Computer III* safeguards requires that we direct the states to apply the cost-based new services test to the payphone line rate. In *Computer III* itself, the Commission "adopted a cost-based approach to the initial pricing of new ONA services" to prevent BOCs from discriminating against independent service providers.⁸⁶ *Computer III* is not the only Commission order in which we evaluated purely intrastate services for compliance with a federal pricing standard.

40. In the *Phase I ONA Order*, for example, the Commission extensively discussed federal jurisdiction over tariffs for the BOCs' intrastate ONA services.⁸⁷ The Commission stated that "unbundling and economical pricing are two hallmarks of an ideal tariff structure for ONA services."⁸⁸ The Commission reviewed, and ultimately approved, the fundamental intrastate tariff structures of many of the plans under review. The Commission did, however, require several BOCs to file amendments explaining their intrastate ONA pricing strategies.⁸⁹ These BOCs had not demonstrated that their intrastate ONA services were either cost-based or sufficiently unbundled, characteristics that we lauded in NYNEX's intrastate ONA services plan, for example.⁹⁰ We concluded that, "[i]f a BOC's ONA plan contains elements that are so inconsistent with ONA policies that they would jeopardize fulfillment of these goals, we cannot approve that plan."⁹¹ We cautioned that, "[t]o do otherwise could create a discriminatory or

⁸⁶ *Computer III*, 6 FCC Rcd at 7601, para. 64 n.108. See also *Part 69/ONA Order*, 6 FCC Rcd at 4531, paras. 38-41.

⁸⁷ *Phase I ONA Order*, 4 FCC Rcd at 162-71, paras. 309-25.

⁸⁸ *Id.* at 164, para. 313.

⁸⁹ *Id.* at 166-67, paras. 316-17.

⁹⁰ *Id.* at 166-67, para. 317.

⁹¹ *Id.*

inefficient environment for [providers] that rely on the BOC's ONA services."⁹²

41. The LEC Coalition argues that the absence of the word "intrastate" from subsection C is evidence of Congress' intent that structural safeguards apply only to interstate services. The absence of that word means little in light of the clear overall thrust of the statute.⁹³ As the Supreme Court stated, "the mere lack of parallelism [in one subsection] is surely not enough to displace [the Commission's] explicit authority" under another subsection.⁹⁴ In addition, the LEC Coalition's interpretation would "produce[] a most chopped-up statute" of the sort rejected in that case.⁹⁵ Further, as we have also discussed, section 276(b)(1)(C) itself implicitly applies to intrastate payphone service. The nonstructural safeguards called for by Congress must include, "at a minimum," the safeguards adopted in *Computer III*. In the course of the *Computer III* proceedings, we preempted various state regulations and asserted federal jurisdiction over a number of intrastate matters.⁹⁶

42. In sum, we require that BOC payphone line rates be cost-based, in accordance with the standards we set forth below.⁹⁷ It is important to note that we require only BOCs, and not LECs generally, to provide payphone lines at cost-based rates. Because sections 276(a) and (b)(1)(C) apply only to BOCs, we do not find that Congress has expressed with the requisite clarity its intention that the Commission exercise jurisdiction over the intrastate payphone prices of non-BOC LECs. Since there are statutory provisions that empower us to apply the new services test to payphone line rates and grant us that authority only over BOCs, we do not have a Congressional grant of jurisdiction over non-BOC LEC line rates. Although the federal regulatory program implemented in section 276 would surely benefit if all LECs were required to use cost-based rates for their payphone line services, we cannot say that, with respect to non-BOC LECs, Congress has spoken with sufficient clarity to overcome the presumption of section 2(b). We do, however, encourage states to apply the new services test to all LECs, thereby extending the pro-competitive regime intended by Congress to apply to the BOCs to other LECs that occupy a similarly dominant position in the provision of payphone lines.

⁹² *Id.* See also *Part 69/ONA Order*, 6 FCC Rcd at 4532, para. 45 ("ONA services do present an increased danger of unreasonable discrimination.").

⁹³ The LEC Coalition's argument that the absence of the word "intrastate" from section 276(b)(1)(C) is dispositive of the jurisdictional question cannot be squared with the Coalition's recent statement that the Commission's "authority with respect to the rates that BOCs charge for intrastate payphone services extends only to ensuring that the BOCs' state tariffs do not undermine the Commission's federal regulatory structure." Letter from Aaron M. Panner, counsel for LEC Coalition, to Magalie Salas, Secretary, FCC, at 6 (Oct. 15, 2001). That is, having conceded that the Commission has jurisdiction *at all* over intrastate payphone line rates -- even if limited to ensuring compliance with federal standards -- the LEC Coalition cannot also claim that the Commission's intrastate jurisdiction fails for want of a single word.

⁹⁴ *Iowa Utils. Bd.*, 525 U.S. at 385.

⁹⁵ *Id.* at 381 n.8.

⁹⁶ *Computer III*, 6 FCC Rcd at 7625-37, paras. 110-131. See *supra* paras. 39-41.

⁹⁷ When the Commission's jurisdiction over intrastate services arises by implication, federal regulation of intrastate services must be as narrow as possible. *IPTA v. FCC*, 117 F.2d at 563. In this case, however, we have been given an express mandate to preempt state regulation of intrastate payphone line rates; therefore, our jurisdiction does not arise by implication, and it need not be narrowly construed. Cf. *id.*

B. PRICING STANDARDS FOR PAYPHONE SERVICES

1. Application of the New Services Test

43. The Commission previously concluded that rates for ONA services must satisfy the flexible, cost-based "new services test."⁹⁸ Contrary to the claims of the LEC Coalition,⁹⁹ the Commission's longstanding precedent shows that we have used forward-looking cost methodologies where we have applied the new services test.¹⁰⁰ Thus, the ONA safeguard from *Computer III* and section 276 requires that payphone service rates comply with the flexible, cost-based, forward-looking new services test. Consistent with the plain language of section 276(b)(1)(C), however, only BOC's intrastate payphone services need satisfy the new services test.¹⁰¹

44. We note that many states have relied on our *Payphone Orders* and have diligently applied the new services test, as we directed, to intrastate payphone line rates.¹⁰² We commend those states. Other states have been awaiting additional guidance from us on this issue.¹⁰³

2. Use of TELRIC and TSLRIC

45. The LEC Coalition contends that the *Bureau Order* contains three primary substantive errors. The Coalition first asserts that payphone services are not new and therefore should not be subject to the new services test. The LEC Coalition also argues that the pricing regime of sections 251 and 252 does not apply to payphone services. Finally, the Coalition claims that the *Bureau Order* mandates the provision of payphone services using only the "total element long-run incremental cost" (TELRIC) pricing methodology.¹⁰⁴ We address these contentions below and conclude that they lack merit.

46. The Coalition argues that payphone lines are not themselves a "new service" and that they are therefore exempted from the new services test requirement to use forward-looking

⁹⁸ *Computer III*, 6 FCC Rcd at 7601, para. 64 n.108; *Part 69/ONA Order*, 6 FCC Rcd at 4531, paras. 38-41.

⁹⁹ LEC App. at 10.

¹⁰⁰ *In the Matter of Open Network Architecture Tariffs of Bell Operating Companies*, CC Docket No. 92-91, Order, 9 FCC Rcd 440, 454-55, paras. 36, 40, 41 (Dec. 15, 1993) (*ONA Tariff Order*); *Local Competition Order*, 11 FCC Rcd at 15911-12, paras. 825-26.

¹⁰¹ To the extent that the *Bureau Order* required application of the new services test to non-BOCs, we hereby vacate that conclusion.

¹⁰² E.g., Public Serv. Comm'n of Md., *In the Matter of the Inquiry into the Payphone Tariffs of Bell Atlantic-Md., Inc.*, Case No. 8763, Order No. 76787 (Feb. 27, 2001).

¹⁰³ E.g., Letter from James Connelly, Chairman, Mass. Dept. of Telecomms. & Energy, to Michael K. Powell, Chairman, FCC (March 5, 2001) (requesting decision on whether new services test applies to intrastate payphone line rates).

¹⁰⁴ LEC App. at 12. See also *Local Competition Order*, 11 FCC Rcd at 15846, para. 679 (defining TELRIC); *AT&T Corp. v. FCC*, 220 F.3d 607, 615-16 (2000) (same); *Video Dialtone Reconsideration Order*, 10 FCC Rcd at 340-47, paras. 209-22 (same).

costs.¹⁰⁵ Nothing in the *Payphone Orders* or section 276 supports this argument. In the *Payphone Orders*, the Commission adopted a new regulatory regime for payphone services, and we therefore required the application of the “new services” test to payphone line services, whether or not BOCs consider those services to be “new.”

47. As we previously explained, “[b]ecause the incumbent LECs have used central office coin services in the past, but have not made these services available to independent [PSPs] for use in their provision of payphone services, we require that incumbent LECs’ provision of payphone transmission services on an unbundled basis be treated as a new service under the Commission’s price cap rules.”¹⁰⁶ We noted that the new services test is necessary to ensure that central office coin services are priced reasonably because “incumbent LECs may have an incentive to charge their competitors unreasonably high prices for these services.”¹⁰⁷ We stated that, because we required “dumb” lines to be re-priced on the same basis as “smart” lines, existing dumb lines would also have to meet the new services test.¹⁰⁸

48. Second, the Coalition states that the pricing regime set forth in sections 251 and 252 does not apply to all section 276 payphone services offered by incumbent LECs.¹⁰⁹ We previously reached the same conclusion in the *First Payphone Order*.¹¹⁰

49. Finally, the LEC Coalition asserts that the *Bureau Order* mandates the exclusive use of the TELRIC pricing methodology and that this mandate is improper.¹¹¹ The *Bureau Order*, however, contains no such directive. Indeed, the *Bureau Order* states that the LECs should use a forward-looking methodology that is “consistent” with the *Local Competition Order*.¹¹² TELRIC is the specific forward-looking methodology described in 47 C.F.R. § 51.505 and required by our rules for use by states in determining UNE prices.¹¹³ States often use “total service long run incremental cost” (TSLRIC) methodology in setting rates for intrastate services. It is consistent with the *Local Competition Order* for a state to use its accustomed TSLRIC methodology (or another forward-looking methodology) to develop the direct costs of payphone line service costs.¹¹⁴

50. As such, we do not impose on payphone line services the sections 251 and 252 pricing regime for local interconnection services. For example, while we have prohibited LECs

¹⁰⁵ LEC Coalition’s Reply in Support of Its Application for Review and Request for Stay at 7 (filed May 30, 2000) (LEC Reply).

¹⁰⁶ *First Payphone Order*, 11 FCC Rcd at 20614, para. 146.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ LEC App. at 14-15.

¹¹⁰ See *First Payphone Order*, 11 FCC Rcd at 20615, para. 147.

¹¹¹ LEC App. at 9.

¹¹² *Bureau Order*, 15 FCC Rcd at 9981, para. 9.

¹¹³ *Local Competition Order*, 11 FCC Rcd at 15844-46, paras. 672-78.

¹¹⁴ *Id.* at 15845-46, paras. 677-78.

from including certain "retail" costs in their prices for UNEs,¹¹⁵ no such prohibition applies to payphone line services. If they wish, the LECs may include in their direct cost calculations those "retail" costs, such as marketing and billing costs, that they can show are attributable to payphone line services.

C. OVERHEAD ALLOCATION AND LOADING FACTORS

51. With respect to overhead loading factors, the *Bureau Order* states that:

the LECs must justify the methodology used to determine [payphone service] overhead costs. 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. Given that the new services test is a cost-based test, overhead allocations must be based on costs, and therefore may not be set artificially high in order to subsidize or contribute to other LEC services. For purposes of justifying overhead allocations, UNEs appear to be "comparable services" to payphone line services, 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.¹¹⁶

52. The *Bureau Order* correctly states our policy that our pricing requirements do not mandate uniform overhead loading, provided that the loading methodology as well as any deviation from it is justified.¹¹⁷ As the above quotation shows, the Bureau approved the use of UNE loading factors to determine an appropriate overhead allocation for payphone services. We agree with the Bureau that UNE overhead loadings may be used in this manner, and states that have used this methodology are in full compliance with section 276 and our *Payphone Orders*. We do not agree, however, with the Bureau that UNE overhead loadings must serve as a default ceiling. There are other approaches that are also consistent with our precedent regarding overhead assignments to new services provided to competitors.

53. In the *Physical Collocation Tariff Order*,¹¹⁸ we stated that, to calculate the appropriate overhead loading, the incumbent LECs must (1) compute the direct costs of providing the DS-1 and DS-3 services that compete with the services offered by collocated competitors; and (2) subtract those costs from the lowest rates charged for those services, taking

¹¹⁵ *Id.* at 15851, para. 691.

¹¹⁶ *Bureau Order*, 15 FCC Rcd at 9982, para. 11.

¹¹⁷ *In the Matter of Local Exchange Carriers' Payphone Functions and Features*, CC Docket No. 97-140, Mem. Opinion and Order, 12 FCC Rcd 17996, 18002, para. 13 (Oct. 29, 1997) (*Payphone Features Order*); *Part 69/ONA Order*, 6 FCC Rcd at 4531, para. 44.

¹¹⁸ *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, CC Docket No. 93-162, Second Report and Order, 12 FCC Rcd 18730 (June 13, 1997) (*Physical Collocation Tariff Order*).

into account all volume and term discounts.¹¹⁹ The difference between the retail rates and the direct costs represents the contribution to overhead from these competitive services.¹²⁰ The Commission then prescribed overhead loading factors for each LEC's expanded interconnection services that did not exceed the lowest overhead loading resulting from the calculation described above.¹²¹ By limiting the overheads applicable to expanded interconnection rates to the lowest overheads applied by LECs to competitive services, the Commission sought to prevent the incumbent LECs from disadvantaging competitors.¹²²

54. We have expressed similar concerns about the potential for discriminatory practices in the context of payphone services.¹²³ Indeed, as we explained above, Congress expressly directed the Commission to prevent the BOCs from discriminating against competing PSPs in the provision of payphone services. For these reasons, we believe that it is appropriate for states to adopt the same method for calculating a ceiling for overhead allocation as we did in the *Physical Collocation Tariff Order*, recognizing that states that continue to use UNE overhead allocations for payphone services are also in full compliance with section 276 and our precedent. Moreover, it is also consistent with our past application of the price cap new services test, and permissible in this context, for states to determine overhead assignments using the methodology that the Commission used to evaluate the reasonableness of ONA tariffs in the *ONA Tariff Order*.¹²⁴ In that investigation, the Commission used ARMIS data to calculate an upper limit for both the ratio of direct cost to direct investment and the ratio of overhead cost to total cost. Analogously, states could use ARMIS data relating to the plant categories used to provide payphone services in calculating an upper limit on overhead loadings.

55. The LEC Coalition claims that BOCs are free to apply to payphone line service rates whatever markup over direct cost is incorporated in their business line rates, even though business line rates may include subsidies for other BOC services.¹²⁵ The Coalition asserts that BOCs have virtually unlimited flexibility in determining the overhead component of payphone line service rates because "the amount of overhead costs that are recovered in the rate does not affect whether the rate is based on costs."¹²⁶ The LEC Coalition argues that any overhead loading a BOC might choose is "reasonable" for purposes of the new services test so long as it is justified by "some plausible benchmark."¹²⁷

¹¹⁹ *Id.* at 18858-59, para. 313.

¹²⁰ *Id.*

¹²¹ *Id.* paras. 313-14.

¹²² *Id.* at 18855, para. 307.

¹²³ *First Payphone Order*, 11 FCC Rcd at 20614, para. 146, and 20640, para. 199; *Payphone Reconsideration Order*, 11 FCC Rcd at 21308, para. 163.

¹²⁴ *In the Matter of Open Network Architecture Tariffs of Bell Operating Companies*, CC Docket No. 92-91, Order, 9 FCC Rcd 440, 458-59, para. 50, and 477-80, Attach. C (Dec. 15, 1993) (*ONA Tariff Order*).

¹²⁵ LEC Reply at 9.

¹²⁶ *Id.* at 10.

¹²⁷ *Id.* at 7.

56. We reject the LEC Coalition's argument. As noted above, under the new services test and our precedent, BOCs bear the burden of affirmatively justifying their overhead allocations. In general, in our decisions applying the new services test to services offered to competitors, we have allowed BOCs some flexibility in calculating overhead allocations, but we have carefully reviewed the reasonableness of BOCs' overhead allocations. We have *not* simply accepted any "plausible benchmark" proffered by an BOC.¹²⁸

57. We also reject the Coalition's argument that the Commission's *Payphone Features Order*¹²⁹ supports the proposition that any overhead allocation within a wide range is "reasonable" for purposes of the new services test. In fact, that decision shows that our evaluation of overhead allocations under the new services test has been very fact-specific. We did permit an unusually high overhead loading in that matter based on adequate justification. We stressed, however, that our decision was specific to the circumstances of the particular investigation, which involved payphone features whose monthly costs did not exceed a few cents per line. We specifically ruled that "we do not find that it will necessarily be determinative in evaluating overhead loadings for other services."¹³⁰

58. In sum, we establish a flexible approach to calculating BOCs' overhead allocation for intrastate payphone line rates. States may continue to use UNE loading factors to evaluate BOCs' overhead allocation for payphone services, but we do not require that UNE overhead allocations must serve as a ceiling on payphone service overhead loading. To evaluate such a ceiling, states should use the methodology from either the Commission's *Physical Collocation Tariff Order* or *ONA Tariff Order*. Consistent with Commission precedent, the BOCs bear the burden of justifying their overhead allocations for payphone services and demonstrating compliance with our standards.

D. ADJUSTMENT FOR FEDERALLY TARIFFED COMMON LINE CHARGES

59. The *Bureau Order* stated that "cost based" payphone line service rates calculated pursuant to the *Payphone Order* requirements must be adjusted to take account of federally tariffed charges, *i.e.*, the SLC and PICC.¹³¹ We affirm this requirement with respect to the SLC but not with respect to the PICC.

60. Under the new services test, the BOC may not charge more for payphone line service than is necessary to recover from PSPs all monthly recurring direct and overhead costs incurred by BOCs in providing payphone lines. The forward-looking cost studies used to make these determinations are usually calculations of total costs, not jurisdictionally separated costs. If an incumbent BOC files in its state tariff a charge that fully recovers these unseparated costs and also assesses on the PSP its federally tariffed SLC, the BOC will over-recover its costs, and the PSP will over-pay, in violation of the new services test and the cost-based rates requirement of

¹²⁸ See, *e.g.*, *ONA Tariff Order*, 9 FCC Rcd at 455, para. 40; *Physical Collocation Tariff Order*, 12 FCC Rcd at 18856, paras. 308-09.

¹²⁹ *Payphone Features Order*, 12 FCC Rcd 17996.

¹³⁰ *Id.* at 18003, para. 13.

¹³¹ See *supra* note 63 and accompanying text.

the *Payphone Orders*. The multiline business PICC, on the other hand, does not recover the costs of the lines on which it is assessed. Rather, it recovers costs that would be recovered through charges on residential and single line business lines, if those charges were not capped.¹³² It is a temporary subsidy element that is being phased out of the interstate access charge system.¹³³ PICC revenues should not, therefore, be subtracted in determining a forward-looking cost-based rate for payphone lines.

61. Therefore, in establishing its cost-based, state-tariffed charge for payphone line service, a BOC must reduce the monthly per line charge determined under the new services test by the amount of the applicable federally tariffed SLC. Verizon contends that cost-based rates need only be adjusted to account for SLC rate levels as of April 1997.¹³⁴ We disagree. At whatever point in time a state reviews a BOC's payphone line rates for compliance with the new services test, it must apply an offset for the SLC that is then in effect.

E. COST SUPPORT FOR USAGE ELEMENTS

62. The *Bureau Order* stated that the new services test applies to usage sensitive as well as flat-rate elements of the services offered to PSPs. We affirm.

63. The LEC Coalition argues that, in the *Payphone Orders*, we only required the new services test to be applied to the monthly rate for the payphone line.¹³⁵ Two years ago, however, the Bureau clarified that the new services test applies to all payphone line service rates, including per-call or per-minute rates applicable to local usage.¹³⁶ Nevertheless, the Coalition contends that we did not require application of the test to local usage rates that are uniformly applicable to PSPs and business line subscribers. According to the LEC Coalition, rates that are equal to business usage rates are not "payphone-specific" and were not intended to be covered by the new services test.¹³⁷

64. We reject the LEC Coalition's interpretation of the Commission's orders. In the *Payphone Orders*, we required LECs to provide PSPs with local exchange services that would enable payphone service providers to offer payphone service using either "smart" or "dumb" payphones.¹³⁸ Providing only a line, without allowing local calls over the line, does not satisfy

¹³² *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-262, 94-1, 99-249, and 96-45, Report and Order, 15 FCC Rcd 12962, 13004, para. 106 (May 31, 2000). We note that parties have filed a reconsideration petition seeking relief from application of the multiline business PICC to payphone lines. This petition is currently pending.

¹³³ *Id.*

¹³⁴ Response of Verizon North at 6-7 (filed Oct. 23, 2000) (Verizon Response).

¹³⁵ LEC App. at 16 n.14; Verizon Response at 12-14.

¹³⁶ Letter from Yog R. Varma, Deputy Chief, Common Carrier Bureau, to Caroline Vachier, Deputy Attorney General of New Jersey, 14 FCC Rcd 17091, 17092 (Oct. 5, 1999).

¹³⁷ LEC App. at 16 n.14.

¹³⁸ *Payphone Reconsideration Order*, 11 FCC Rcd at 21307-08, para. 162.

this requirement.¹³⁹ We required these payphone line services to be priced at cost-based rates in accordance with the new services test.¹⁴⁰ Therefore, any rate for local usage billed to a payphone line, as well as the monthly payphone line rate, must be cost-based and priced in accordance with the new services test. This requirement applies regardless of whether current payphone line service tariffs specify a particular rate for payphone line usage, or whether they currently incorporate by reference the applicable rate from a business service tariff.

65. This conclusion advances our purpose in requiring cost-based payphone line rates in the first place. A high usage rate would undermine our and the states' efforts to set the payphone service rates in accordance with a cost-based standard. A non-cost-based usage rate would also constitute an impermissible "end run" around the requirements of section 276.

F. WISCONSIN PAYPHONE RATES

66. We do not now review or evaluate the cost support materials submitted by Ameritech and Verizon. We urge the Wisconsin Commission to review its jurisdiction to apply the new services test in light of the fact that, as we have described above, it is intended to address potentially discriminatory practices in accordance with the requirements of section 276 and would seem to be within the Wisconsin Commission's authority to prevent such discrimination.¹⁴¹

67. We also relieve TDS and Century, and by extension other small rural incumbent LECs, of the obligation to comply with the application of the new services test as set forth herein. Neither TDS nor Century are BOCs, and, as we have discussed above, our federal jurisdiction to apply the new services test was intended to reach BOCs only.¹⁴² Nevertheless, nothing prevents states from applying the new services test to all non-BOC LECs, whether rural or not, but we conclude that the states themselves should determine whether that is appropriate and warranted.¹⁴³

¹³⁹ The LEC Coalition cites a prior Bureau order discussing "payphone specific" services in support of its position that a BOC may exempt local usage from *Payphone Orders* requirements by not including local usage rates in a "payphone specific" tariff or by not offering local usage at a "payphone specific" rate. LEC App. at 16 n.14. The Bureau used the term "payphone specific" to distinguish those network "features and functions" that must be *federally tariffed* from those that may be offered solely under *state tariffs*. Nothing in the Bureau's orders supports the proposition that a BOC could avoid subjecting necessary network services, such as local usage, to any of the *Payphone Orders*' tariffing requirements, under *either* federal *or* state tariffs, by the simple device of tariffing those services in a "non-payphone-specific" manner.

¹⁴⁰ *Payphone Reconsideration Order*, 11 FCC Rcd at 21308, para. 163 & n.492.

¹⁴¹ See *supra* note 45 and accompanying text.

¹⁴² See *supra* para. 42.

¹⁴³ See also *id.*

IV. CONCLUSION

68. In sum, we issue this *Order* to assist states in determining whether BOCs' intrastate payphone line rates comply with section 276 and our *Payphone Orders*. This *Order* includes the following basic propositions: First, BOCs' intrastate payphone line rates, including usage rates, should comply with the flexible, cost-based new services test. Second, these rates should be calculated using a forward-looking, direct cost methodology such as TELRIC or TSLRIC, but the full pricing regime of sections 251 and 252 does not apply. Third, overhead loading rates for payphone line rates should be cost-based, and such rates may be calculated using UNE overhead loading factors, provided that such rates do not exceed an upper limit calculated using the methodology from either the *Physical Collocation Tariff Order* or the *ONA Tariff Order*. Finally, BOCs' payphone line rates should be adjusted to account for SLC charges, as set forth herein.

V. ORDERING CLAUSES

69. Accordingly, pursuant to sections 4(i), 205, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 205, and 276, IT IS HEREBY ORDERED that the Application for Review of the LEC Coalition is hereby GRANTED and that the LEC Coalition's request that we withdraw or stay the *Bureau Order* is hereby DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Request: For purposes of the following requests, please refer to FPTA's response to Staff's First Set of Interrogatories, No. 4(d), where it is indicated that the 1998 Florida Order is in conflict with the *Wisconsin Order*, and must be corrected "ab initio." Since the *Wisconsin Order* was not confirmed by the courts until 2003, and thus its findings presumably binding after that time, please explain why the FPSC's 1998 Order must be "corrected ab initio."

Responses: Section 276(c) of the Telecom Act specifically provides that "To the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements." The fact that the *Wisconsin Orders* were confirmed by the appellate court in 2003 does not alter the fact that these orders were merely confirming the FCC's "long standing policy," which was intended to be implemented in the original new services test orders and effective from the dates of those orders. Those orders pre-dated this Commission's 1998 Order and were the orders that this Commission's 1998 Order intended to implement. Thus, the 1998 Order was flawed when adopted and must be modified and given proper effect (under the preemptive provisions of Section 276 of the Telecom Act), now that the error has become confirmed by the federal court's upholding of the *Wisconsin Orders*. This result is buttressed by the twin mandates of Section 276 of the Telecom Act: (i) the widespread deployment of payphones for the benefit of the general public and (ii) the promotion of fair competition.

Response provided by: Bruce W. Renard

Request: Please refer to page 8, lines 5-7 of witness Renard's Direct Testimony. In that testimony, witness Renard asserts that the rates BellSouth charges payphone providers are "unlawful."

(a) During the past seven (7) years, did the FPTA, or any of its members ever come to this Commission and ask it to review BellSouth's allegedly "unlawful" rates?

(b) If yes, when were such requests made?

(c) If yes, were the requests made by FPTA, or were the request(s) made by a member on their own volition?

(d) If yes, what FPSC docket number(s) correspond to the request(s)?

(e) If yes, what was the outcome?

(f) If not, why?

Responses: (a) No. Except for the petition filed in the present case, the FPTA has not asked this Commission to review BellSouth's unlawful rates during the last seven years. The FPTA did not come to this Commission for several reasons. First, the payphone industry has consistently been under significant economic pressure and the FPTA could not afford to present the question of BellSouth's unlawful rates to this Commission until the FCC's determination of those issues, particularly given the unlimited resources available to BellSouth to combat these types of proceedings. Attached to these responses as Exhibit A is a timeline showing the applicable federal decisions affecting the issues before this Commission in this proceeding. As Staff will recognize, the Court of Appeals for the District of Columbia did not finally affirm the FCC's *Wisconsin Order*, the primary basis for the FPTA's petition in this docket, until July of 2003; numerous months after the filing of the FPTA's petition in this docket.

(b) The FPTA incorporates its answer to request (a) above.

FPTA'S RESPONSES TO STAFF'S INTERROGATORIES --- EXHIBIT A

**TIMELINE OF FEDERAL DECISIONS APPLICABLE TO
THE ISSUES BEFORE THE COMMISSION IN THIS DOCKET**

<u>Date</u>	<u>Event</u>
February 1996	The Telecommunications Act of 1996 is signed into law by President William J. Clinton.
September 20, 1996	<i>Implementation of the Pay Telephone and Reclassification and Compensation Provisions of the Telecomm. Act of 1996</i> , CC Docket No. 96-128, First Report and Order, 11 FCC Rcd 20541 (Sept. 20, 1996).
November 8, 1996	Order on Reconsideration, 11 FCC Rcd 21233 (Nov. 8, 1996), <i>aff'd in part and remanded in part</i> , <i>Illinois Pub. Telecomms. Ass'n v. FCC</i> , 117 F.3d 606 (D.C. Cir. 1997).
October 9, 1997	Second Report and Order, 13 FCC rcd 1778 (Oct. 9, 1997), <i>vacated and remanded</i> , <i>MCI Telecomms. Corp. v. FCC</i> , 143 F.3d 606 (D.C. Cir. 1998).
August 11, 1998	This Commission issues Order No. PSC-98-1088-FOF-TL in Docket No. 970281-TL approving BellSouth's PTAS rates as in compliance with the new services test.
February 4, 1999	Third Report and Order and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545 (Feb. 4, 1999), <i>aff'd</i> , <i>American Pub. Communications Council v. FCC</i> , 215 F.3d 51 (D.C. Cir. 2000).
March 2, 2000	<i>In the Matter of the Wisconsin Public Service Commission: Order Directing Filings</i> , 15 FCC Rcd (March 2, 2002) (the "First Wisconsin Order").
January 31, 2002	<i>In the Matter of the Wisconsin Public Service Commission: Order Directing Filings, FCC Memorandum Opinion and Order Bureau</i> , 17 FCC Rcd 2051 (January 31, 2002) (the "Second Wisconsin Order").
March 26, 2003	FPTA files its Petition in this docket.
July 11, 2003	<i>New England Public Comm. Council, Inc. v. FCC</i> , 334 F.3d 69 (D.C. Cir. 2003) (affirming the <i>Wisconsin Orders</i> in all respects). ¹

Request: Refer to page 6, lines 12-17 of witness Wood's Rebuttal Testimony. Witness Wood states, "... in the Second *Wisconsin Order* (§14) the FCC reiterated its 1996 finding that 'even if LEC payphone tariffs were filed at the state level, they should nevertheless comply with section 276 as implemented by the Commission and, as such, should be cost-based, nondiscriminatory, and consistent with both section 276 and our Computer III tariffing guidelines.'"

(a) Didn't this Commission use the same standards in making its decision in Docket No. 970281-TL, Order Nos. PSC-98-1088-FOF-TL and PSC-99-0493-FOF-TL?

(b) If not, what standards or guidelines did this Commission follow?

Response: (a) The FPTA is not aware of the standards or guidelines used by this Commission in making its decision in Docket No. 970281-TL, Order Nos. PSC-98-1088-FOF-TL and PSC-99-0493-FOF-TL because those standards and/or guidelines are not included in the Orders. However, the standards and guidelines set forth in any FCC orders as clarified subsequent to 1998 were not followed by this Commission because those clarified standards and guidelines, as set forth in those orders, were not yet known or available to this Commission at that time.

(b) The FPTA incorporates its response to Request (a) above.

Response provided by:

Don J. Wood

Table 4
Percentage of Households with Telephone Service in March

Total Household Income in March 1984 Dollars *	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993
Florida										
\$9,999 or less	60.2	77.0	74.7	80.2	82.4	83.2	83.6	84.2	86.4	84.7
\$10,000 - \$19,999	87.9	87.6	88.2	89.0	91.6	88.0	91.4	91.4	93.0	93.8
\$20,000 - \$29,999	94.8	92.6	93.3	94.6	95.5	95.5	94.8	96.2	97.2	95.9
\$30,000 - \$39,999	96.8	98.3	96.6	96.5	97.3	97.6	97.7	99.3	98.9	98.4
\$40,000 or more	99.1	97.7	98.1	98.9	99.0	98.1	98.8	99.7	98.5	99.3
All Households	88.9	88.9	89.1	91.2	92.8	91.7	92.6	93.2	94.1	93.5
Georgia										
\$9,999 or less	69.1	75.0	73.3	70.0	81.9	78.5	80.3	76.5	77.7	81.9
\$10,000 - \$19,999	85.7	86.4	88.3	81.8	88.7	88.5	88.2	90.1	92.0	95.2
\$20,000 - \$29,999	91.5	95.7	92.4	95.8	94.2	94.2	92.6	97.1	93.9	97.8
\$30,000 - \$39,999	98.7	100.0	97.2	97.8	98.9	98.4	98.7	98.7	98.1	99.3
\$40,000 or more	97.8	99.8	99.1	98.1	99.3	98.8	98.7	98.5	98.1	98.8
All Households	85.9	89.3	88.0	87.7	92.0	91.0	91.0	91.1	90.5	93.5
Hawaii										
\$9,999 or less	76.1	74.6	80.1	85.7	85.9	83.4	89.6	81.1	78.0	88.7
\$10,000 - \$19,999	93.4	93.7	92.6	90.0	95.4	96.5	94.2	92.2	95.1	91.5
\$20,000 - \$29,999	100.0	98.7	100.0	98.9	95.2	95.5	98.4	97.0	97.8	93.7
\$30,000 - \$39,999	97.2	98.6	98.5	97.2	98.5	98.5	99.1	98.3	98.7	97.5
\$40,000 or more	99.3	98.7	98.0	99.4	97.4	100.0	99.4	99.4	99.5	98.6
All Households	94.0	93.4	94.4	94.7	95.3	95.7	96.7	94.8	95.1	94.8
Idaho										
\$9,999 or less	78.4	78.6	79.6	81.4	82.8	79.8	86.7	86.9	82.3	87.5
\$10,000 - \$19,999	89.6	92.4	92.0	89.3	93.4	92.3	88.9	88.5	91.2	92.2
\$20,000 - \$29,999	94.7	96.7	96.3	96.0	96.8	98.0	97.6	96.7	96.2	99.4
\$30,000 - \$39,999	98.7	98.2	98.0	98.1	98.8	100.0	96.5	97.8	98.9	99.2
\$40,000 or more	99.1	100.0	98.9	100.0	97.3	98.8	99.6	98.4	99.6	99.2
All Households	90.6	92.0	91.8	91.2	92.7	92.0	92.8	92.3	92.2	94.5
Illinois										
\$9,999 or less	87.8	84.6	82.5	85.2	84.5	85.8	84.4	83.3	83.7	82.3
\$10,000 - \$19,999	95.8	94.2	94.5	92.0	93.6	92.5	92.5	91.4	94.0	93.3
\$20,000 - \$29,999	96.8	98.1	95.6	96.6	96.7	98.4	96.9	96.1	97.1	97.3
\$30,000 - \$39,999	99.7	97.9	98.0	97.9	99.2	97.6	99.3	97.9	99.0	99.8
\$40,000 or more	99.0	98.9	98.3	99.3	99.4	98.8	99.2	99.1	99.3	98.4
All Households	95.6	94.4	93.4	94.1	94.4	94.6	94.5	93.9	94.5	93.7
Indiana										
\$9,999 or less	80.4	78.1	82.9	81.5	80.1	78.7	85.5	85.6	70.0	79.8
\$10,000 - \$19,999	90.9	89.0	92.4	88.5	90.0	93.0	89.2	89.9	89.4	88.5
\$20,000 - \$29,999	97.7	98.6	96.0	95.3	97.3	98.6	94.7	97.4	97.6	98.6
\$30,000 - \$39,999	98.8	99.3	97.3	97.5	98.5	99.2	98.2	98.0	98.6	97.8
\$40,000 or more	98.0	98.3	98.6	98.6	99.3	98.5	98.9	97.9	100.0	99.4
All Households	92.0	91.7	93.0	91.3	91.6	93.0	92.3	92.8	89.4	91.3
Iowa										
\$9,999 or less	89.7	91.1	87.8	86.8	83.8	91.0	93.8	88.9	87.8	89.1
\$10,000 - \$19,999	96.6	95.5	97.0	96.8	96.3	97.9	95.2	94.6	96.1	95.8
\$20,000 - \$29,999	97.3	96.7	96.9	98.2	98.2	99.4	98.9	98.7	98.7	98.8
\$30,000 - \$39,999	100.0	100.0	100.0	100.0	99.1	100.0	100.0	100.0	98.5	100.0
\$40,000 or more	99.0	99.7	99.1	98.1	98.9	99.1	100.0	100.0	100.0	98.0
All Households	95.8	95.9	95.5	95.6	94.6	97.3	97.2	95.7	95.3	96.0
Kansas										
\$9,999 or less	86.5	88.8	90.1	92.2	86.9	91.6	89.2	86.8	86.6	89.7
\$10,000 - \$19,999	92.9	91.2	91.1	93.9	93.4	88.4	94.0	93.1	95.2	95.8
\$20,000 - \$29,999	97.7	97.0	93.7	96.5	98.5	96.6	97.2	96.2	94.9	98.0
\$30,000 - \$39,999	99.0	99.5	99.2	98.7	100.0	98.0	98.8	98.5	100.0	99.1
\$40,000 or more	100.0	99.1	97.9	97.9	100.0	99.4	100.0	98.6	100.0	100.0
All Households	94.5	94.8	93.8	95.5	95.3	94.5	95.5	94.3	94.8	95.5
Kentucky										
\$9,999 or less	72.1	79.1	75.4	73.8	76.0	78.8	79.2	75.2	77.6	80.8
\$10,000 - \$19,999	89.2	88.7	86.8	90.4	90.9	89.0	87.9	89.7	91.8	91.8
\$20,000 - \$29,999	93.5	94.6	94.8	90.5	96.2	95.1	98.4	93.9	96.0	97.6
\$30,000 - \$39,999	94.2	95.8	95.8	97.3	94.4	96.6	98.7	100.0	97.9	97.3
\$40,000 or more	97.3	98.4	100.0	98.9	100.0	100.0	98.8	99.0	100.0	100.0
All Households	87.1	89.1	87.3	87.5	89.5	89.5	90.4	89.2	90.2	90.9

* Current dollar equivalents are at the end of Table 4

Table 4
Percentage of Households with Telephone Service in March

Total Household Income in March 1984 Dollars *	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Florida										
\$9,999 or less	84.2	86.7	86.6	84.4	85.4	87.8	85.6	84.2	89.7	89.8
\$10,000 - \$19,999	91.1	93.7	94.0	92.0	93.6	91.5	90.2	91.1	94.3	94.4
\$20,000 - \$29,999	96.1	97.2	95.8	95.4	95.6	92.8	94.6	95.4	97.5	96.7
\$30,000 - \$39,999	97.1	97.2	95.9	94.7	97.8	95.2	97.1	97.1	96.8	97.3
\$40,000 or more	98.7	98.0	97.8	97.7	97.3	97.3	98.9	95.3	97.0	98.3
All Households	92.4	93.9	93.4	92.1	93.3	92.6	92.4	92.3	94.7	95.1
Georgia										
\$9,999 or less	88.6	81.0	86.1	81.6	78.4	78.7	81.4	86.0	87.3	86.0
\$10,000 - \$19,999	91.2	90.6	88.4	87.8	90.0	90.7	90.2	90.6	90.9	92.6
\$20,000 - \$29,999	94.1	96.8	94.8	95.4	91.1	94.7	93.2	92.8	95.2	97.2
\$30,000 - \$39,999	95.7	96.5	97.0	97.9	93.3	98.5	95.1	95.1	96.5	98.5
\$40,000 or more	96.0	95.4	95.7	93.9	97.4	99.0	98.1	96.0	96.9	98.9
All Households	93.2	91.4	92.0	90.4	90.3	92.5	91.9	92.1	93.8	94.8
Hawaii										
\$9,999 or less	84.6	83.5	88.8	89.9	85.4	87.2	88.9	93.6	92.5	93.9
\$10,000 - \$19,999	92.7	91.7	86.7	89.8	92.8	93.2	90.2	95.9	96.2	98.4
\$20,000 - \$29,999	93.3	99.1	97.1	96.4	97.6	97.6	94.2	96.6	96.7	98.5
\$30,000 - \$39,999	98.2	100.0	92.7	97.2	98.2	100.0	95.2	95.6	99.6	100.0
\$40,000 or more	98.0	98.6	98.7	99.3	100.0	100.0	97.4	97.7	99.5	98.5
All Households	94.6	95.5	93.9	94.9	95.0	95.8	93.8	96.3	97.1	97.6
Idaho										
\$9,999 or less	87.0	83.9	85.6	87.9	85.6	81.9	84.4	87.6	91.1	88.2
\$10,000 - \$19,999	93.6	94.8	91.0	95.8	90.2	93.6	93.9	94.9	92.5	95.0
\$20,000 - \$29,999	98.3	98.2	98.2	96.5	93.0	95.8	94.4	96.5	97.8	96.3
\$30,000 - \$39,999	99.1	98.9	98.7	97.1	98.6	97.9	97.2	92.2	98.3	99.0
\$40,000 or more	99.1	95.7	99.1	98.4	98.5	97.9	100.0	95.4	98.9	99.2
All Households	95.0	94.2	93.6	95.0	92.5	93.3	93.7	93.4	95.4	95.5
Illinois										
\$9,999 or less	81.3	81.4	83.3	83.2	81.7	75.3	78.8	81.9	83.9	80.0
\$10,000 - \$19,999	92.8	92.3	92.0	92.5	91.4	89.9	92.6	89.1	91.9	93.0
\$20,000 - \$29,999	97.7	95.3	95.8	96.7	93.0	94.2	94.3	93.2	94.9	92.9
\$30,000 - \$39,999	97.5	97.0	93.6	96.8	97.4	96.9	97.9	93.7	98.9	96.9
\$40,000 or more	99.3	98.9	98.6	97.9	97.6	97.1	97.7	98.3	98.1	98.0
All Households	93.5	92.9	93.1	93.5	92.6	91.3	93.0	91.4	93.5	92.3
Indiana										
\$9,999 or less	87.7	83.2	92.7	91.6	84.5	83.3	92.4	85.3	88.5	87.5
\$10,000 - \$19,999	89.8	94.8	92.3	93.3	90.6	97.1	92.7	93.5	94.1	91.4
\$20,000 - \$29,999	95.8	98.2	98.8	94.6	96.7	95.1	98.4	96.2	95.9	98.0
\$30,000 - \$39,999	93.7	100.0	94.8	96.8	97.9	96.4	99.0	98.8	98.9	95.8
\$40,000 or more	100.0	99.2	97.6	95.9	97.2	98.9	98.4	98.6	98.0	98.5
All Households	92.8	94.2	94.7	94.3	93.9	93.8	95.7	94.0	94.8	94.1
Iowa										
\$9,999 or less	93.1	88.8	91.3	87.7	93.3	92.5	90.1	94.7	95.0	93.2
\$10,000 - \$19,999	95.4	95.6	92.5	96.3	96.8	97.1	96.3	97.0	95.0	95.1
\$20,000 - \$29,999	98.0	98.7	99.2	98.1	95.1	94.2	97.3	99.2	98.7	98.3
\$30,000 - \$39,999	98.2	99.0	99.1	97.9	100.0	99.4	97.5	98.3	97.1	99.1
\$40,000 or more	100.0	99.3	98.1	100.0	98.5	97.9	100.0	98.6	99.8	98.7
All Households	96.5	96.0	95.8	96.1	96.6	96.2	96.5	97.6	97.1	96.7
Kansas										
\$9,999 or less	82.1	89.3	85.5	87.0	91.2	94.4	83.2	79.3	88.6	89.1
\$10,000 - \$19,999	94.0	93.1	93.7	92.4	89.9	94.7	93.8	91.3	95.2	94.9
\$20,000 - \$29,999	99.6	97.8	96.9	98.6	100.0	96.8	96.7	97.7	96.1	97.9
\$30,000 - \$39,999	98.5	98.7	99.2	100.0	97.2	100.0	99.0	97.5	99.3	98.6
\$40,000 or more	99.1	99.7	97.4	100.0	99.0	100.0	98.9	98.0	99.5	99.6
All Households	94.1	94.8	93.6	94.9	95.2	97.0	94.1	92.5	95.7	96.0
Kentucky										
\$9,999 or less	78.9	78.1	81.0	87.7	83.4	81.1	90.4	84.8	90.2	84.7
\$10,000 - \$19,999	94.7	93.9	91.7	90.0	94.7	94.7	91.3	87.8	94.2	93.8
\$20,000 - \$29,999	92.3	97.1	96.5	96.9	98.1	96.4	95.5	96.1	96.6	98.1
\$30,000 - \$39,999	98.3	97.8	100.0	99.1	98.7	98.7	97.2	98.9	99.4	98.5
\$40,000 or more	99.3	100.0	94.8	96.2	99.2	99.4	97.9	96.9	98.4	99.4
All Households	90.1	91.2	91.3	93.1	94.1	93.4	93.9	91.9	95.7	94.2

* Current dollar equivalents are at the end of Table 4

Table 2
Telephone Penetration by State
(Percentage of Households with Telephone Service)

State	November 1983	July 2003	Change
Alabama	87.9 %	92.3 %	4.4 % *
Alaska	83.8	96.6	12.9 *
Arizona	88.8	95.0	6.3 *
Arkansas	88.2	90.4	2.3
California	91.7	97.6	5.9 *
Colorado	94.4	97.3	2.9 *
Connecticut	95.5	95.1	-0.4
Delaware	95.0	96.3	1.2
District of Columbia	94.7	95.3	0.6
Florida	85.5	95.2	9.7 *
Georgia	88.9	94.7	5.8 *
Hawaii	94.6	97.5	2.9
Idaho	89.5	95.8	6.3 *
Illinois	95.0	91.3	-3.7 †
Indiana	90.3	92.8	2.5
Iowa	95.4	96.5	1.1
Kansas	94.9	95.3	0.4
Kentucky	86.9	96.0	9.1 *
Louisiana	88.9	93.7	4.8 *
Maine	90.7	97.3	6.6 *
Maryland	96.3	97.2	0.9
Massachusetts	94.3	97.9	3.5 *
Michigan	93.8	94.2	0.4
Minnesota	96.4	97.7	1.3
Mississippi	82.4	92.5	10.2 *
Missouri	92.1	95.2	3.1
Montana	92.8	92.7	-0.1
Nebraska	94.0	95.9	1.9
Nevada	89.4	94.3	4.9 *
New Hampshire	95.0	98.0	3.1 *
New Jersey	94.1	96.6	2.5 *
New Mexico	85.3	90.4	5.0 *
New York	90.8	95.4	4.5 *
North Carolina	89.3	92.9	3.6 *
North Dakota	95.1	93.7	-1.4
Ohio	92.2	96.4	4.2 *
Oklahoma	91.5	90.8	-0.7
Oregon	91.2	96.9	5.7 *
Pennsylvania	95.1	97.2	2.1 *
Rhode Island	93.3	96.3	3.0
South Carolina	81.8	94.4	12.6 *
South Dakota	92.7	92.9	0.2
Tennessee	87.6	94.2	6.6 *
Texas	89.0	93.1	4.2 *
Utah	90.3	96.9	6.6 *
Vermont	92.7	97.7	5.0 *
Virginia	93.1	96.0	2.9
Washington	92.5	96.8	4.4 *
West Virginia	88.1	94.7	6.6 *
Wisconsin	94.8	96.3	1.5
Wyoming	89.7	93.8	4.0 *
Total United States	91.4	95.2	3.8 *

* Increase is statistically significant at the 95% confidence level.
† Decrease is statistically significant at the 95% confidence level.
Differences may not appear to equal changes due to rounding.

PTAS Retail Line Trends - post NST Rate changes

SOUTH CAROLINA

NST Rate effective July 1999

	Jul-99	Jan-00	Jul-00	Jan-01	Nov-03
All Other PSPs (1)	6,249	7,411	7,412	7,274	3,879

All Other PSPs % Change at 1 YR: 18.6%

All Other PSPs % Change From NST to Current: -37.9%

TENNESSEE

NST Rate effective February 2001

	Feb-01	Aug-01	Feb-02	Aug-02	Nov-03
All Other PSPs:	11,385	10,560	10,375	9,675	6,652

All Other PSPs % Change at 1 YR: -8.9%

All Other PSPs % Change From NST to Current: -41.6%

LOUISIANA

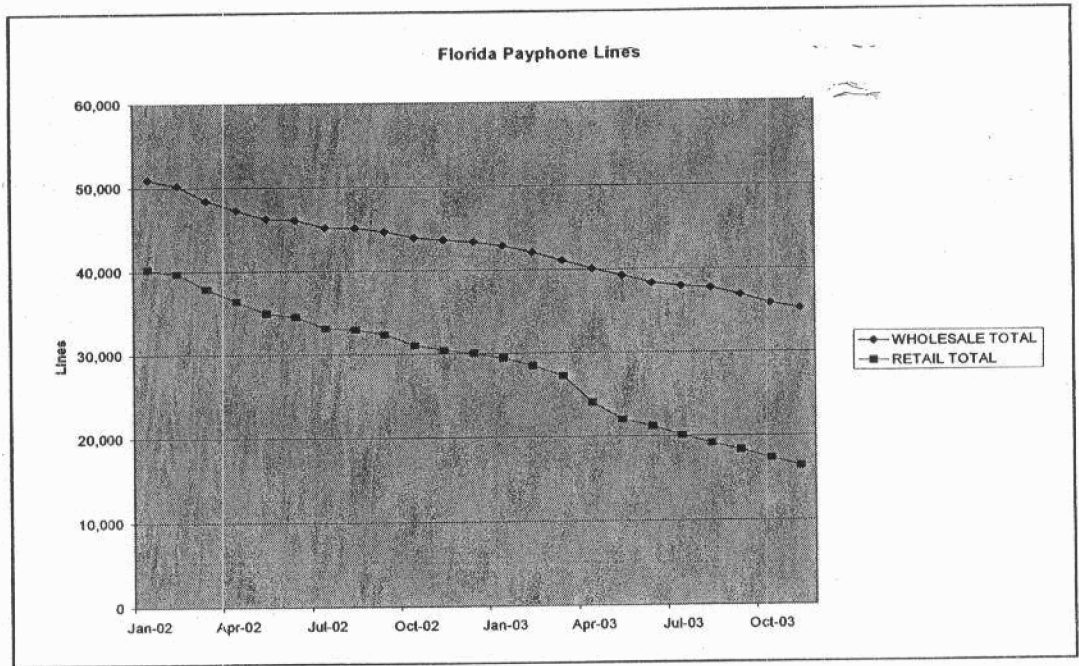
NST Rate effective Aug 2001 via Settlement Agreement with LPPA

	Aug-01	Feb-02	Aug-02	Feb-03	Nov-03
All Other PSPs:	10,123	9,926	8,318	7,621	5,190

All Other PSPs % Change at 1 YR: -17.8%

All Other PSPs % Change From NST to Current: -48.7%

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COMMISSIONER DEASON: Very well. Exhibits -- I have a question. I identified Exhibit 4 as -- I'm sorry, Exhibit 5 as the exhibits accompanying the prefiled direct. I'm not sure there were any exhibits accompanying the prefiled direct. Do you know if that is the case or not?

Staff, were there any exhibits attached to the prefiled direct?

MR. FORDHAM: Commissioner, I don't think there were.

COMMISSIONER DEASON: I'm not showing any.

MR. TOBIN: I don't think so either, Commissioner.

COMMISSIONER DEASON: Okay. So that is identified as Exhibit 5. We won't try to take that exhibit number away. We just won't enter Exhibit 5 into the record because apparently it's nonexistent anyway.

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET

NO. 030300-TP EXHIBIT NO. 5

COMPANY/ Would have been exhibits

WITNESS: accompanying prefiled direct

DATE: 5/12/04

Not entered into the Record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Florida Public
Telecommunications Association)
for Expedited Review of BellSouth)
Telecommunications, Inc.'s Tariffs)
with respect to Rates for Payphone)
Line Access, Usage, and Features.)

Docket No. 030300-TP

Filed: May 9, 2003

**THE FLORIDA PUBLIC TELECOMMUNICATIONS ASSOCIATION'S
RESPONSE IN OPPOSITION TO THE MOTION TO DISMISS
FILED BY BELL SOUTH**

The Florida Public Telecommunications Association (the "FPTA") responds in opposition to the Motion to Dismiss filed by BellSouth Telecommunications, Inc. ("BellSouth") and says:

BACKGROUND

In February 1996, then President Bill Clinton signed the Telecommunications Act of 1996 (the "Act") into law. Congress' express purpose for passing § 276 of the Act was "... to promote competition among payphone service providers and promote the widespread deployment of payphone services to benefit the general public." As part of its implementation of the Act, the Federal Communications Commission (the "FCC") required Incumbent Local Exchange Companies ("ILECs") to file tariffs at the state level establishing cost based, non-discriminatory rates for basic payphone access lines and related usage and ancillary services on or before April 15, 1997. The FCC has delegated to the state Commissions the responsibility to ensure the ILEC's intrastate tariffs comply with federal law.

After the Act was passed, many states attempted to interpret the § 276 of the Act, including the application of the cost-based new services test to pay telephone access ("PTAS") rates. Those

EXHIBIT 1

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET
NO. 030300-TP EXHIBIT NO. 6
COMPANY/ FPTA
WITNESS: Bruce Renard
DATE 05/12/04

interpretations differed from state to state, left many questions unanswered and created many questions concerning the application of the new services test to PTAS rates. In response, the FCC issued its *Wisconsin Order* on January 31, 2002 for the express purpose of clarifying the application of the cost-based new services test to ILEC PTAS rates.¹ In the *Wisconsin Order*, the FCC provided the state commissions with a clear direction: (i) that the Act and the FCC's orders implementing the Act, including the *Wisconsin Order*, preempt any inconsistent state requirements; (ii) all PTAS rates charged by Regional Bell Operating Companies ("RBOCs") must comply with the cost-based new services test; and (iii) how to implement the new services test to RBOC PTAS lines. Specifically, the FCC found that all ILECs must reduce the monthly per line rate by the amount of the subscriber line charge (also known as EUCL) to prevent the over-recovery of costs associated with the facilities involved in providing PTAS to pay telephone service providers ("PSPs").

On August 11, 1998, the Florida Public Service Commission (the "PSC") attempted to address whether or not existing incumbent local exchange company tariffs for PTAS rates were, at that time, consistent with § 276 of the Act. While the PSC issued an order concluding that "[e]xisting incumbent local exchange company tariffs for smart and dumb line payphones services are cost-based, consistent with Section 276 of the Telecommunications Act of 1996, and nondiscriminatory,"² it did so without the benefit of the FCC's *Wisconsin Order* and the FCC's many subsequent orders interpreting § 276 of the Act. As a result, the PSC's order is in direct conflict with the FCC's *Wisconsin Order*. Accordingly, the FPTA filed its petition requesting that the PSC, with the clear direction provided by the FCC in the *Wisconsin Order*, review its prior decision and BellSouth's tariffs with respect to PTAS rates.

¹*Order Directing Filings, FCC Memorandum Opinion and Order Bureau*, 17 FCC Rcd. 2051. (January 31, 2002) (*Wisconsin Order*).

²*Order No. PSC-98-1088-FOF-TL* at 6, August 11, 1998.

Despite the FCC's clear directive of the *Wisconsin Order*, BellSouth has failed to amend its tariffs to provide cost-based PTAS rates to pay telephone providers in the State of Florida. As an example, BellSouth has continued to pass on EUCL charges to Florida PSPs. Additionally (as alleged in FPTA's petition), since the effective date of the PSC's order (January 19, 1999) BellSouth's costs to provide PTAS have consistently decreased. Despite its decrease in costs, BellSouth has failed to correspondingly reduce its PTAS rates. Contrary to the assertion in BellSouth's Motion to Dismiss, FPTA has objected to the EUCL charges and the failure of BellSouth to lower its rates to correspond with its decrease in costs. Indeed, if BellSouth voluntarily complied with the *Wisconsin Order*, FPTA would not have been forced to file its Petition. BellSouth and FPTA are currently negotiating a substantial decrease in the PTAS rates (including a discontinuation of further EUCL charges) but BellSouth has refused to refund any of the rates charged, including the EUCL charges which it continues to assess in violation of the *Wisconsin Order*.

MEMORANDUM OF LAW

1. Federal Law preempts all state decisions conflicting with the FCC's implementation of § 276.

The threshold question addressed by the FCC in the *Wisconsin Order* is whether it had the authority to set the standard that states must apply in reviewing payphone line rate tariffs. In that proceeding, the LEC Coalition (which included BellSouth) requested that the FCC review the Bureau's March 2, 2000 Order that directed the four largest local exchange companies in Wisconsin to submit to the FCC their currently effective tariffs for intrastate payphone service offerings. The LEC Coalition challenged the FCC's jurisdiction over intrastate payphone line rates. In response, the FCC found it had the authority to regulate intrastate payphone line rates. In doing so, it relied in part on § 276(c) of the Act.

That provisions preempts “any State requirement” that is “inconsistent with the Commission’s regulations implemented pursuant to Section 276(b)(1).” *Wisconsin Order* at ¶ 7. Accordingly, the *Wisconsin Order* preempts any inconsistent state requirement, including the PSC’s order approving BellSouth’s unlawful tariffs.

2. Federal Law requires the PSC to order refunds to the extent necessary to force BellSouth to comply with § 276.

As part of the Act, Congress expressly directed the FCC to prevent Bell operating companies from discriminating against competing independent pay telephone service providers in the provision of payphone services.³ The FCC’s *Implementation Order* confirms that it intends to ensure that rates are nondiscriminatory. *See, e.g., Implementing Order* at 21294-95 ¶¶ 61-62. Although traditionally a matter of state jurisdiction, the FCC is required to ensure that ILEC intrastate rates comply with the Act. *Wisconsin Order* ¶ 31. As BellSouth recognized in its Motion to Dismiss, the FCC has delegated its obligation to ensure ILEC intrastate rate compliance with the Act to the state commissions. *Wisconsin Order* at ¶ 15.

The FCC’s implementation and review has taken several years and has required substantial clarification. The *Wisconsin Order* clarifies, however, that BellSouth has been over-charging the PSPs in violation of § 276 of the Act through its continual assessment of rates that are not cost-based and EUCL fees. *Wisconsin Order* at ¶ 61. The *Wisconsin Order* “requires [BellSouth] to set [its] intrastate payphone line rates in compliance with the Commission’s cost-based, forward-looking ‘new services’ test.” *Wisconsin Order* at ¶ 2. BellSouth’s failure to decrease its rates with its decreasing costs and its continued

³See *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1966*, 2002 WL 31374875, 17 F.C.C.R. 21274, FCC 02-292 at 1 ¶ 1 (CC Docket No. 96-128, Oct. 23, 2002) (*Implementation Order*).

pass-through of EUCL fees violates the new services test because it allows BellSouth to “over-recover” its costs. *Wisconsin Order* at ¶ 6. As the FCC recognized in its *Wisconsin Order*, BellSouth has an affirmative obligation under § 276 to conform its rates to the new services test. *Wisconsin Order* at ¶ 2. BellSouth has, however, ignored its duty and now seeks to retain its unlawful profits under the protection of the PSC’s prior order.

The PSC’s prior approval of BellSouth’s state tariffs clearly conflicts with the *Wisconsin Order* because it allowed BellSouth to continue charging EUCL fees to the PSPs. Further, as alleged in FPTA’s Petition, BellSouth’s costs have decreased since the PSC approved its tariffs in January of 1999. *FPTA Petition*, ¶ 6. BellSouth has refused, however, to lower its rates, and thus has continued to charge rates it knows violate § 276.

The FCC has broad authority under the Act to rectify over-compensation in violation of § 276 through refunds when necessary to ensure fair compensation. *MCI Telecom. Corp. v. FCC*, 143 F.3d 606, 609 (D.C. 1998). In its present capacity, the PSC is acting through the FCC’s delegation of power to implement the Act. Accordingly, the PSC shares the FCC’s equitable power and responsibility to force BellSouth to return its unlawful assessments to the PSPs to the extent necessary to bring BellSouth into compliance with the Act.

3. The PSC also has discretion to exercise its equitable ratemaking power ~~under~~ to force BellSouth to comply with §276 through the issuance of refunds.

Even if the PSC determines that Florida law on this subject is not preempted by federal law, Florida law does not prohibit a refund of BellSouth’s unlawful fees. Florida law requires the PSC to determine rates based upon equitable considerations. *GTE Florida Inc. v. Clark*, 668 So. 2d 971 (Fla. 1996). Refunds are not automatically barred as retroactive ratemaking under Florida law. *Id.*

The cornerstone to the general prohibition on retroactive ratemaking is the utilities’ reasonable

reliance on the approved rate. BellSouth's twisted application of the retroactive ratemaking doctrine in this instance is completely misplaced as it has not, and cannot demonstrate any reasonable reliance on the PSC's prior order in the wake of the FCC's *Wisconsin Order*. BellSouth was a member of the coalition involved in the Wisconsin matter that gave rise to the FCC's *Wisconsin Order*. *Wisconsin Order* at 1 n.1. As a fair reading of the *Wisconsin Order* indicates, the issue of the statutory lawfulness of ILEC rates is simply a continuation of the evolving implementation of the Act. BellSouth cannot now claim that it reasonably relied to its detriment on the PSC's initial approval of its state tariffs as a final resolution of the implementation of §276. The FCC's implementation of the Act has been ongoing and has involved multiple decisions. BellSouth has litigated this issue around the nation, and was therefore well aware of the inconsistent application of § 276 to ILEC rates. BellSouth knew (or should have known) that the FCC must ultimately resolve these inconsistencies as it did in the *Wisconsin Order*. Indeed, resolving the lack of conformity in state implementation of § 276 was an express objective of the *Wisconsin Order*. *Wisconsin Order* at ¶2. Accordingly, BellSouth knew the FCC's final interpretation and implementation of the new services test could conflict with the PSC's prior approval and subject it to refund any overcharges back to the PSPs.

Moreover, BellSouth is estopped to now claim a refund cannot be awarded because it promised to refund excess revenues when its agent sought and obtained a waiver of the statutory requirements. As alleged in FPTA's Petition, the Bell operating companies Payphone Coalition counsel, Michael K. Kellogg, promised the FCC that the Bell operating companies would issue refunds if the new statutory rate was lower than the existing rate. *FPTA Petition* ¶27. BellSouth cannot now claim it is prejudiced because the FPTA now asks the PSC to hold BellSouth to its promise.

Finally, BellSouth cannot use Florida's retroactive ratemaking doctrine as a shield against its continuing obligation under § 276 to conform its rates to the new services test. BellSouth continues to profit

from its flagrant disregard of the *Wisconsin Order* by continuing to assess EUCL fees in Florida and continuing to assess rates that have not decreased with its decreased costs.

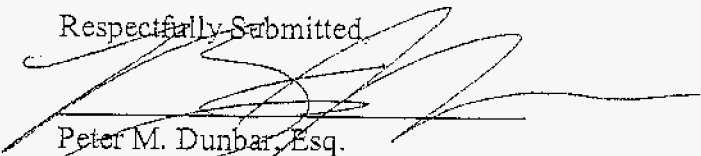
Notwithstanding its unlawful actions, BellSouth argues that PSPs are not entitled to refunds because on August 11, 1998 the PSC found that BellSouth's rates were in compliance with § 276. To accept BellSouth's argument, the PSC must rule that BellSouth has no obligation to amend its PTAS tariff to reflect changes in its costs. In other words, BellSouth asserts that it is the PSP's obligation to continually police BellSouth's rates to ensure it complies with § 276, and petition the PSC for ratemaking proceedings each time BellSouth's rates fall out of compliance. BellSouth is in the best position to know when its costs will decrease and merit a rate adjustment. If the PSC does not order a refund when BellSouth fails to timely conform its rates to the Act, BellSouth has absolutely no incentive to ever adjust its rates. Indeed, if refunds can never be ordered as BellSouth contends, BellSouth will never adjust its rates unless and until it is forced to do so.

At the very least, BellSouth should be required to refund the EUCL fees it has charged after the *Wisconsin Order* as well as the rates BellSouth knew no longer conformed to the new services test because of its decrease in costs. The PSC should not allow BellSouth to bury its head in the sand and enjoy the benefit of the overcharges it receives as it delays its inevitable compliance with the

Wisconsin Order.

WHEREFORE, FPTA respectfully requests that the Florida Public Service Commission deny BellSouth's Motion to Dismiss.

Respectfully Submitted,


Peter M. Dunbar, Esq.

Brian A. Newman, Esq.

Pennington, Moore, Wilkinson, Bell
& Dunbar, P.A.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by and U.S. Mail to Meredith E. Mays, Regulatory Counsel, BellSouth Corporation, Legal Department, 675 West Peachtree Street, Suite 4300, Atlanta, Georgia 30375-0001, Nancy B. White, General Counsel- Florida, BellSouth Telecommunications, Inc., Suite 1910, 150 W. Flagler St., Miami, Florida 33130, and Linda Dodson, Staff Counsel, Florida Public Service Commission, Division of Legal Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, this 9th day of May, 2003.


ATTORNEY

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Florida Public Telecommunications Association, Inc. (Company Code: TX029)

Currently Regulated by the Florida Public Service Commission

Services covered by certificate number: 4449

- Competitive Local Exchange

Mailing Address:

Mr. David Tobin
% Tobin & Reyes
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Current Open Dockets

No open dockets associated with Florida Public Telecommunications Association, Inc.

Current Closed Dockets

[View associated closed dockets](#)

Tariffs

Tariff No:	T960143
Action:	AGENDA
Company:	Florida Public Telecommunications Association, Inc. TX029
Effective Date:	06/14/1996
Date Filed:	03/04/1996
Official Filing Date:	
Description:	ALEC application for Florida Public Telecommunications Association, Inc. (NO PRICE LIST INCLUDED) Official Filing Date is 2/21/96
Recomm. Date:	04/18/1996
Agenda Date:	04/30/1996
Docket Number:	960213-TX

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CURRENT EMPLOYMENT

Don J. Wood is a principal in the firm of Wood & Wood. He provides economic and regulatory analysis services in telecommunications, cable, IP, and related convergence industries, specializing in economic policy related to the development of competitive markets and cost of service issues. In addition, Mr. Wood advises industry associations on regulatory and economic policy, and assists investors in their evaluation of investment opportunities in the telecommunications industry. The scope of his work has included landline and wireless voice communications, data services, and emerging technologies.

As a consultant, Mr. Wood has assisted his clients in responding to the challenges and business opportunities of the industry both before and subsequent to the Telecommunications Act of 1996. Prior to his work as a consultant, Mr. Wood was employed in a management capacity at a major Local Exchange Company and an Interexchange Carrier. In each capacity he has been directly involved in both the development and implementation of regulatory policy and business strategy.

As a part of his regulatory practice, Mr. Wood has presented testimony before the administrative regulatory bodies of thirty-five states, the District of Columbia, and Puerto Rico, and has prepared comments and testimony for filing with the Federal Communications Commission. The subject matter of his testimony has ranged from broad policy issues to detailed cost analysis.

Mr. Wood has also presented testimony in state, federal, and overseas courts regarding business plans and strategies, competition policy, and cost of service issues. He has presented studies of the damages incurred by plaintiffs and has provided rebuttal testimony to damage calculations performed by others. Mr. Wood has also testified in alternative dispute resolution proceedings conducted pursuant to both AAA and CPR rules.

Mr. Wood is certified as a Commercial Mediator in the state of Georgia.

PREVIOUS INDUSTRY EMPLOYMENT

Klick, Kent & Allen/FTI Consulting, Inc.
Regional Director.

GDS Associates, Inc.
Senior Project Manager.

MCI Telecommunications Corporation
Manager of Regulatory Analysis, Southeast Division.
Manager, Corporate Economic Analysis and Regulatory Affairs.

BellSouth Services, Inc.
Staff Manager.

EDUCATION

Emory University, Atlanta, Ga.
BBA in Finance, with Distinction.

College of William and Mary, Williamsburg, Va.
MBA, with concentrations in Finance and Microeconomics.

TESTIMONY - STATE REGULATORY COMMISSIONS:

Alabama Public Service Commission

Docket No. 19356, Phase III: Alabama Public Service Commission vs. All Telephone Companies Operating in Alabama, and Docket 21455: AT&T Communications of the South Central States, Inc., Applicant, Application for a Certificate of Public Convenience and Necessity to Provide Limited IntraLATA Telecommunications Service in the State of Alabama.

Docket No. 20895: In Re: Petition for Approval to Introduce Business Line Termination for MCI's 800 Service.

Docket No. 21071: In Re: Petition by South Central Bell for Introduction of Bidirectional Measured Service.

Docket No. 21067: In Re: Petition by South Central Bell to Offer Dial Back-Up Service and 2400 BPS Central Office Data Set for Use with PulseLink Public Packet Switching Network Service.

Docket No. 21378: In Re: Petition by South Central Bell for Approval of Tariff Revisions to Restructure ESSX and Digital ESSX Service.

Docket No. 21865: In Re: Petition by South Central Bell for Approval of Tariff Revisions to Introduce Network Services to be Offered as a Part of Open Network Architecture.

Docket No. 25703: In Re: In the Matter of the Interconnection Agreement Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Docket No. 25704: In Re: Petition by AT&T Communications of the South Central States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE South Incorporated and CONTEL of the South, Inc. Concerning Interconnection and Resale under the Telecommunications Act of 1996.

Docket No. 25835: In Re: Petition for Approval of a Statement of Generally Available Terms and Conditions Pursuant to §252(f) of the Telecommunications Act of 1996 and Notification of Intention to File a §271 Petition for In-Region InterLATA Authority with the Federal Communications Commission Pursuant to the Telecommunications Act of 1996.

Docket No. 26029: In Re: Generic Proceeding - Consideration of TELRIC Studies.

Docket No. 25980: Implementation of the Universal Support Requirements of Section 254 of the Telecommunications Act of 1996.

Docket No. 27091: Petition for Arbitration by ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Docket No. 27821: Generic Proceeding to Establish Prices for Interconnection Services and Unbundled Network Elements.

Docket Nos. 27989 and 15957: BellSouth "Full Circle" Promotion and Generic Proceeding Considering the Promulgation of Telephone Rules Governing Promotions.

Docket No. 28841: In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

The Regulatory Commission of Alaska

Case No. U-02-039: In the Matter of Request by Alaska Digitel, LLC for Designation as a Carrier Eligible To Receive Federal Universal Service Support Under the Telecommunications Act of 1996.

Arkansas Public Service Commission

Docket No. 92-337-R: In the Matter of the Application for a Rule Limiting Collocation for Special Access to Virtual or Physical Collocation at the Option of the Local Exchange Carrier.

Public Utilities Commission of the State of California

Rulemaking 00-02-005: Order Instituting Rulemaking on the Commission's Own Motion into Reciprocal Compensation for Telephone Traffic Transmitted to Internet Service Provider Modems.

Application Nos. 01-02-024, 01-02-035, 02-02-031, 02-02-032, 02-02-034, 02-03-002: Applications for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Network element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Public Utilities Commission of the State of Colorado

Docket No. 96A-345T: In the Matter of the Interconnection Contract Negotiations Between AT&T Communications of the Mountain States, Inc., and US West Communications, Inc., Pursuant to 47 U.S.C. Section 252. Docket No. 96A-366T: In the Matter of the Petition of MCIMetro Access Transmission Services, Inc., for Arbitration Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with US West Communications, Inc. (consolidated).

Docket No. 96S-257T: In Re: The Investigation and Suspension of Tariff Sheets Filed by US West Communications, Inc., with Advice Letter No. 2608 Regarding Proposed Rate Changes.

Docket No. 98F-146T: Colorado Payphone Association, Complainant, v. US West Communications,

Inc., Respondent.

Docket No. 02A-276T: In the Matter of the Application of Wiggins Telephone Association for Approval of its Disaggregation Plan

Docket No. 02A-444T: In the Matter of NECC's Application to Redefine the Service Area of Eastern Slope Rural Telephone Association, Inc., Great Plains Communications, Inc., Plains Coop Telephone Association, Inc., and Sunflower Telephone Co., Inc.

State of Connecticut, Department of Utility Control

Docket 91-12-19: DPUC Review of Intrastate Telecommunications Services Open to Competition (Comments).

Docket No. 94-07-02: Development of the Assumptions, Tests, Analysis, and Review to Govern Telecommunications Service Reclassifications in Light of the Eight Criteria Set Forth in Section 6 of Public Act 94-83 (Comments).

Delaware Public Service Commission

Docket No. 93-31T: In the Matter of the Application of The Diamond State Telephone Company for Establishment of Rules and Rates for the Provision of IntelliLinQ-PRI and IntelliLinQ-BRI.

Docket No. 41: In the Matter of the Development of Regulations for the Implementation of the Telecommunications Technology Investment Act.

Docket No. 96-324: In the Matter of the Application of Bell Atlantic-Delaware, Inc. for Approval of its Statement of Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996 (Phase II).

Docket no. 02-001: In the Matter of the Inquiry into Verizon Delaware Inc.'s Compliance with the Conditions Set Forth in 47 U.S.C. § 271(c).

Florida Public Service Commission

Docket No. 881257-TL: In Re: Proposed Tariff by Southern Bell to Introduce New Features for Digital ESSX Service, and to Provide Structural Changes for both ESSX Service and Digital ESSX Service.

Docket No. 880812-TP: In Re: Investigation into Equal Access Exchange Areas (EAEAs), Toll Monopoly Areas (TMAs), 1+ Restriction to the Local Exchange Companies (LECs), and Elimination of the Access Discount.

Docket No. 890183-TL: In Re: Generic Investigation into the Operations of Alternate Access Vendors.

Docket No. 870347-TI: In Re: Petition of AT&T Communications of the Southern States for Commission Forbearance from Earnings Regulation and Waiver of Rule 25-4.495(1) and 25-24.480 (1) (b), F.A.C., for a trial period.

Docket No. 900708-TL: In Re: Investigation of Methodology to Account for Access Charges in Local Exchange Company (LEC) Toll Pricing.

Docket No. 900633-TL: In Re: Development of Local Exchange Company Cost of Service Study Methodology.

Docket No. 910757-TP: In Re: Investigation into the Regulatory Safeguards Required to Prevent Cross-Subsidization by Telephone Companies.

Docket No. 920260-TL: In Re: Petition of Southern Bell Telephone and Telegraph Company for Rate Stabilization, Implementation Orders, and Other Relief.

Docket No. 950985-TP: In Re: Resolution of Petitions to establish 1995 rates, terms, and conditions for interconnection involving local exchange companies and alternative local exchange companies pursuant to Section 364.162, Florida Statutes.

Docket No. 960846-TP: In Re: Petition by MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. for Arbitration of Certain Terms and Conditions of a proposed agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996 and Docket No. 960833-TP: In Re: Petition by AT&T Communications of the Southern States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996 (consolidated).

Docket No. 960847-TP and 960980-TP: In Re: Petition by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation, MCI Metro Access Transmission Service, Inc., for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE Florida Incorporated Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996 (consolidated).

Docket No. 961230-TP: In Re: Petition by MCI Telecommunications Corporation for Arbitration with United Telephone Company of Florida and Central Telephone Company of Florida Concerning Interconnection Rates, Terms, and Conditions, Pursuant to the Federal Telecommunications Act of 1996.

Docket No. 960786-TL: In Re: Consideration of BellSouth Telecommunications, Inc.'s Entry Into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996.

Docket Nos. 960833-TP, 960846-TP, 960757-TP, and 971140-TP: Investigation to develop permanent rates for certain unbundled network elements.

Docket No. 980696-TP: In Re: Determination of the cost of basic local telecommunications service, pursuant to Section 364.025 Florida Statutes.

Docket No. 990750-TP: Petition by ITC^DeltaCom Communications, Inc., d/b/a/ ITC^DeltaCom, for arbitration of certain unresolved issues in interconnection negotiations between ITC^DeltaCom and BellSouth Telecommunications, Inc.

Docket No. 991605-TP: Petition of BellSouth Telecommunications, Inc. for Arbitration of the Interconnection Agreement Between Time Warner Telecom of Florida, L.P., pursuant to Section 252 (b) of the Telecommunications Act of 1996.

Docket No. 030137-TP: In re: Petition for Arbitration of Unresolved Issues in Negotiation of Interconnection Agreement with BellSouth Telecommunications, Inc. by ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom.

Georgia Public Service Commission

Docket No. 3882-U: In Re: Investigation into Incentive Telephone Regulation in Georgia.

Docket No. 3883-U: In Re: Investigation into the Level and Structure of Intrastate Access Charges.

Docket No. 3921-U: In Re: Compliance and Implementation of Senate Bill 524.

Docket No. 3905-U: In Re: Southern Bell Rule Nisi.

Docket No. 3995-U: In Re: IntraLATA Toll Competition.

Docket No. 4018-U: In Re: Review of Open Network Architecture (ONA) (Comments).

Docket No. 5258-U: In Re: Petition of BellSouth Telecommunications for Consideration and Approval of its "Georgians FIRST" (Price Caps) Proposal.

Docket No. 5825-U: In Re: The Creation of a Universal Access Fund as Required by the Telecommunications Competition and Development Act of 1995.

Docket No. 6801-U: In Re: Interconnection Negotiations Between BellSouth Telecommunications, Inc. and AT&T Communications of the Southern States, Inc., Pursuant to Sections 251-252 and 271 of the Telecommunications Act of 1996.

Docket No. 6865-U: In Re: Petition by MCI for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and

Resale Under the Telecommunications Act of 1996.

Docket No. 7253-U: In Re: BellSouth Telecommunications, Inc.'s Statement of Generally Available Terms and Conditions Under Section 252 (f) of the Telecommunications Act of 1996.

Docket No. 7061-U: In Re: Review of Cost Studies and Methodologies for Interconnection and Unbundling of BellSouth Telecommunications Services.

Docket No. 10692-U: In Re: Generic Proceeding to Establish Long-Term Pricing Policies for Unbundled Network Elements.

Docket No. 10854-U: In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Docket No. 16583-U: In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Public Utilities Commission of Hawaii

Docket No. 7702: In the Matter of Instituting a Proceeding on Communications, Including an Investigation of the Communications Infrastructure of the State of Hawaii.

Indiana Utility Regulatory Commission

Cause No. 42303: In the Matter of the Complaint of the Indiana Payphone Association for a Commission Determination of Just and Reasonable Rates and Charges and Compliance with Federal Regulations.

Cause No. 41052-ETC-43: In the Matter of the Designation of Eligible Telecommunications Carriers by the Indiana Utility Regulatory Commission Pursuant to the Telecommunications Act of 1996 and Related FCC Orders. In Particular, the Application of NPCR, Inc. d/b/a Nextel Partners to be Designated.

Iowa Utilities Board

Docket No. RPU-95-10.

Docket No. RPU-95-11.

State Corporation Commission of the State of Kansas

Docket No. 00-GIMT-1054-GIT: In the Matter of a General Investigation to Determine Whether Reciprocal Compensation Should Be Paid for Traffic to an Internet Service Provider.

Kentucky Public Service Commission

Administrative Case No. 10321: In the Matter of the Tariff Filing of South Central Bell Telephone Company to Establish and Offer Pulselink Service.

Administrative Case No. 323: In the Matter of An Inquiry into IntraLATA Toll Competition, An Appropriate Compensation Scheme for Completion of IntraLATA Calls by Interexchange Carriers, and WATS Jurisdictionality.

- Phase IA: Determination of whether intraLATA toll competition is in the public interest.
- Phase IB: Determination of a method of implementing intraLATA competition.
- Rehearing on issue of Imputation.

Administrative Case No. 90-256, Phase II: In the Matter of A Review of the Rates and Charges and Incentive Regulation Plan of South Central Bell Telephone Company.

Administrative Case No. 336: In the Matter of an Investigation into the Elimination of Switched Access Service Discounts and Adoption of Time of Day Switch Access Service Rates.

Administrative Case No. 91-250: In the Matter of South Central Bell Telephone Company's Proposed Area Calling Service Tariff.

Administrative Case No. 96-431: In Re: Petition by MCI for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996.

Administrative Case No. 96-478: In Re: The Petition by AT&T Communications of the South Central States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE South Incorporated Concerning Interconnection and Resale Under the Telecommunications Act of 1996.

Administrative Case No. 96-482: In Re: The Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Administrative Case No. 360: In the Matter of: An Inquiry into Universal Service and Funding Issues.

Administrative Case No. 96-608: In the Matter of: Investigation Concerning the Provision of

InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Administrative Case No. 382: An Inquiry into the Development of Deaveraged Rates for Unbundled Network Elements.

Louisiana Public Service Commission

Docket No. 17970: In Re: Investigation of the Revenue Requirements, Rate Structures, Charges, Services, Rate of Return, and Construction Program of AT&T Communications of the South Central States, Inc., in its Louisiana Operations.

Docket No. U-17949: In the Matter of an Investigation of the Revenue Requirements, Rate Structures, Charges, Services, Rate of Return, and Construction Program of South Central Bell Telephone Company, Its Louisiana Intrastate Operations, The Appropriate Level of Access Charges, and All Matters Relevant to the Rates and Service Rendered by the Company.

- Subdocket A (SCB Earnings Phase)
- Subdocket B (Generic Competition Phase)

Docket No. 18913-U: In Re: South Central Bell's Request for Approval of Tariff Revisions to Restructure ESSX and Digital ESSX Service.

Docket No. U-18851: In Re: Petition for Elimination of Disparity in Access Tariff Rates.

Docket No. U-22022: In Re: Review and Consideration of BellSouth Telecommunications, Inc.'s TSLRIC and LRIC Cost Studies Submitted Pursuant to Sections 901(C) and 1001(E) of the Regulations for Competition in the Local Telecommunications Market as Adopted by General Order Dated March 15, 1996 in Order to Determine the Cost of Interconnection Services and Unbundled Network Components to Establish Reasonable, Non-Discriminatory, Cost Based Tariffed Rates and Docket No. U-22093: In Re: Review and Consideration of BellSouth Telecommunications, Inc.'s Tariff Filing of April 1, 1996, Filed Pursuant to Section 901 and 1001 of the Regulations for Competition in the Local Telecommunications Market Which Tariff Introduces Interconnection and Unbundled Services and Establishes the Rates, Terms and Conditions for Such Service Offerings (consolidated).

Docket No. U-22145: In the Matter of Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Docket No. U-22252: In Re: Consideration and Review of BST's Preapplication Compliance with Section 271 of the Telecommunications Act of 1996, including but not limited to the fourteen requirements set forth in Section 271 (c) (2) (b) in order to verify compliance with section 271 and

provide a recommendation to the FCC regarding BST's application to provide interLATA services originating in-region.

Docket No. U-20883 Subdocket A: In Re: Submission of the Louisiana Public Service Commission's Forward Looking Cost Study to the FCC for Purposes of Calculating Federal Universal Service Support.

Docket No. U-24206: In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Docket No. U-22632: In Re: BellSouth Telecommunications, Inc. Filing of New Cost Studies for Providing Access Line Service for Customer Provided Public Telephones and Smartline Service for Public Telephone Access.

Docket No. Docket No. U-24714-A: In Re: Final Deaveraging of BellSouth Telecommunications, Inc. UNE Rates Pursuant to FCC 96-45 Ninth Report and Order and Order on Eighteenth Order on Reconsideration Released November 2, 1999.

Public Service Commission of Maryland

Case 8584, Phase II: In the Matter of the Application of MFS Intelenet of Maryland, Inc. for Authority to Provide and Resell Local Exchange and Intrastate Telecommunications Services in Areas Served by C&P Telephone Company of Maryland.

Case 8715: In the Matter of the Inquiry into Alternative Forms of Regulating Telephone Companies.

Case 8731: In the Matter of the Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising Under Section 252 of the Telecommunications Act of 1996.

Massachusetts Department of Telecommunications and Energy

D.P.U./D.T.E. 97088/97-18 (Phase II): Investigation by the Department of Telecommunications & 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 Service, and (4) the rate policy for operator service providers.

Minnesota Public Utilities Commission

PUC Docket No. PT6153/AM-02-686, OAH Docket No. 3-2500-14980-2: In the Matter of Petition of Midwest Wireless Communications, LLC for Designation as an Eligible Communications carrier under 47 U.S.C. § 214(e)(2).

PUC Docket No. PT-6182, 6181/M-02-1503: In the Matter of RCC Minnesota, Inc. and Wireless Alliance, LLC for Designation as an Eligible Telecommunications Carrier under 47 U.S.C. § 214(e)(2).

Mississippi Public Service Commission

Docket No. U-5086: In Re: MCI Telecommunications Corporation's Metered Use Service Option D (Prism I) and Option E (Prism II).

Docket No. U-5112: In Re: MCI Telecommunications Corporation's Metered Use Option H (800 Service).

Docket No. U-5318: In Re: Petition of MCI for Approval of MCI's Provision of Service to a Specific Commercial Banking Customers for Intrastate Interexchange Telecommunications Service.

Docket 89-UN-5453: In Re: Notice and Application of South Central Bell Telephone Company for Adoption and Implementation of a Rate Stabilization Plan for its Mississippi Operations.

Docket No. 90-UA-0280: In Re: Order of the Mississippi Public Service Commission Initiating Hearings Concerning (1) IntraLATA Competition in the Telecommunications Industry and (2) Payment of Compensation by Interexchange Carriers and Resellers to Local Exchange Companies in Addition to Access Charges.

Docket No. 92-UA-0227: In Re: Order Implementing IntraLATA Competition.

Docket No. 96-AD-0559: In Re: In the Matter of the Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Docket No. 98-AD-035: Universal Service.

Docket No. 97-AD-544: In Re: Generic Proceeding to Establish Permanent Prices for BellSouth Interconnection and Unbundled Network Elements.

Public Service Commission of the State of Montana

Docket No. D2000.8.124: In the Matter of Touch America, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 of the Terms and Conditions of Interconnection with Qwest Corporation, f/k/a US West Communications, Inc.

Docket No. D2000.6.89: In the Matter of Qwest Corporation's Application to Establish Rates for Interconnection, Unbundled Network Elements, Transport and Termination, and Resale Services.

Nebraska Public Service Commission

Docket No. C-1385: In the Matter of a Petition for Arbitration of an Interconnection Agreement Between AT&T Communications of the Midwest, Inc., and US West Communications, Inc.

New York Public Service Commission

Case No. 28425: Proceeding on Motion of the Commission as to the Impact of the Modification of Final Judgement and the Federal Communications Commission's Docket 78-72 on the Provision of Toll Service in New York State.

North Carolina Public Utilities Commission

Docket No. P-100, Sub 72: In the Matter of the Petition of AT&T to Amend Commission Rules Governing Regulation of Interexchange Carriers (Comments).

Docket No. P-141, Sub 19: In the Matter of the Application of MCI Telecommunications Corporation to Provide InterLATA Facilities-Based Telecommunications Services (Comments).

Docket No. P-55, Sub 1013: In the Matter of Application of BellSouth Telecommunications, Inc. for, and Election of, Price Regulation.

Docket Nos. P-7, Sub 825 and P-10, Sub 479: In the Matter of Petition of Carolina Telephone and Telegraph and Central Telephone Company for Approval of a Price Regulation Plan Pursuant to G.S. 62-133.5.

Docket No. P-19, Sub 277: In the Matter of Application of GTE South Incorporated for and Election of, Price Regulation.

Docket No. P-141, Sub 29: In the Matter of: Petition of MCI Telecommunications Corporation for Arbitration of Interconnection with BellSouth Telecommunications, Inc., Petition of AT&T Communications of the Southern States, Inc. for Arbitration of Interconnection with BellSouth Telecommunications, Inc. (consolidated).

Docket No. P-141, Sub 30: In the Matter of: Petition of MCI Telecommunications Corporation for Arbitration of Interconnection with General Telephone Company of North Carolina, Inc., Petition of AT&T Communications of the Southern States, Inc. for Arbitration of Interconnection with General Telephone Company of North Carolina, Inc. (consolidated).

Docket No. P-100, Sub 133b: Re: In the Matter of Establishment of Universal Support Mechanisms Pursuant to Section 254 of the Telecommunications Act of 1996.

Docket No. P-100, Sub 133d: Re: Proceeding to Determine Permanent Pricing for Unbundled Network Elements.

Docket No. P-100, Sub 84b: Re: In the Matter of Petition of North Carolina Payphone Association for Review of Local Exchange Company Tariffs for Basic Payphone Services (Comments).

Docket No. P-561, Sub 10: BellSouth Telecommunications, Inc., Complainant, v. US LEC of North Carolina, LLC, and Metacomm, LLC, Respondents.

Docket No. P-472, Sub 15: In the Matter of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Time Warner Telecom of North Carolina, L.P. Pursuant to Section 252(b) of the Telecommunications Act of 1996.

Docket Nos. P-7, Sub 995; P-10, Sub 633: ALEC., Inc. v. Carolina Telephone and Telegraph Company and Central Telephone Company.

Docket No. P-500, Sub 18: In the Matter of: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Public Utilities Commission of Ohio

Case No. 93-487-TP-ALT: In the Matter of the Application of The Ohio Bell Telephone Company for Approval of an Alternative Form of Regulation.

Oklahoma Corporation Commission

Cause No. PUD 01448: In the Matter of the Application for an Order Limiting Collocation for Special Access to Virtual or Physical Collocation at the Option of the Local Exchange Carrier.

Cause No. PUD 200300195: Application of United States Cellular Corporation for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996.

Cause No. PUD 200300239: Application of Dobson Cellular Systems, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996.

Public Utility Commission of Oregon

Docket No. UT 119: In the Matter of an Investigation into Tariffs Filed by US West Communications, Inc., United Telephone of the Northwest, Pacific Telecom, Inc., and GTE Northwest, Inc. in Accordance with ORS 759.185(4).

Docket No. ARB 3: In the Matter of the Petition of AT&T Communications of the Pacific Northwest, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996. Docket No. ARB 6: In the Matter of the Petition of MCIMetro Access Transmission Services, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996 (consolidated).

Docket No. ARB 9: In the Matter of the Petition of an Interconnection Agreement Between MCIMetro Access Transportation Services, Inc. and GTE Northwest Incorporated, Pursuant to 47 U.S.C. Section 252.

Docket No. UT-125: In the Matter of the Application of US West Communications, Inc. for an Increase in Revenues.

Pennsylvania Public Utilities Commission

Docket No. I-00910010: In Re: Generic Investigation into the Current Provision of InterLATA Toll Service.

Docket No. P-00930715: In Re: The Bell Telephone Company of Pennsylvania's Petition and Plan for Alternative Form of Regulation under Chapter 30.

Docket No. R-00943008: In Re: Pennsylvania Public Utility Commission v. Bell Atlantic-Pennsylvania, Inc. (Investigation of Proposed Promotional Offerings Tariff).

Docket No. M-00940587: In Re: Investigation pursuant to Section 3005 of the Public Utility Code, 66 Pa. C. S. §3005, and the Commission's Opinion and Order at Docket No. P-930715, to establish standards and safeguards for competitive services, with particular emphasis in the areas of cost allocations, cost studies, unbundling, and imputation, and to consider generic issues for future rulemaking.

South Carolina Public Service Commission

Docket No. 90-626-C: In Re: Generic Proceeding to Consider Intrastate Incentive Regulation.

Docket No. 90-321-C: In Re: Petition of Southern Bell Telephone and Telegraph Company for Revisions to its Access Service Tariff Nos. E2 and E16.

Docket No. 88-472-C: In Re: Petition of AT&T of the Southern States, Inc., Requesting the Commission to Initiate an Investigation Concerning the Level and Structure of Intrastate Carrier Common Line (CCL) Access Charges.

Docket No. 92-163-C: In Re: Position of Certain Participating South Carolina Local Exchange Companies for Approval of an Expanded Area Calling (EAC) Plan.

Docket No. 92-182-C: In Re: Application of MCI Telecommunications Corporation, AT&T Communications of the Southern States, Inc., and Sprint Communications Company, L.P., to Provide IntraLATA Telecommunications Services.

Docket No. 95-720-C: In Re: Application of BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company for Approval of an Alternative Regulation Plan.

Docket No. 96-358-C: In Re: Interconnection Agreement Negotiations Between AT&T Communications of the Southern States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Docket No. 96-375-C: In Re: Interconnection Agreement Negotiations Between AT&T Communications of the Southern States, Inc. and GTE South Incorporated Pursuant to 47 U.S.C. § 252.

Docket No. 97-101-C: In Re: Entry of BellSouth Telecommunications, Inc. into the InterLATA Toll Market.

Docket No. 97-374-C: In Re: Proceeding to Review BellSouth Telecommunications, Inc. Cost for Unbundled Network Elements.

Docket No. 97-239-C: Intrastate Universal Service Fund.

Docket No. 97-124-C: BellSouth Telecommunications, Inc. Revisions to its General Subscriber Services 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.

Docket No. 1999-268-C: Petition of Myrtle Beach Telephone, LLC, for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Horry Telephone Cooperative, Inc.

Docket No. 1999-259-C: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Docket No. 2001-65-C: Generic Proceeding to Establish Prices for BellSouth's Interconnection Services, Unbundled Network Elements and Other Related Elements and Services.

Tennessee Public Service Commission

Docket No. 90-05953: In Re: Earnings Investigation of South Central Bell Telephone Company.

Docket Nos. 89-11065, 89-11735, 89-12677: AT&T Communications of the South Central States, MCI Telecommunications Corporation, US Sprint Communications Company -- Application for Limited IntraLATA Telecommunications Certificate of Public Convenience and Necessity.

Docket No. 91-07501: South Central Bell Telephone Company's Application to Reflect Changes in its Switched Access Service Tariff to Limit Use of the 700 Access Code.

Tennessee Regulatory Authority

Docket No. 96-01152: In Re: Petition by AT&T Communications of the South Central States, Inc. for Arbitration under the Telecommunications Act of 1996 and Docket No. 96-01271: In Re: Petition by MCI Telecommunications Corporation for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996 (consolidated).

Docket No. 96-01262: In Re: Interconnection Agreement Negotiations Between AT&T of the South Central States, Inc. and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. § 252.

Docket No. 97-01262: Proceeding to Establish Permanent Prices for Interconnection and Unbundled Network Elements.

Docket No. 97-00888: Universal Service Generic Contested Case.

Docket No. 99-00430: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996.

Docket No. 97-00409: In Re: All Telephone Companies Tariff Filings Regarding Reclassification of Pay Telephone Service as Required by Federal Communications Commission Docket No. 96-128.

Docket No. 03-00119: In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc.

Public Utility Commission of Texas

Docket No. 12879: Application of Southwestern Bell Telephone Company for Expanded Interconnection for Special Access Services and Switched Transport Services and Unbundling of Special Access DS1 and DS3 Services Pursuant to P. U. C. Subst. R. 23.26.

Docket No. 18082: Complaint of Time Warner Communications against Southwestern Bell Telephone Company.

Docket No. 21982: Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996.

Docket No. 23396: Joint Petition of CoServ, LLC d/b/a CoServ Communications and Multitechnology Services, LP d/b/a CoServ Broadband Services for Arbitration of Interconnection

Rates, Terms, Conditions, and Related Arrangements with Southwestern Bell Telephone Company.

Docket No. 24015: Consolidated Complaints and Requests of Post-Interconnection Dispute Resolution Regarding Inter-Carrier Compensation for FX-Type Traffic Against Southwestern Bell Telephone Company.

PUC Docket No. 27709: Application of NPCR, Inc., dba Nextel Partners for Eligible Telecommunications Carrier Designation (ETC).

State of Vermont Public Service Board

Docket No. 6533: Application of Verizon New England Inc. d/b/a Verizon Vermont for a Favorable Recommendation to Offer InterLATA Services Under 47 U.S.C. 271.

Virginia State Corporation Commission

Case No. PUC920043: Application of Virginia Metrotel, Inc. for a Certificate of Public Convenience and Necessity to Provide InterLATA Interexchange Telecommunications Services.

Case No. PUC920029: Ex Parte: In the Matter of Evaluating the Experimental Plan for Alternative Regulation of Virginia Telephone Companies.

Case No. PUC930035: Application of Contel of Virginia, Inc. d/b/a GTE Virginia to implement community calling plans in various GTE Virginia exchanges within the Richmond and Lynchburg LATAs.

Case No. PUC930036: Ex Parte: In the Matter of Investigating Telephone Regulatory Methods Pursuant to Virginia Code § 56-235.5, & Etc.

Washington Utilities and Transportation Commission

Docket Nos. UT-941464, UT-941465, UT-950146, and UT-950265 (Consolidated): Washington Utilities and Transportation Commission, Complainant, vs. US West Communications, Inc., Respondent; TCG Seattle and Digital Direct of Seattle, Inc., Complainant, vs. US West Communications, Inc., Respondent; TCG Seattle, Complainant, vs. GTE Northwest Inc., Respondent; Electric Lightwave, Inc., vs. GTE Northwest, Inc., Respondent.

Docket No. UT-950200: In the Matter of the Request of US West Communications, Inc. for an Increase in its Rates and Charges.

Docket No. UT-000883: In the Matter of the Petition of U S West Communications, Inc. for Competitive Classification.

Public Service Commission of West Virginia

Case No. 02-1453-T-PC: Highland Cellular, Inc. Petition for consent and approval to be designated as an eligible telecommunications carrier in the areas served by Citizens Telecommunications Company of West Virginia.

Public Service Commission of Wyoming

Docket No. 70000-TR-95-238: In the Matter of the General Rate/Price Case Application of US West Communications, Inc. (Phase I).

Docket No. PSC-96-32: In the Matter of Proposed Rule Regarding Total Service Long Run Incremental Cost (TSLRIC) Studies.

Docket No. 70000-TR-98-420: In the Matter of the Application of US West Communications, Inc. for authority to implement price ceilings in conjunction with its proposed Wyoming Price Regulation Plan for essential and noncompetitive telecommunications services (Phase III).

Docket No. 70000-TR-99-480: In the Matter of the Application of US West Communications, Inc. for authority to implement price ceilings in conjunction with its proposed Wyoming Price Regulation Plan for essential and noncompetitive telecommunications services (Phase IV).

Docket No. 70000-TR-00-556: In the Matter of the Filing by US West Communications, Inc. for Authority to File its TSLRIC 2000 Annual Input Filing and Docket No. 70000-TR-00-570: In the Matter of the Application of US West Communications, Inc. for Authority to File its 2000 Annual TSLRIC Study Filing.

Public Service Commission of the District of Columbia

Formal Case No. 814, Phase IV: In the Matter of the Investigation into the Impact of the AT&T Divestiture and Decisions of the Federal Communications Commission on Bell Atlantic - Washington, D. C. Inc.'s Jurisdictional Rates.

Puerto Rico Telecommunications Regulatory Board

Case No. 98-Q-0001: In Re: Payphone Tariffs.

Docket No.: JRT-2001-AR-0002: In the Matter of Interconnection Rates, Terms and Conditions between WorldNet Telecommunications, Inc. and Puerto Rico Telephone Company.

COMMENTS/DECLARATIONS - FEDERAL COMMUNICATIONS COMMISSION

CC Docket No. 92-91: In the Matter of Open Network Architecture Tariffs of Bell Operating Companies.

CC Docket No. 93-162: Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Special Access.

CC Docket No. 91-141: Common Carrier Bureau Inquiry into Local Exchange Company Term and Volume Discount Plans for Special Access.

CC Docket No. 94-97: Review of Virtual Expanded Interconnection Service Tariffs.

CC Docket No. 94-128: Open Network Architecture Tariffs of US West Communications, Inc.

CC Docket No. 94-97, Phase II: Investigation of Cost Issues, Virtual Expanded Interconnection Service Tariffs.

CC Docket No. 96-98: In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996

CC Docket No. 97-231: Application by BellSouth to Provide In-Region InterLATA Services

CC Docket No. 98-121: Application by BellSouth to Provide In-Region InterLATA Services

CCB/CPD No. 99-27: In the Matter of Petition of North Carolina Payphone Association for Expedited Review of, and/or Declaratory Ruling Concerning, Local Exchange Company Tariffs for Basic Payphone Services.

CC Docket No. 96-128: In the Matter of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CCB/CPD No. 99-31: Oklahoma Independent Telephone Companies Petition for Declaratory Ruling (consolidated).

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

CC Docket No. 99-68: In the Matter of Inter-Carrier Compensation for ISP-Bound Traffic

File No. EB-01-MD-020: In the Matter of Sprint Communications Company, L.P., Complainant v. Time Warner Telecom, Inc. Defendant.

Request by the American Public Communications Council that the Commission Issue a Notice of Proposed Rulemaking to Update the Dial-Around Compensation Rate

File Nos. EB-02-MD-018-030: In the Matter of Communications Vending Corp. of Arizona, et. al., Complainants, v. Citizens Communications Co. f/k/a Citizens Utilities Co. and Citizens Telecommunications Co., et. al., Defendants.

CC Docket No. 96-45: In the Matter of Federal-State Joint Board on Universal Service, Cellular South License, Inc., RCC Holdings, Inc., Petitions for designation as an Eligible Telecommunications Carrier in the State of Alabama.

CC Docket No. 96-45: In the Matter of Federal-State Joint Board on Universal Service, Declaration in Support of the Comments to the Federal-State Joint Board of the Rural Cellular Association and the Alliance of Rural CMRS Carriers.

REPRESENTATIVE TESTIMONY – STATE, FEDERAL, AND OVERSEAS COURTS

Court of Common Pleas, Philadelphia County, Pennsylvania

Shared Communications Services of 1800-80 JFK Boulevard, Inc., Plaintiff, v. Bell Atlantic Properties, Inc., Defendant.

Texas State Office of Administrative Hearings

Office of Customer Protection (OCP) Investigation of Axces, Inc. for Continuing Violations of PUC Substantive Rule §26.130, Selection of Telecommunications Utilities, Pursuant to Procedural Rules 22.246 Administrative Penalties.

Superior Court for the State of Alaska, First Judicial District

Richard R. Watson, David K. Brown and Ketchikan Internet Services, a partnership of Richard R. Watson and David K. Brown, plaintiffs, v. Karl Amylon and the City of Ketchikan, Defendants.

United States District Court for the District of South Carolina, Columbia Division

Brian Wesley Jeffcoat, on behalf of himself and others similarly situated, Plaintiffs, v. Time Warner Entertainment - Advance/Newhouse Partnership, Defendant.

United States District Court for the Northern District of Texas, Fort Worth Division

Multitechnology Services, L. P. d/b/a CoServ Broadband Services, Plaintiffs, v. Southwestern Bell Telephone Company, Defendant.

Multitechnology Services, L. P. d/b/a CoServ Broadband Services, Plaintiffs, v. Verizon Southwest f/k/a GTE Southwest Incorporated.

High Court of the Hong Kong Special Administrative Region, Court of First Instance

Commercial List No. 229 of 1999: Cable and Wireless HKT International Limited, Plaintiff v. New World Telephone Limited, Defendant.

REPRESENTATIVE TESTIMONY – PRIVATE COMMERCIAL ARBITRATION TRIBUNALS

American Arbitration Association

Southwestern Bell Telephone Company, Claimant vs. Time Warner Telecom, Respondent.

CPR Institute for Dispute Resolution

Supra Telecommunications and Information Systems, Inc., Claimant vs. BellSouth
Telecommunications, Inc., Respondent.

Analysis of Current BellSouth Rates for Payphone Access Lines

Exhibit DJW-2

Current Rates

	Group ¹	Cedar Keys	Cross City	Sunny Hills - Vernon	St. Augustine	Panama City Vero Beach	Daytona Beach	Melbourne	Sanford	West Palm Beach	Jacksonville	Orlando	Miami - Ft. Lauderdale
Current Payphone Charges		<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>	<u>11</u>	<u>12</u>
Monthly Base Rate		\$ 19.80	\$ 20.80	\$ 21.90	\$ 22.90	\$ 23.85	\$ 24.90	\$ 25.75	\$ 26.60	\$ 27.40	\$ 28.00	\$ 28.60	\$ 29.10
Coin Billed Number Screening													
Coin Selective Call screening													
EUCL		\$ 7.84	\$ 7.84	\$ 7.84	\$ 7.84	\$ 7.84	\$ 7.84	\$ 7.84	\$ 7.84	\$ 7.84	\$ 7.84	\$ 7.84	\$ 7.84
Total Current Monthly Charges		<u>\$ 27.64</u>	<u>\$ 28.64</u>	<u>\$ 29.74</u>	<u>\$ 30.74</u>	<u>\$ 31.69</u>	<u>\$ 32.74</u>	<u>\$ 33.59</u>	<u>\$ 34.44</u>	<u>\$ 35.24</u>	<u>\$ 35.84</u>	<u>\$ 36.44</u>	<u>\$ 36.94</u>

Zone 1

Unbundled Network Elements		\$ 12.87	\$ 12.87	\$ 12.87	\$ 12.87	\$ 12.87	\$ 12.87	\$ 12.87	\$ 12.87	\$ 12.87	\$ 12.87	\$ 12.87	\$ 12.87
Quantification of Excess Rate		\$ 14.77	\$ 15.77	\$ 16.87	\$ 17.87	\$ 18.82	\$ 19.87	\$ 20.72	\$ 21.57	\$ 22.37	\$ 22.97	\$ 23.57	\$ 24.07

Zone 2

Unbundled Network Elements		\$ 16.98	\$ 16.98	\$ 16.98	\$ 16.98	\$ 16.98	\$ 16.98	\$ 16.98	\$ 16.98	\$ 16.98	\$ 16.98	\$ 16.98	\$ 16.98
Quantification of Excess Rate		\$ 10.66	\$ 11.66	\$ 12.76	\$ 13.76	\$ 14.71	\$ 15.76	\$ 16.61	\$ 17.46	\$ 18.26	\$ 18.86	\$ 19.46	\$ 19.96

Zone 3

Unbundled Network Elements		\$ 27.73	\$ 27.73	\$ 27.73	\$ 27.73	\$ 27.73	\$ 27.73	\$ 27.73	\$ 27.73	\$ 27.73	\$ 27.73	\$ 27.73	\$ 27.73
Quantification of Excess Rate		\$ (0.09)	\$ 0.91	\$ 2.01	\$ 3.01	\$ 3.96	\$ 5.01	\$ 5.86	\$ 6.71	\$ 7.51	\$ 8.11	\$ 8.71	\$ 9.21

Unbundled Network Elements ²

<u>Access Area (Density)</u>	<u>Zone 1</u>	<u>Zone 2</u>	<u>Zone 3</u>
UNE Platform (Local Loop incl Port)	\$ 10.94	\$ 15.05	\$ 25.80
Local Usage	1.93	1.93	1.93
Best Estimate - Cost Base Rates	<u>\$ 12.87</u>	<u>\$ 16.98</u>	<u>\$ 27.73</u>

Calls	300.0
Minutes/Call	3.0
Total Minutes	900.0
Switching Rate ³	\$ 0.0021478
Average Monthly Cost for LS	\$ 1.9330

NOTES:

- ¹ Business Group definition BellSouth Telecommunications General Subscriber Service Tariff A
² Order No. PSC-01-2051-FOF-TP Docket #: 990649A-TP
³ Covers both origination and termination.

Trends in Telephone Service



*Industry Analysis Division
Common Carrier Bureau*

August 2001

This report is available for reference in the FCC's Information Center at 445 12th Street, S.W., Courtyard Level. Copies may be purchased by calling International Transcription Service, Inc. at (202) 857-3800. The report can also be downloaded [file names: TREND101.ZIP, TREND101.PDF] from the FCC-State Link Internet site at www.fcc.gov/ccb/stats.

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET

NO. 030300-TP EXHIBIT NO. 9

COMPANY/ BellSouth

WITNESS: FCC 2001 Trends in Telephones

DATE: 05-12-04

8 Lines

Within the telephone industry there are several alternative, but closely related, definitions of telephone lines or loops. While these differences often make it difficult to reconcile data from different statistical series, they are not usually large enough to affect comparisons among companies or trends over time. Since 1970, over 90% of households and virtually all businesses have subscribed to telephone service. Line growth over time, averaging about 3% per year, has historically reflected growth in the population and the economy. In recent years, the growth in lines has increased as households have added additional lines.

Table 8.1 shows the nation's total number of telephone lines using three alternative measures. One measure is the number of local loops, which is a way of counting lines that is used to determine the amount of Universal Service Fund payments to local exchange carriers. A second measure is the number of presubscribed lines, which were used before 1998 to determine the amount of payments by the interexchange carriers to support the Universal Service Fund and the Lifeline and LinkUp programs. The third measure, access lines, represents estimates for the whole industry based on data filed with the Commission by large local exchange carriers.

Table 8.2 shows the number of local exchange operating areas (study areas) and loops in each state, and shows breakdowns by loops for price-cap and average-schedule companies. Table 8.3 shows the number of loops by holding companies.

Table 8.4 compares the number of residential local loops with the number of households with telephone service. The difference between these series is an approximate measure of the number of additional residential access lines. Table 8.4 shows that the percentage of additional lines for households with telephone service has increased dramatically, from about 3% in 1988 to about 29% in 1999.

Long distance carriers are required to pay payphone owners \$0.24 for every completed dial-around call (calls where the consumer chooses the long distance carrier over the payphone's presubscribed long distance carrier).² Because of this requirement, several long distance carriers employ the National Payphone Clearinghouse to administer payments on their behalf. On an annual basis, the National Payphone Clearinghouse supplies the FCC with data that allows the number of payphones in each state to be calculated. Table 8.5 shows the number of payphones owned by LECs and by independent payphone operators in each state at the end of the first quarter of 1999, 2000, and 2001 respectively. The number of payphones is broken down by whether the payphones are served by an RBOC or by another LEC.

² See *Third Report and Order and Order on Reconsideration of the 2nd Report and Order*, CC Docket 96-128, adopted Jan. 28, 1999.

Table 8.1
Total U.S. Telephone Lines

Year End	Presubscribed Lines	Annual Growth (%)	Local Loops	Annual Growth (%)	Access Lines	Annual Growth (%)
1980			102,216,367			
1981			105,559,222	3.3 %		
1982			107,519,214	1.9		
1983			110,612,689	2.9		
1984			112,550,739	1.8	113,880,538	
1985			115,985,813	3.1	117,434,802	3.1 %
1986			118,289,121	2.0	120,781,565	2.8
1987	121,466,500		122,789,249	3.8	124,678,710	3.2
1988	124,360,829	2.4 %	127,086,765	3.5	126,953,616	1.8
1989	128,482,479	3.3	131,504,568	3.5	130,915,695	3.1
1990	132,408,608	3.1	136,114,201	3.5	134,743,029	2.9
1991	135,286,582	2.2	139,412,884	2.4	139,672,703	3.7
1992	138,725,040	2.5	143,341,581	2.8	142,428,028	2.0
1993	142,809,280	2.9	148,106,159	3.3	147,095,681	3.3
1994	148,479,328	4.0	153,447,946	3.6	151,607,529	3.1
1995	152,601,177	2.8	159,658,662	4.0	158,219,924	4.4
1996	158,672,243	4.0	166,445,580	4.3	165,420,650	4.6
1997	NA	NA	173,868,033	4.5	173,705,523	5.0
1998	NA	NA	179,846,360	3.4	180,471,261	3.9
1999	NA	NA	184,985,055	2.9	186,260,652	3.2

NA - Not Available.

Source: Presubscribed lines and local loops: National Exchange Carrier Association.
Access Lines: *Statistics of Communications Common Carriers*, 1999 edition, Table 4.10,
after inflating access lines of reporting carriers to represent the total industry.

Table 8.2
Telephone Loops of Incumbent Local Exchange Carriers by State
(As of December 31, 1999)

	Study Areas	Price Cap		Non-Price Cap		Total Loops
		Bell Company Loops	Other Company Loops	Average Schedule Company Loops	Other Company Loops	
Alabama	28	2,000,061	323,533	52,741	145,298	2,521,633
Alaska	25	0	23,493	226	434,981	458,700
American Samoa	1	0	0	10,506	0	10,506
Arizona	16	2,774,707	162,506	0	34,337	2,971,550
Arkansas	28	1,039,166	222,076	25,768	214,271	1,501,281
California	22	17,782,239	4,749,226	0	204,992	22,736,457
Colorado	28	2,737,393	0	3,288	123,489	2,864,170
Connecticut	2	2,411,062	0	24,144	0	2,435,206
Delaware	1	582,735	0	0	0	582,735
District of Columbia	1	926,875	0	0	0	926,875
Florida	12	6,686,776	4,439,100	0	183,683	11,309,559
Georgia	36	4,338,146	28,652	76,750	765,277	5,208,825
Guam	1	0	0	0	77,609	77,609
Hawaii	2	0	722,147	0	269	722,416
Idaho	21	529,331	156,648	5,014	42,307	733,300
Illinois	56	7,089,259	970,306	43,616	227,244	8,330,425
Indiana	42	2,280,543	1,242,839	93,824	64,078	3,681,284
Iowa	153	1,088,216	349,338	199,238	40,837	1,677,629
Kansas	39	1,445,327	145,017	21,327	108,435	1,720,106
Kentucky	19	1,240,607	760,175	142,721	48,085	2,191,588
Louisiana	20	2,396,531	0	9,964	179,284	2,585,779
Maine	20	718,057	0	36,539	107,339	861,935
Maryland	2	3,833,217	0	7,714	0	3,840,931
Massachusetts	3	4,582,859	0	2,964	1,159	4,586,982
Michigan	39	5,514,290	809,602	35,278	172,044	6,531,214
Minnesota	88	2,246,696	424,521	235,467	163,035	3,069,719
Mississippi	19	1,326,316	6,321	23,931	63,474	1,420,042
Missouri	43	2,716,232	726,282	21,206	162,963	3,626,683
Montana	18	366,557	8,742	4,129	159,005	538,433
Nebraska	41	508,081	384,729	29,554	84,103	1,006,467
Nevada	14	358,700	926,999	0	31,879	1,317,578
New Hampshire	10	818,682	0	2,164	54,456	875,302
New Jersey	3	6,519,258	219,929	0	10,492	6,749,679
New Mexico	15	811,430	99,748	0	43,318	954,496
New York	44	11,466,333	1,067,356	21,518	263,337	12,818,544
North Carolina	26	2,544,247	1,828,529	253,485	467,061	5,093,322
North Dakota	24	253,914	0	63,272	100,680	417,866
Northern Mariana Islands	1	0	24,945	0	0	24,945
Ohio	42	4,133,557	2,346,160	65,313	460,929	7,005,959
Oklahoma	39	1,724,420	121,945	5,791	233,530	2,085,686
Oregon	33	1,395,086	575,748	11,922	146,252	2,129,008
Pennsylvania	36	6,530,158	1,109,767	576,536	252,360	8,468,821
Puerto Rico	2	0	0	0	1,294,704	1,294,704
Rhode Island	1	678,123	0	0	0	678,123
South Carolina	27	1,503,586	320,727	77,107	428,067	2,329,487
South Dakota	31	280,323	0	95,463	53,611	429,397
Tennessee	25	2,743,845	354,059	143,060	206,426	3,447,390
Texas	57	10,192,419	2,404,248	9,652	568,084	13,174,403
Utah	13	1,117,319	23,317	4,932	30,801	1,176,369
Vermont	10	352,186	0	4,384	59,697	416,267
Virgin Islands	1	0	0	0	67,229	67,229
Virginia	21	3,629,926	1,016,550	97,479	18,157	4,762,112
Washington	23	2,527,498	955,970	4,124	261,316	3,748,908
West Virginia	10	848,375	149,635	8,445	7,654	1,014,109
Wisconsin	88	2,207,612	591,493	217,039	462,125	3,478,269
Wyoming	10	247,234	7,508	0	42,301	297,043
Total	1,432	142,045,510	30,799,886	2,767,595	9,372,064	184,985,055

Source: NECA universal service filings.

Table 8.3
Telephone Loops of Incumbent Local Exchange Carriers by Holding
(As of December 31, 1999)

Holding Companies	Loops	Percent of Loops
Verizon Communications 2/	62,276,224	33.67 %
SBC Communications	58,918,970	31.85
BellSouth Telecommunications, Inc.	24,780,115	13.40
Qwest Communications Corporation	16,883,785	9.13
Sprint Corporation	7,874,408	4.26
ALLTEL Corporation	2,271,645	1.23
CenturyTel, Inc.	1,264,311	0.68
Global Crossing Ltd.	1,126,253	0.61
Citizens Communications Company	1,011,101	0.55
Cincinnati Bell, Inc.	998,991	0.54
IDS Telecommunications Corporation	588,355	0.32
Alaska Communications Systems Holding, Inc.	329,876	0.18
C-TEC Corporation	297,405	0.16
Madison River Telephone Company	148,614	0.08
MJD Communications	140,031	0.08
North State Telephone Company	133,533	0.07
Rock Hill Telephone Company	123,806	0.07
Roseville Telephone Company	123,520	0.07
The Concord Telephone Company	118,218	0.06
TXU Communications	117,268	0.06
Consolidated Communications, Inc.	88,953	0.05
Horry Telephone Cooperative, Inc.	86,423	0.05
Conestoga Enterprises, Inc.	80,169	0.04
North Pittsburgh Telephone Company	79,042	0.04
Guam Telephone Authority	77,609	0.04
Hargray Communications Group, Inc.	67,645	0.04
Virgin Islands Telephone Corporation	67,229	0.04
Denver & Ephrata Telephone Company	59,395	0.03
Farmers Telephone Cooperative, Inc.	57,255	0.03
Matanuska Telephone Association	56,575	0.03
Pioneer	50,282	0.03
GTC, Inc.	49,710	0.03
Chorus Communications Group	43,543	0.02
Fort Bend Communication Company	41,677	0.02
Mankato Citizens Telephone Company	40,573	0.02
Lynch Telephone Corporation	40,437	0.02
Coastal Utilities, Inc.	39,332	0.02
East Ascension Telephone Company, Inc.	39,289	0.02
CFW Communication Companies	38,342	0.02
Atlantic Telephone Membership Corporation	38,083	0.02
Twin Lake Telephone Cooperative	36,574	0.02
SRT Service Corporation	35,985	0.02
Ben Lomand Rural Telephone Cooperative, Inc.	35,813	0.02
The Chillicothe Telephone Company	35,566	0.02
Golden West Telecommunications	35,384	0.02
Telephone Electronics Corporation	35,102	0.02
Lexington Communications, Inc.	34,739	0.02
Guadalupe Valley Telephone Cooperative	34,713	0.02
Skyline Telephone Membership Corporation	34,663	0.02
Great Plains Communication, Inc.	34,478	0.02
Smithville Telephone Company, Inc.	33,333	0.02
Wood County Telephone Company	30,921	0.02
Yadkin Valley Telephone	30,785	0.02
Eastex Telephone Cooperative, Inc.	30,748	0.02
Ollig Utilities	28,233	0.02
Brandenburg Telephone Company	27,652	0.01
South Central Rural Telephone Cooperative	27,596	0.01
Millington Telephone Company, Inc.	26,336	0.01
Kerrville Telephone Company	25,645	0.01
Grand River Mutual Telephone Corporation	25,520	0.01
All Other Companies	3,677,277	1.99
Total	184,985,055	100.00 %

1/ Includes incumbent local exchange carrier's loops for holding companies with more than 25,000 loops.

2/ Includes Bell Atlantic Corporation and GTE Corporation.

Source: NECA universal service filings.

Table 8.4
Additional Residential Lines
for Households with Telephone Service
(End-of-Year Data in Millions)

Year	Loops 1/			Households with Telephone Service 2/	Additional Residential Lines	Percentage of Additional Lines for Households with Telephones
	Residential	Non- Residential	Total Loops			
1988	87.7	38.5	126.2	85.4	2.3	2.7 %
1989	90.0	40.6	130.6	87.4	2.6	3.0
1990	92.2	42.9	135.1	88.4	3.9	4.4
1991	95.9	42.5	138.4	89.4	6.5	7.3
1992	99.3	43.0	142.3	91.0	8.3	9.1
1993	101.8	45.2	147.0	93.0	8.8	9.4
1994	105.1	47.2	152.3	93.7	11.4	12.2
1995	108.1	50.4	158.5	94.2	13.9	14.7
1996	111.6	54.6	166.2	95.1	16.5	17.3
1997	115.6	58.7	174.3	96.5	19.1	19.8
1998	119.9	64.1	183.9	98.0	21.9	22.3
1999	127.8	66.1	193.9	99.1	28.6	28.9

1/ Total loops are from the Universal Service Fund subscriber line counts provided by the National Exchange Carrier Association. Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands totals have been removed. Total loops have been divided between residential and non-residential using the ratio of residential to non-residential access lines reported in Statistics of Communications Common Carriers. Those totals also exclude Puerto Rico, but cover only the carriers that file ARMIS reports (of which there are none for Guam, the Northern Mariana Islands, and the U.S. Virgin Islands). Loop counts beginning in 1996 have been increased by estimated competitive local exchange carrier lines from Association for Local Telecommunications Services (ALTS) and New Paradigm Resources Group.

2/ *Current Population Survey* (U.S. Department of Commerce, Bureau of the Census).

Source: FCC staff estimates.

Table 8.5
Number of Payphones Owned by LECs and Independent Operators
(As of March 31, 1999)

State	RBOC Territories ¹		All Other LEC Territories		Total		Grand Total
	LEC Owned	Independent	LEC Owned	Independent	LEC Owned	Independent	
Alabama	15,475	7,435	252	707	15,727	8,142	23,869
Alaska	0	0	1,477	866	1,477	866	2,343
Arizona	16,540	12,547	84	5,028	16,624	17,575	34,199
Arkansas	15,024	1,833	435	438	15,459	2,271	17,730
California	183,098	93,553	2,270	15,813	185,368	109,366	294,734
Colorado	15,944	9,919	187	1,101	16,131	11,020	27,151
Connecticut	23,217	30	0	309	23,217	339	23,556
Delaware	4,804	908	0	0	4,804	908	5,712
District of Columbia	8,034	2,332	0	0	8,034	2,332	10,366
Florida	49,112	46,392	13,131	12,015	62,243	58,407	120,650
Georgia	33,382	17,834	1,925	3,312	35,307	21,146	56,453
Hawaii	7,984	686	0	0	7,984	686	8,670
Idaho	3,945	2,370	362	354	4,307	2,724	7,031
Illinois	77,064	30,946	200	122	77,264	31,068	108,332
Indiana	31,566	7,678	2,238	1,902	33,804	9,580	43,384
Iowa	6,657	4,154	663	312	7,320	4,466	11,786
Kansas	15,844	1,619	1,679	525	17,523	2,144	19,667
Kentucky	11,187	13,324	274	1,767	11,461	15,091	26,552
Louisiana	15,521	9,351	337	2,326	15,858	11,677	27,535
Maine	6,093	784	348	299	6,441	1,083	7,524
Maryland	31,978	10,422	55	154	32,033	10,576	42,609
Massachusetts	43,766	9,308	10	670	43,776	9,978	53,754
Michigan	65,367	21,151	620	1,088	65,987	22,239	88,226
Minnesota	12,193	3,870	2,029	2,806	14,222	6,676	20,898
Mississippi	11,416	4,305	118	362	11,534	4,667	16,201
Missouri	34,959	6,376	2,910	1,400	37,869	7,776	45,645
Montana	2,620	1,674	430	867	3,050	2,541	5,591
Nebraska	3,432	2,172	3,365	585	6,797	2,757	9,554
Nevada	4,213	1,400	1,592	16,304	5,805	17,704	23,509
New Hampshire	6,253	1,394	108	183	6,361	1,577	7,938
New Jersey	71,334	23,214	2,260	2,547	73,594	25,761	99,355
New Mexico	6,852	3,985	65	777	6,917	4,762	11,679
New York	107,491	49,677	588	28,461	108,079	78,138	186,217
North Carolina	15,572	17,502	10,252	13,304	25,824	30,806	56,630
North Dakota	746	1,091	102	993	848	2,084	2,932
Ohio	6,250	17,440	6,433	2,931	12,683	20,371	33,054
Oklahoma	22,654	2,008	1,003	2,034	23,657	4,042	27,699
Oregon	11,683	7,902	870	1,443	12,553	9,345	21,898
Pennsylvania	56,627	21,433	8,188	4,065	64,815	25,498	90,313
Rhode Island	5,713	1,884	0	5	5,713	1,889	7,602
South Carolina	14,048	7,975	1,129	2,981	15,177	10,956	26,133
South Dakota	2,480	845	438	164	2,918	1,009	3,927
Tennessee	17,111	12,036	2,765	3,426	19,876	15,462	35,338
Texas	106,514	37,587	2,678	16,268	109,192	53,855	163,047
Utah	7,118	3,575	125	528	7,243	4,103	11,346
Vermont	3,194	320	99	101	3,293	421	3,714
Virginia	35,280	19,841	3,221	3,534	38,501	23,375	61,876
Washington	21,432	11,137	803	2,274	22,235	13,411	35,646
West Virginia	8,873	1,364	309	944	9,182	2,308	11,490
Wisconsin	25,304	4,925	1,946	4,537	27,250	9,462	36,712
Wyoming	2,499	995	118	137	2,617	1,132	3,749
Totals	1,305,463	572,503	80,491	163,069	1,385,954	735,572	2,121,526

See footnote(s) at end of table.

Table 8.5
Number of Payphones Owned by LECs and Independent Operators - Continued
(As of March 31, 2000)

State	RBOC Territories		All Other LEC Territories		Total		Grand Total
	LEC Owned	Independent	LEC Owned	Independent	LEC Owned	Independent	
Alabama	14,347	8,171	247	1,472	14,594	9,643	24,237
Alaska	0	0	1,058	3,525	1,058	3,525	4,583
Arizona	16,212	14,518	132	2,501	16,344	17,019	33,363
Arkansas	13,251	2,229	271	1,203	13,522	3,432	16,954
California	170,456	92,062	1,730	3,708	172,186	95,770	267,956
Colorado	15,502	9,934	214	1,385	15,716	11,319	27,035
Connecticut	21,570	4,195	0	176	21,570	4,371	25,941
Delaware	4,612	1,082	0	0	4,612	1,082	5,694
District of Columbia	7,750	2,755	0	0	7,750	2,755	10,505
Florida	46,090	51,208	9,150	12,759	55,240	63,967	119,207
Georgia	30,530	21,921	635	8,433	31,165	30,354	61,519
Hawaii	7,784	1,159	0	0	7,784	1,159	8,943
Idaho	3,756	2,470	280	348	4,036	2,818	6,854
Illinois	72,615	30,837	1,109	1,807	73,724	32,644	106,368
Indiana	30,612	8,343	2,228	1,246	32,840	9,589	42,429
Iowa	6,512	3,663	732	276	7,244	3,939	11,183
Kansas	13,574	1,543	989	843	14,563	2,386	16,949
Kentucky	10,240	7,961	114	918	10,354	8,879	19,233
Louisiana	14,140	12,071	118	1,506	14,258	13,577	27,835
Maine	6,047	892	36	521	6,083	1,413	7,496
Maryland	31,182	12,094	50	10	31,232	12,104	43,336
Massachusetts	42,015	10,912	8	99	42,023	11,011	53,034
Michigan	60,795	20,790	519	1,055	61,314	21,845	83,159
Minnesota	8,317	4,884	1,969	1,661	10,286	6,545	16,831
Mississippi	10,748	4,806	74	573	10,822	5,379	16,201
Missouri	31,292	6,760	2,356	2,102	33,648	8,862	42,510
Montana	2,617	1,517	579	1,171	3,196	2,688	5,884
Nebraska	3,299	2,116	609	3,644	3,908	5,760	9,668
Nevada	3,924	1,603	1,636	10,341	5,560	11,944	17,504
New Hampshire	6,229	1,582	74	247	6,303	1,829	8,132
New Jersey	68,858	24,363	2,225	335	71,083	24,698	95,781
New Mexico	6,356	4,296	57	665	6,413	4,961	11,374
New York	106,298	59,456	570	4,774	106,868	64,230	171,098
North Carolina	14,820	10,573	9,954	10,596	24,774	21,169	45,943
North Dakota	720	873	59	855	779	1,728	2,507
Ohio	48,872	11,061	4,832	6,501	53,704	17,562	71,266
Oklahoma	19,338	5,175	564	1,087	19,902	6,262	26,164
Oregon	11,265	7,914	461	2,019	11,726	9,933	21,659
Pennsylvania	55,064	22,635	6,010	6,894	61,074	29,529	90,603
Rhode Island	5,487	2,228	0	1,220	5,487	3,448	8,935
South Carolina	12,125	10,220	1,889	4,210	14,014	14,430	28,444
South Dakota	2,343	727	381	875	2,724	1,602	4,326
Tennessee	18,348	14,775	2,715	3,091	21,063	17,866	38,929
Texas	92,033	49,707	1,963	4,017	93,996	53,724	147,720
Utah	7,182	3,395	125	764	7,307	4,159	11,466
Vermont	3,010	424	0	327	3,010	751	3,761
Virginia	33,443	19,018	2,858	2,302	36,301	21,320	57,621
Washington	21,048	10,557	600	2,163	21,648	12,720	34,368
West Virginia	8,643	1,770	339	952	8,982	2,722	11,704
Wisconsin	23,280	6,096	1,033	4,974	24,313	11,070	35,383
Wyoming	2,347	1,063	256	202	2,603	1,265	3,868
Totals	1,244,535	633,022	63,808	122,353	1,308,343	755,375	2,063,718

See footnote(s) at end of table.

Table 8.5
Number of Payphones Owned by LECs and Independent Operators - Continued
(As of March 31, 2001)

State	RBOC Territories		All Other LEC Territories		Total		Grand Total
	LEC Owned	Independent	LEC Owned	Independent	LEC Owned	Independent	
Alabama	13,158	6,937	467	1,332	13,625	8,269	21,894
Alaska	0	0	1,217	3,377	1,217	3,377	4,594
Arizona	18,788	15,031	803	2,704	19,591	17,735	37,326
Arkansas	10,216	1,563	1,675	1,552	11,891	3,115	15,006
California	137,535	103,245	1,885	3,915	139,420	107,160	246,580
Colorado	15,380	9,363	196	924	15,576	10,287	25,863
Connecticut	19,835	4,360	0	2	19,835	4,362	24,197
Delaware	4,473	960	0	0	4,473	960	5,433
District of Columbia	7,362	1,273	0	0	7,362	1,273	8,635
Florida	42,019	45,822	7,714	11,658	49,733	57,480	107,213
Georgia	27,920	20,403	3,532	6,367	31,452	26,770	58,222
Hawaii	7,068	1,128	0	0	7,068	1,128	8,196
Idaho	3,623	2,304	260	248	3,883	2,552	6,435
Illinois	62,280	29,263	1,515	2,087	63,795	31,350	95,145
Indiana	26,901	7,766	2,187	1,260	29,088	9,026	38,114
Iowa	6,307	2,837	705	306	7,012	3,143	10,155
Kansas	11,707	2,272	950	952	12,657	3,224	15,881
Kentucky	9,055	8,021	2,263	1,905	11,318	9,926	21,244
Louisiana	13,370	11,343	156	1,421	13,526	12,764	26,290
Maine	5,937	682	50	311	5,987	993	6,980
Maryland	31,492	6,233	49	9	31,541	6,242	37,783
Massachusetts	39,148	10,581	8	1,239	39,156	11,820	50,976
Michigan	48,830	18,735	709	1,087	49,539	19,822	69,361
Minnesota	11,279	4,528	2,438	2,376	13,717	6,904	20,621
Mississippi	10,115	4,495	186	499	10,301	4,994	15,295
Missouri	23,827	6,842	2,906	2,968	26,733	9,810	36,543
Montana	2,615	1,426	609	1,023	3,224	2,449	5,673
Nebraska	3,187	1,703	637	4,012	3,824	5,715	9,539
Nevada	3,514	1,716	2,016	9,760	5,530	11,476	17,006
New Hampshire	5,963	1,565	103	220	6,066	1,785	7,851
New Jersey	66,213	16,991	1,937	1,392	68,150	18,383	86,533
New Mexico	5,951	3,455	302	670	6,253	4,125	10,378
New York	103,168	52,436	11,284	8,157	114,452	60,593	175,045
North Carolina	13,434	10,176	8,314	11,674	21,748	21,850	43,598
North Dakota	650	763	73	817	723	1,580	2,303
Ohio	41,298	10,924	9,458	7,170	50,756	18,094	68,850
Oklahoma	15,302	4,600	1,343	1,076	16,645	5,676	22,321
Oregon	10,676	7,580	486	2,038	11,162	9,618	20,780
Pennsylvania	52,279	20,595	6,765	4,570	59,044	25,165	84,209
Rhode Island	5,126	2,368	0	793	5,126	3,161	8,287
South Carolina	10,850	9,097	2,159	3,947	13,009	13,044	26,053
South Dakota	2,343	785	410	826	2,753	1,611	4,364
Tennessee	14,458	11,846	2,618	2,671	17,076	14,517	31,593
Texas	75,275	51,552	2,013	6,407	77,288	57,959	135,247
Utah	7,398	3,246	156	578	7,554	3,824	11,378
Vermont	2,865	398	44	286	2,909	684	3,593
Virginia	30,899	13,757	2,523	2,199	33,422	15,956	49,378
Washington	20,521	10,566	792	2,395	21,313	12,961	34,274
West Virginia	7,901	1,751	665	700	8,566	2,451	11,017
Wisconsin	19,454	5,578	1,552	6,039	21,006	11,617	32,623
Wyoming	2,412	917	269	167	2,681	1,084	3,765
Totals	1,131,377	571,778	88,399	128,086	1,219,776	699,864	1,919,640

¹ Although Bell Atlantic and GTE had not merged as of March 31, 1999, their data were combined so that comparisons across years could be made.

Source: Raw data provided by National Payphone Clearinghouse. Rollups performed by the Industry Analysis Division of the FCC.

Trends in Telephone Service

030300

exhibits

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***Industry Analysis and Technology Division
Wireline Competition Bureau***

August 2003

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FLORIDA PUBLIC SERVICE COMMISSION
DOCKET

NO. 030300-TP EXHIBIT NO. 10

COMPANY/ BellSouth

WITNESS: FCC 2003 Trends in Telephone

DATE: 05/13/04

7 Lines

Within the telephone industry there are several alternative, but closely related, definitions of telephone lines or loops. While these differences often make it difficult to reconcile data from different statistical series, they are not usually large enough to affect comparisons among companies or trends over time. Since 1970, over 90% of households and virtually all businesses have subscribed to telephone service. Line growth over time, averaging about 3% per year, has historically reflected growth in the population and the economy. The number of lines, however, has declined since 2000 because of the recession, because some consumers are substituting wireless service for wireline service, and because some households are eliminating second lines when they move from dial-up internet service to broadband service.

Table 7.1 shows the nation's total number of telephone lines using three alternative measures. The first measure is the number of end-user lines for both ILECs and CLECs as reported to the Commission on the FCC Form 477. These totals undercount lines by a small amount because carriers with less than 10,000 lines in a state are not required to file FCC Form 477. The second measure is the number of local loops, which is a way of counting lines that is used to determine the amount of high-cost universal service support provided to local exchange carriers. This measure excludes CLEC lines provided over their own facilities. The third measure, access lines, represents estimates for the whole ILEC industry based on data filed with the Commission by large ILECs through the Automated Reporting Management Information System (ARMIS).

Table 7.2 shows the number of local exchange operating areas (study areas – company's operations in one state) and loops in each state, and shows breakdowns by loops for price-cap and average-schedule companies. Table 7.3 shows the number of loops by holding companies.

Table 7.4 compares the number of residential local loops with the number of households with telephone service. The difference between these series is an approximate measure of the number of additional residential access lines. Table 7.4 shows that the percentage of additional lines for households with telephone service has increased dramatically, from about 3% in 1988 to about 25% in 2001.

Tables 7.5 and 7.6 display payphone line information. Long distance carriers are required to pay payphone owners \$0.24 for every completed dial-around call (calls where the consumer chooses the long distance carrier over the payphone's presubscribed long distance carrier).¹ Because of this requirement, several long distance carriers employ the National Payphone Clearinghouse to administer payments on their behalf. On an annual basis, the National Payphone Clearinghouse supplies the FCC with data that allow the number of payphones in each state to be calculated.

¹ See *Third Report and Order and Order on Reconsideration of the 2nd Report and Order*, CC Docket 96-128, adopted Jan. 28, 1999.

Table 7.5 shows the number of payphones owned by LECs and by independent payphone operators in each state at the end of the first quarter of 2002 and 2003. The number of payphones is broken down by whether the payphones are served by an RBOC or by another LEC. Payphones located in RBOC territories but that are served by a CLEC are accounted for in the "RBOC territories" columns. Similarly, payphones located in non-RBOC territories (i.e., other ILEC territories) but that are served by a CLEC are accounted for in the "all other LEC territories" columns. Data for earlier years can be found in earlier editions of *Trends*.

Table 7.6 shows the number of payphones over time. The National Payphone Clearinghouse began providing detailed data to the Commission starting with data as of March 31, 1999. Where possible, data from the payphone proceedings were used to fill values for 1997 and 1998 (see the footnotes to Table 7.6 for citations).

Table 7.1
U.S. Wireline Telephone Lines

Year End	FCC Form 477	Annual Growth (%)	ILEC Local Loops	Annual Growth (%)	ILEC Access Lines	Annual Growth (%)
1980			102,216,367			
1981			105,559,222	3.3 %		
1982			107,519,214	1.9		
1983			110,612,689	2.9		
1984			112,550,739	1.8	113,832,113	
1985			115,985,813	3.1	117,384,865	3.1 %
1986			118,289,121	2.0	120,730,205	2.8
1987			122,789,249	3.8	124,625,693	3.2
1988			127,086,765	3.5	126,899,632	1.8
1989			131,504,568	3.5	130,860,026	3.1
1990			136,114,201	3.5	134,685,732	2.9
1991			139,412,884	2.4	139,613,309	3.7
1992			143,341,581	2.8	142,367,463	2.0
1993			148,106,159	3.3	147,033,132	3.3
1994			153,447,946	3.6	151,543,061	3.1
1995			159,658,662	4.0	158,152,644	4.4
1996			166,445,580	4.3	165,350,308	4.6
1997			173,866,799	4.5	173,857,193	5.1
1998			179,849,045	3.4	180,516,161	3.8
1999	189,501,938		185,002,992	2.9	186,594,497	3.4
2000	192,512,938	1.6 %	188,501,344	1.9	187,581,092	0.5
2001	191,697,023	-0.4	185,588,578	-1.5	179,811,283	-4.1
2002	187,508,810	-2.2	NA	NA	169,913,443 ¹	-5.5

NA - Not Available.

¹ Data for 2002 are preliminary from annual ARMIS (Automated Reporting Management Information System) 43-08 filings, April 1, 2003, adjusted using the 2001 adjustment factor.

Source: FCC Form 477: Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of December 31, 2002* (June 2003).
Local loops: National Exchange Carrier Association.
Access Lines: 1984-2001: Industry Analysis and Technology Division, Wireline Competition Bureau, *Statistics of Communications Common Carriers*, 2001/2002 edition (September 2002), Table 4.10, after inflating access lines of reporting carriers to represent the total industry. The 1996 adjustment factor was used for the years prior to 1996.

Table 7.2
Telephone Loops of Incumbent Local Exchange Carriers by State
(As of December 31, 2001)

	Study Areas	Price Cap		Non-Price Cap		Total Loops
		Bell Company Loops ¹	Other Company Loops	Average Schedule Company Loops	Other Company Loops	
Alabama	28	2,260,366	25,944	41,011	170,303	2,497,624
Alaska	24	0	0	246	460,948	461,194
American Samoa	1	0	0	0	10,325	10,325
Arizona	17	2,881,752	172,665	0	40,732	3,095,149
Arkansas	28	1,037,211	0	25,557	446,565	1,509,333
California	22	23,013,488	153,138	0	219,063	23,385,691
Colorado	28	2,812,527	0	1,092	134,847	2,948,466
Connecticut	2	2,381,200	0	25,504	0	2,406,704
Delaware	1	589,979	0	0	0	589,979
District of Columbia	1	919,587	0	0	0	919,587
Florida	12	9,027,643	2,093,652	0	196,638	11,317,933
Georgia	36	4,225,392	2,769	69,120	851,036	5,148,317
Guam	1	0	0	0	74,006	74,006
Hawaii	2	720,374	0	0	859	721,233
Idaho	21	692,507	21,575	1,729	47,175	762,986
Illinois	57	7,609,540	130,126	39,796	233,408	8,012,870
Indiana	42	3,358,983	273,994	88,333	82,324	3,803,634
Iowa	153	1,107,337	346,722	205,887	44,839	1,704,785
Kansas	39	1,390,959	143,539	767	131,365	1,666,630
Kentucky	19	1,805,685	199,582	90,340	111,134	2,206,741
Louisiana	20	2,377,949	0	1,665	195,426	2,575,040
Maine	20	731,657	0	38,630	113,683	883,970
Maryland	2	3,932,175	0	0	8,440	3,940,615
Massachusetts	3	4,406,165	0	0	4,229	4,410,394
Michigan	39	5,910,478	25,881	30,137	182,869	6,149,365
Minnesota	88	2,279,543	435,280	251,527	169,927	3,136,277
Mississippi	19	1,345,229	0	11,041	86,945	1,443,215
Missouri	44	3,033,011	264,428	16,593	316,106	3,630,138
Montana	18	374,971	8,381	4,384	166,059	553,795
Nebraska	41	473,127	370,049	21,136	91,645	955,957
Nevada	14	426,320	889,811	0	33,342	1,349,473
New Hampshire	10	795,753	0	2,362	57,288	855,403
New Jersey	3	6,681,455	230,777	0	11,178	6,923,410
New Mexico	16	854,785	104,083	0	45,125	1,003,993
New York	44	11,857,572	924,051	22,332	272,603	13,076,558
North Carolina	26	2,892,176	1,455,052	266,743	492,748	5,106,719
North Dakota	24	211,961	16,202	64,393	99,728	392,284
Northern Mariana Islands	1	21,521	0	0	0	21,521
Ohio	42	5,133,605	1,383,541	67,231	469,273	7,053,650
Oklahoma	39	1,663,280	124,517	4,032	243,967	2,035,796
Oregon	33	1,918,643	91,490	12,527	148,334	2,171,014
Pennsylvania	36	6,970,719	444,212	624,537	261,940	8,301,408
Puerto Rico	2	1,333,656	0	0	0	1,333,656
Rhode Island	1	641,977	0	0	0	641,977
South Carolina	27	1,720,475	102,686	61,278	482,073	2,366,512
South Dakota	30	257,651	0	77,327	75,251	410,229
Tennessee	25	2,673,375	343,500	127,048	242,030	3,385,953
Texas	58	11,844,985	749,175	10,582	587,319	13,192,061
Utah	13	1,076,872	23,309	8,164	64,098	1,172,443
Vermont	10	360,161	0	4,638	61,229	426,028
Virgin Islands	1	0	0	0	69,073	69,073
Virginia	21	4,226,700	411,542	94,376	27,684	4,760,302
Washington	23	3,378,958	87,674	4,521	271,902	3,743,055
West Virginia	10	862,638	156,717	2,707	13,823	1,035,885
Wisconsin	90	2,614,546	58,472	228,763	623,663	3,525,444
Wyoming	10	261,260	7,153	0	44,365	312,778
Total	1,437	161,379,879	12,271,689	2,648,056	9,288,954	185,588,578

¹ Includes loops formerly owned by GTE and Southern New England Telephone. SBC of Connecticut has 25,504 average schedule company loops that are not included in this total.

Source: NECA universal service filings.

Table 7.3
Telephone Loops of Incumbent Local Exchange Carriers by Holding Company ¹
(As of December 31, 2001)

Holding Companies	Loops	Percent of Loops
Verizon Communications, Inc.	61,154,853	32.95 %
SBC Communications, Inc.	58,628,735	31.59
BellSouth Telecommunications, Inc.	24,547,566	13.23
Qwest Communications International, Inc.	17,074,229	9.20
Sprint Corporation	7,873,085	4.24
Citizens Communications Company	2,361,685	1.27
ALLTEL Corporation	2,354,679	1.27
CenturyTel, Inc.	1,770,100	0.95
Broadwing, Inc.	954,146	0.51
TDS Telecommunications Corporation	693,162	0.37
Valor Telecommunications, LLC	569,987	0.31
C-TEC Corporation	332,084	0.18
Alaska Communications System	327,209	0.18
Iowa Network Service, Inc.	286,516	0.15
FairPoint Communications, Inc.	246,498	0.13
Madison River Telephone Company	192,566	0.10
TXU Communications Telephone Company	169,753	0.09
D & E Communications, Inc.	150,136	0.08
North State Telecommunications Corporation	137,791	0.07
Roseville Telephone Company	132,728	0.07
Rock Hill Telephone Company	131,019	0.07
The Concord Telephone Company	124,832	0.07
Horry Telephone Cooperative	97,798	0.05
McLeodUSA Telecommunications Services, Inc.	85,703	0.05
North Pittsburgh Telephone Company	81,623	0.04
Hargray Communications Group, Inc.	75,565	0.04
Guam Telephone Authority	74,006	0.04
Virgin Islands Telephone Corporation	69,073	0.04
Hickory Tech Corporation	68,719	0.04
Matanuska Telephone Association	60,131	0.03
Farmers Telephone Cooperative, Inc.	59,905	0.03
Pioneer Telephone Cooperative, Inc.	56,569	0.03
Lynch Interactive Corporation	55,736	0.03
Ntelos, Inc.	51,692	0.03
SRT Service Corporation	48,609	0.03
Atlantic Telephone Membership Corporation	42,833	0.02
East Ascension Telephone Company, Inc.	41,863	0.02
Guadalupe Valley Telephone Cooperative	40,595	0.02
Twin Lake Telephone Cooperative	38,824	0.02
Skyline Telephone Membership Corporation	37,887	0.02
Ben Lomand Rural Telephone Cooperative, Inc.	37,464	0.02
The Chillicothe Telephone Company	37,201	0.02
CEA Capital	36,886	0.02
Telephone Electronics Corporation	35,633	0.02
Golden West Telecommunications	35,249	0.02
Smithville Telephone Company, Inc.	34,707	0.02
Eastex Telephone Cooperative, Inc.	33,985	0.02
Great Plains Communications, Inc.	33,284	0.02
Lexington Communications	33,107	0.02
Yadkin Valley Telephone Co.	32,663	0.02
Wood County Telephone Company	30,710	0.02
All Other Companies	3,907,199	2.11
Total	185,588,578	100.00 %

¹ Includes incumbent local exchange carriers' loops for holding companies with more than 30,000 loops.

Source: NECA universal service filings.

Table 7.4
Additional Residential Lines
For Households with Telephone Service
(End-of-Year Data in Millions)

Year	Loops ¹			Households with Telephone Service ²	Additional Residential Lines	Percentage of Additional Lines for Households with Telephones
	Residential	Non-Residential	Total Loops			
1988	87.7	38.5	126.2	85.4	2.3	2.7 %
1989	90.0	40.6	130.6	87.4	2.6	3.0
1990	92.2	42.9	135.1	88.4	3.9	4.4
1991	95.9	42.5	138.4	89.4	6.5	7.3
1992	99.3	43.0	142.3	91.0	8.3	9.1
1993	101.8	45.2	147.0	93.0	8.8	9.4
1994	105.1	47.2	152.3	93.7	11.4	12.2
1995	108.1	50.4	158.5	94.2	13.9	14.7
1996	111.1	54.3	165.4	95.1	16.0	16.8
1997	114.7	58.2	172.9	96.5	18.2	18.9
1998	117.1	62.6	179.8	98.0	19.1	19.5
1999	122.7	63.5	186.2	99.1	23.6	23.8
2000	126.4	65.8	192.2	100.2	26.2	26.2
2001	127.3	62.9	190.2	102.2	25.1	24.6

¹ Total loops are from the Universal Service Fund subscriber line counts provided by the National Exchange Carrier Association. Guam, the Northern Mariana Islands, Puerto Rico, American Samoa, and the U.S. Virgin Islands totals have been removed. Total loops have been divided between residential and non-residential using the ratio of residential to non-residential access lines reported in Industry Analysis and Technology Division, Wireline Competition Bureau, *Statistics of Communications Common Carriers*, (September 2002). Those totals also exclude Puerto Rico, but cover only the carriers that file ARMIS reports (of which there are none for Guam, the Northern Mariana Islands, and the U.S. Virgin Islands). Loop counts beginning in 1996 have been increased by estimated competitive local exchange carrier lines from the Association for Local Telecommunications Services (ALTS) and the report by Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of June 30, 2002* (December 2002).

² *Current Population Survey* (U.S. Department of Commerce, Bureau of the Census).

Source: FCC staff estimates.

Table 7.5
Number of Payphones Owned by LECs and Independent Operators
(As of March 31, 2002)

State	RBOC Territories		All Other LEC Territories		Total LEC Owned	Total Independent	Grand Total
	LEC Owned	Independent	LEC Owned	Independent			
Alabama	10,413	7,173	403	1,120	10,816	8,293	19,109
Alaska	0	0	828	2,997	828	2,997	3,825
Arizona	15,326	11,959	7	2,470	15,333	14,429	29,762
Arkansas	8,358	1,423	1,799	1,485	10,157	2,908	13,065
California	128,105	95,293	502	2,462	128,607	97,755	226,362
Colorado	14,701	8,301	279	763	14,980	9,064	24,044
Connecticut	291	36	16,594	4,158	16,885	4,194	21,079
Delaware	4,077	882	0	0	4,077	882	4,959
District of Columbia	6,565	1,574	0	0	6,565	1,574	8,139
Florida	30,992	43,440	7,294	8,813	38,286	52,253	90,539
Georgia	21,511	18,361	3,774	3,889	25,285	22,250	47,535
Hawaii	6,502	995	0	0	6,502	995	7,497
Idaho	3,349	1,791	163	335	3,512	2,126	5,638
Illinois	52,771	26,274	1,086	1,899	53,857	28,173	82,030
Indiana	23,543	6,940	1,951	1,213	25,494	8,153	33,647
Iowa	6,097	2,167	804	1,055	6,901	3,222	10,123
Kansas	8,888	2,173	761	922	9,649	3,095	12,744
Kentucky	7,451	7,784	267	3,419	7,718	11,203	18,921
Louisiana	10,458	11,090	210	1,235	10,668	12,325	22,993
Maine	5,515	637	91	335	5,606	972	6,578
Maryland	27,691	8,635	35	7	27,726	8,642	36,368
Massachusetts	35,459	11,089	6	18	35,465	11,107	46,572
Michigan	38,982	17,567	760	777	39,742	18,344	58,086
Minnesota	10,972	4,497	2,407	1,504	13,379	6,001	19,380
Mississippi	8,549	4,717	115	393	8,664	5,110	13,774
Missouri	17,293	5,199	3,771	3,365	21,064	8,564	29,628
Montana	2,570	1,387	503	890	3,073	2,277	5,350
Nebraska	3,073	1,601	3,393	879	6,466	2,480	8,946
Nevada	3,206	1,475	1,606	9,563	4,812	11,038	15,850
New Hampshire	5,485	1,470	108	161	5,593	1,631	7,224
New Jersey	61,042	19,256	1,725	285	62,767	19,541	82,308
New Mexico	5,574	3,106	281	1,041	5,855	4,147	10,002
New York	96,955	56,051	6,872	4,815	103,827	60,866	164,693
North Carolina	11,045	11,128	6,979	10,326	18,024	21,454	39,478
North Dakota	596	678	60	631	656	1,309	1,965
Ohio	35,752	9,961	5,559	9,241	41,311	19,202	60,513
Oklahoma	12,511	4,050	1,599	1,074	14,110	5,124	19,234
Oregon	10,131	6,262	608	1,564	10,739	7,826	18,565
Pennsylvania	47,825	19,015	6,193	3,571	54,018	22,586	76,604
Rhode Island	4,754	3,107	0	0	4,754	3,107	7,861
South Carolina	8,939	9,007	1,786	2,973	10,725	11,980	22,705
South Dakota	2,177	680	499	156	2,676	836	3,512
Tennessee	11,842	11,339	1,881	2,840	13,723	14,179	27,902
Texas	56,383	39,398	7,194	13,029	63,577	52,427	116,004
Utah	6,705	2,360	0	561	6,705	2,921	9,626
Vermont	2,676	328	46	238	2,722	566	3,288
Virginia	26,975	14,326	2,441	1,734	29,416	16,060	45,476
Washington	18,971	8,677	611	1,925	19,582	10,602	30,184
West Virginia	7,145	1,300	54	1,241	7,199	2,541	9,740
Wisconsin	16,472	5,018	1,487	5,105	17,959	10,123	28,082
Wyoming	2,336	824	247	145	2,583	969	3,552
Totals	964,999	531,801	95,639	118,622	1,060,638	650,423	1,711,061

Source: Raw data provided by National Payphone Clearinghouse. Rollups performed by the Industry Analysis and Technology Division staff, Wireline Competition Bureau.

Table 7.5
Number of Payphones Owned by LECs and Independent Operators - Continued
(As of March 31, 2003)

State	RBOC Territories		All Other LEC Territories		Total LEC Owned	Total Independent	Grand Total
	LEC Owned	Independent	LEC Owned	Independent			
Alabama	7,176	5,929	1,295	1,955	8,471	7,884	16,355
Alaska	0	0	1,134	2,675	1,134	2,675	3,809
Arizona	14,227	10,555	65	2,332	14,292	12,887	27,179
Arkansas	7,880	1,259	1,920	1,134	9,800	2,393	12,193
California	109,551	90,363	853	5,505	110,404	95,868	206,272
Colorado	14,239	7,466	243	647	14,482	8,113	22,595
Connecticut	15,714	32	111	3,312	15,825	3,344	19,169
Delaware	3,324	885	0	0	3,324	885	4,209
District of Columbia	5,450	439	0	0	5,450	439	5,889
Florida	25,719	35,139	6,572	7,645	32,291	42,784	75,075
Georgia	17,508	16,674	3,279	3,657	20,787	20,331	41,118
Hawaii	6,014	889	0	0	6,014	889	6,903
Idaho	2,969	1,589	153	278	3,122	1,867	4,989
Illinois	47,951	22,035	1,010	1,664	48,961	23,699	72,660
Indiana	21,623	6,657	1,882	1,140	23,505	7,797	31,302
Iowa	5,775	1,997	603	1,208	6,378	3,205	9,583
Kansas	8,162	1,988	630	729	8,792	2,717	11,509
Kentucky	4,577	5,238	2,806	4,224	7,383	9,462	16,845
Louisiana	8,748	8,869	306	1,100	9,054	9,969	19,023
Maine	4,301	644	104	385	4,405	1,029	5,434
Maryland	23,843	1,227	0	9	23,843	1,236	25,079
Massachusetts	26,707	10,410	5	6	26,712	10,416	37,128
Michigan	35,227	16,518	709	743	35,936	17,261	53,197
Minnesota	10,296	3,988	1,708	1,848	12,004	5,836	17,840
Mississippi	6,786	4,504	93	136	6,879	4,640	11,519
Missouri	15,623	4,749	3,255	3,135	18,878	7,884	26,762
Montana	2,470	1,127	331	574	2,801	1,701	4,502
Nebraska	3,353	907	3,274	771	6,627	1,678	8,305
Nevada	2,719	1,375	1,413	9,261	4,132	10,636	14,768
New Hampshire	4,530	1,250	134	54	4,664	1,304	5,968
New Jersey	45,783	17,264	1,527	229	47,310	17,493	64,803
New Mexico	5,374	2,615	265	940	5,639	3,555	9,194
New York	89,377	47,115	5,748	5,146	95,125	52,261	147,386
North Carolina	9,023	9,273	6,561	8,717	15,584	17,990	33,574
North Dakota	567	443	143	453	710	896	1,606
Ohio	32,992	9,131	7,180	6,093	40,172	15,224	55,396
Oklahoma	11,657	3,890	1,502	828	13,159	4,718	17,877
Oregon	9,304	5,738	771	935	10,075	6,673	16,748
Pennsylvania	37,316	18,326	5,600	3,146	42,916	21,472	64,388
Rhode Island	3,782	2,849	0	0	3,782	2,849	6,631
South Carolina	6,826	8,807	1,652	2,560	8,478	11,367	19,845
South Dakota	2,049	608	510	394	2,559	1,002	3,561
Tennessee	9,852	10,512	1,901	2,273	11,753	12,785	24,538
Texas	56,061	40,275	2,161	5,442	58,222	45,717	103,939
Utah	6,128	2,222	49	656	6,177	2,878	9,055
Vermont	2,147	306	46	220	2,193	526	2,719
Virginia	23,789	6,973	2,180	1,563	25,969	8,536	34,505
Washington	17,157	7,937	594	1,527	17,751	9,464	27,215
West Virginia	5,974	114	64	1,116	6,038	1,230	7,268
Wisconsin	14,489	4,686	3,317	2,678	17,806	7,364	25,170
Wyoming	2,186	693	226	84	2,412	777	3,189
Totals	854,295	464,479	75,885	101,127	930,180	565,606	1,495,786

Source: Raw data provided by National Payphone Clearinghouse. Rollups performed by the Industry Analysis and Technology Division staff, Wireline Competition Bureau.

Table 7.6
Number of Payphones Over Time
(As of March 31 of Each Year)

Year	RBOCs' Territories			All Other LECs' Territories			Total LEC Owned	Total Independent	Grand Total
	LEC Owned	Independent	Total	LEC Owned	Independent	Total			
1997	1,399,600 ¹	NA	NA	NA	NA	NA	NA	NA	2,086,540 ²
1998	1,381,800 ¹	NA	NA	NA	NA	NA	NA	NA	2,100,558 ²
1999	1,305,463	572,503	1,877,966	80,491	163,069	243,560	1,385,954	735,572	2,121,526
2000	1,244,535	633,022	1,877,557	63,808	122,353	186,161	1,308,343	755,375	2,063,718
2001	1,131,377	571,778	1,703,155	88,399	128,086	216,485	1,219,776	699,864	1,919,640
2002	964,999	531,801	1,496,800	95,639	118,622	214,261	1,060,638	650,423	1,711,061
2003	854,295	464,479	1,318,774	75,885	101,127	177,012	930,180	565,606	1,495,786

NA - Not Available.

¹ See RBOC/GTE/SNET Payphone Coalition Comments on Remand Issues in CC Docket No. 96-128, Report of Arthur Andersen on Per-Call Compensation, Carl R. Geppert at 10 (July 13, 1998).

² See Letter from Denny Reuss, NPC Product Manager, to Craig Stroup, Federal Communications Commission, CC Docket 96-128 at 1 (Filed October 22, 1998. The 1997 data point is as of June 30, 1997.)

Source: Unless otherwise noted, raw data provided by National Payphone Clearinghouse. Rollups performed by the Industry Analysis and Technology Division staff, Wireline Competition Bureau.