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STATE OF FLORIDA



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## Public Service Commission

January 27, 2005

FPSC, CLK - CORRESPONDENCE  
✓ Administrative Parties Consumer  
DOCUMENT NO. 11991-05  
DISTRIBUTION: \_\_\_\_\_

Ms. Nancy H. Sims  
BellSouth Telecommunications, Inc.  
150 South Monroe Street, Suite 400  
Tallahassee, Florida 32301-1556

**Re: Return of Confidential Documents to the Source, Docket No. 030300-TP**

Dear Ms. Sims:

Commission staff have advised that Confidential Document Nos. 11558-03, 12631-03, 05116-04, and 05266-04, filed on behalf of BellSouth Telecommunications, Inc. can be returned to the source. The documents are enclosed.

Please do not hesitate to contact me if you have any questions concerning return of this material.

Sincerely,

A handwritten signature in black ink, appearing to read "Kay Flynn".

Kay Flynn, Chief  
Bureau of Records

KF/mhl  
Enclosure

cc: Todd M. Brown, Division of Competitive Markets and Enforcement  
Lee Fordham, Office of the General Counsel

RECEIVED

A large, stylized handwritten signature in black ink, likely belonging to a recipient or official.

DATE

2.18.05

**MEMORANDUM**

RECEIVED-PPSC

04 DEC -3 PM 3: 38

COMMISSION  
CLERK

December 1, 2004

**TO:** KAY FLYNN/CCA  
HONG WANG/CCA  
MARY DISKERUD/GCL-APP  
WANDA TERRELL/GCL-APP

**FROM:** DAVID E. SMITH, ATTORNEY SUPERVISOR, OFFICE OF  
THE GENERAL COUNSEL DES/WS

**RE:** FLORIDA PUBLIC TELECOMMUNICATIONS ASSOCIATION, INC. v.  
FLORIDA PUBLIC SERVICE COMMISSION AND BELL SOUTH  
TELECOMMUNICATIONS, INC., FLORIDA SUPREME COURT,  
FPSC DOCKET NO. 030300-TP.

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Please note that the above appeal has been assigned to Chris Moore. The Notice of Administrative Appeal was filed on November 22, 2004. The case schedule is as follows:

<u>Date</u>	<u>Item</u>
From day of filing:	
<u>12/28/04</u>	Draft of Index of Record from CCA to Appeals Attorney.
<u>01/11/05</u>	Index of Record served on Parties.
<u>01/21/05</u>	Copy of Record to Appeals.
<u>01/31/05</u>	Appellant's Initial Brief Due.
<u>02/15/05</u>	Draft Commission Answer Brief Due.
<u>02/20/05</u>	Commission's Answer Brief Due.
<u>03/12/05</u>	Appellant's Reply Brief Due.



STATE OF FLORIDA

COMMISSIONERS:  
BRAULIO L. BAEZ, CHAIRMAN  
J. TERRY DEASON  
LILA A. JABER  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON



CAPITAL CIRCLE OFFICE CENTER  
2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FL 32399-0850

**Public Service Commission**

November 24, 2004

Thomas D. Hall, Clerk  
Supreme Court of Florida  
Supreme Court Building  
Tallahassee, Florida 32301

**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)**

Dear Mr. Hall:

Enclosed is a certified copy of a Notice of Appeal, filed in this office on November 22, 2004, on behalf of Florida Public Telecommunications Association, Inc. Also enclosed is a copy of Order No. PSC-04-0974-FOF-TP, the order on appeal.

Sincerely,

Kay Flynn, Chief  
Bureau of Records

KF/mhl  
Enclosure

cc: David S. Tobin, Esquire  
Nancy B. White, Esquire  
Meredith Mays, Esquire  
R. Douglas Lackey, Esquire  
J. Phillip Carver, Esquire  
David Smith, Office of the General Counsel

CCA Official Filing  
11/22/2004 4:33 PM\*\*\*\*\*

ORIGINAL  
4:33 PM\*\*\*\*\*

Timolyn Henry\*\*\*\*\*1

Timolyn Henry

**From:** Joseph Gibson [jrg@tobinreyes.com]  
**Sent:** Monday, November 22, 2004 4:17 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Lee Fordham; David Tobin  
**Subject:** Docket Number 030300-TP; E-Filing



n-appeal.pdf (4  
MB)

On behalf of the Florida Public Telecommunication Association, attached please find the FPTA's Notice of Appeal. The Notice of Appeal is filed in 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. 030300-TP. The attached pdf document is 26 pages in length and consists of the two page Notice of Appeal and attaches this Commission's Order Number PSC-04-0974-FOF-TP, which is 24 pages in length.

<<n-appeal.pdf>>

Joseph R. Gibson, Esq.  
Tobin & Reyes, P.A.  
7251 West Palmetto Park Road  
Suite 205  
Boca Raton, Florida 33433  
Telephone (561) 620-0656  
Facsimile (561) 620-0657  
jrg@tobinreyes.com

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

RECEIVED-HPSC

04 NOV 22 PM 4:37

Docket No.: 030300-TP

Florida Public Telecommunications  
Association, Inc., a Florida non-profit  
corporation,

COMMISSION  
CLERK

Petitioner/Appellant,

vs.

The Florida Public Service Commission,  
an administrative agency of the State of  
Florida, and BellSouth Telecommunications,  
Inc., a foreign corporation,

Respondent/Appellees.

**NOTICE OF APPEAL**

NOTICE IS GIVEN that Florida Public Telecommunications Association, Inc. Petitioner/Appellant, appeals to the Florida Supreme Court the order of the Commission rendered on October 22, 2004. The nature of the order is a final order regarding the Florida Public Telecommunications Association, Inc.'s Petition for Expedited Review of BellSouth Telecommunications, Inc.'s Tariffs with respect Rates for Payphone Line Access, Usage, and Features (a copy of said final order is attached hereto).

A TRUE COPY  
ATTEST Kary Flynn  
Chief Bureau of Records

Docket No.: 030300-TP

WE HEREBY CERTIFY that a true and correct copy of the foregoing was this 22<sup>nd</sup> day of November, 2004, served by mail on: Meredith E. Mays, Regulatory Counsel, BellSouth Corporation Legal Department, 675 West Peachtree Street, Suite 4300, Atlanta, Georgia 30375-0001; Nancy White, General Counsel – Florida, BellSouth Telecommunications, Inc., 150 West Flagler Street, Suite 1910, Miami, Florida 33130; Lee Fordham, Staff Counsel Florida Public Service Commission, Gerald L. Gunter Building, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850.

Respectfully submitted,

TOBIN & REYES, P.A.  
Attorneys for Defendants  
7251 W. Palmetto Park Rd., Suite 205  
Boca Raton, Florida 33433  
Phone: (561) 620-0656  
Fax: (561) 620-0657

BY 

David S. Tobin  
Fla. Bar No. 864277

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BEFORE THE 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  
ORDER NO. PSC-04-0974-FOF-TP  
ISSUED: October 7, 2004

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

APPEARANCES:

DAVID S. TOBIN, Esquire, Tobin & Reyes, P.A., 7251 West Palmetto Park Road, Suite  
205, Boca Raton, Florida 33433  
On behalf of the Florida Public Telecommunications Association (FPTA).

NANCY B. WHITE, Esquire, and MEREDITH MAYS, Esquire, c/o Nancy Sims, 150  
South Monroe Street, Suite 400, Tallahassee, Florida 32301; and R. Douglas Lackey,  
Esquire, and J. Phillip Carver, Esquire, 675 W. Peachtree Street, NE, Suite 4300, Atlanta,  
Georgia 30375  
On behalf of BellSouth Telecommunications, Inc. (BST).

LEE FORDHAM, Esquire, and ADAM TEITZMAN, Esquire, Florida Public Service  
Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
On behalf of the Commission.

DOCUMENT NUMBER-DATE

10830 OCT-7 8

FPC- COMMISSION CLERK

FINAL ORDER ON ARBITRATION OF COMPLAINT

I. Case Background

A. Procedural History: FCC

Beginning in the fall of 1996, the FCC issued a series of payphone orders<sup>1</sup> implementing Section 276 of the Telecommunications Act (the Act).<sup>2</sup> Among other things, the *Payphone Orders* established that intrastate rates for pay telephone access service (PTAS) lines must comply with the new services test (NST). The NST was developed to prevent LECs from setting excessively high prices and to protect against discriminatory pricing. As such, the NST requires a LEC to provide cost data to establish that the rate for a service will not recover more than a just and reasonable portion of the carrier's overhead costs and the service's direct costs. The *Payphone Orders* provided specific standards for the implementation of Section 276 of the Act, many of which were not new standards but had been in place for many years, including the *Computer III Guidelines*.<sup>3</sup> The FCC required all local exchange carriers (LECs) to file intrastate tariffs by April 15, 1997 for payphone access services that: (a) were cost-based; (b) consistent with Section 276 of the Act; (c) non-discriminatory; and (d) in compliance with the FCC's new services test.<sup>4</sup>

On April 10, 1997, the regional Bell operating companies (RBOCs or BOCs), including BellSouth Telecommunications, Inc. (BellSouth), acknowledged the FCC's requirement that PTAS rates comply with Section 276 and the *Payphone Orders*, but asked the FCC for a waiver indicating that more time was necessary to comply with that requirement. In making this request for a waiver, the RBOCs stated that "they voluntarily commit 'to reimburse or provide credit to

<sup>1</sup> Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecom Act of 1996, CC Docket 96-128, First Report and Order, 11 FCC Rcd. 20541 (1996); Order on Reconsideration, 11 FCC Rcd. 21233 (1996), aff'd in part and remanded in part sub nom., Ill. Public Telecomms. Ass'n v. FCC, 117 F.3d 555 (D.C. Cir. 1997); First Clarification Order, 12 FCC Rcd. 20997 (Com. Car. Bur. 1997); Second Clarification Order, 12 FCC Rcd. 21370 (Com. Car. Bur. 1997); Second Report and Order, 13 FCC Rcd. 1778 (1997), aff'd in part and remanded in part. Sub nom., MCI Telecoms Corp. v. FCC, 143 F.3d 606 (D.C. Cir. 1998); Third Report and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd. 2545 (1999), aff'd, American Public Communications Council, Inc. v. FCC, 215 F.3d 51 (D.C. Cir. 2000) (unless individually referred to, collectively hereinafter the "Payphone Orders").

<sup>2</sup> §276 applies only to the BOCs.

<sup>3</sup> 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).

<sup>4</sup> Payphone Clarification Order, 13 FCC Rcd at 1780 ¶2, citing Payphone Reconsideration Order, 11 FCC Rcd at 21308.



those purchasing the services back to April 15, 1997' . . . 'to the extent that the new tariff rates are lower than the existing ones.'" (*Second Waiver Order*, ¶13) The FCC granted a limited waiver until May 19, 1997, thus enabling the BOCs to collect dial-around compensation, contingent upon the BOCs' intrastate PTAS rates being in compliance with Section 276 of the Act. (*Id.*, ¶25)

In March of 2000, the FCC's Common Carrier Bureau (the Bureau) issued the *First Wisconsin Order*,<sup>5</sup> after the Wisconsin Public Service Commission decided that it had no jurisdiction under state law to review LECs' PTAS rates. The Bureau found that total element long run incremental cost (TELRIC) was the presumptive measure of NST- compliant rates. The Bureau's order, by its express terms, applied only "to the LECs in Wisconsin specifically identified herein." (*First Wisconsin Order*, ¶13) The Bureau's order was appealed to the FCC, and on January 31, 2002, the FCC issued the *Second Wisconsin Order*.<sup>6</sup>

The FCC issued the *Second Wisconsin Order* to ". . . assist states in applying the NST to BOCs' intrastate payphone line rates in order to ensure compliance with the *Payphone Orders* and Congress' directives in section 276." (*Second Wisconsin Order*, ¶72) In its *Second Wisconsin Order*, the FCC clarified and further interpreted the requirements of Section 276 of the Act and the application of the NST specifically to pay telephone access rates. In that order, the FCC found that: (i) Section 276 requires BOCs to set their intrastate payphone line rates, including usage rates, in compliance with the NST; (ii) intrastate payphone service rates must be calculated using a forward-looking, direct cost methodology such as TELRIC or TSLRIC; (iii) overhead loading rates for payphone lines must be cost-based, may be calculated using unbundled network element (UNE) overhead loading factors, and may not be set artificially high in order to subsidize or contribute to other local exchange services; additionally, any overhead allocations for payphone services that represent a significant departure from overhead allocations for UNE services must be justified by the local exchange company; and (iv) in establishing its cost-based, state-tariffed rates, a BOC must reduce the monthly per line rate determined under the new services test by the amount of the federally tariffed subscriber line charge or end user common line charge (EUCL). (*Id.*, ¶68)

#### B. Prior Commission Activity Regarding BellSouth's PTAS Rates

On August 11, 1998, in Docket No. 970281-TL, we issued a Notice of Proposed Agency Action Order Approving Federally Mandated Intrastate Tariffs For Basic Payphone Service.<sup>7</sup> In

<sup>5</sup> In the Matter of Wisconsin Public Service Commission Order Directing Filings, 15 FCC Rcd. 9978 (Com. Car. Bur. 2000) ("First Wisconsin Order") (BellSouth refers to this order as the "Bureau Order").

<sup>6</sup> In the Matter of Wisconsin Public Service Commission Order Directing Filings, Memorandum Opinion and Order, 17 FCC Rcd. 2051 (2002) ("Second Wisconsin Order") (BellSouth refers to this order as the "Wisconsin Order").

<sup>7</sup> Order No. PSC-98-1088-FOF-TL ("PTAS Order").

ORDER NO. PSC-04-0974-FOF-TP

DOCKET NO. 030300-TP

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that order, we found that the existing incumbent local exchange company tariffs for payphone line services were cost-based, consistent with Section 276 of the Telecommunications Act of 1996, and non-discriminatory. We noted that Florida was unique relative to other states, as it had long had payphone tariffs in place. Moreover, we referred to three prior evidentiary hearings and two stipulations, rate reductions, and other actions we had taken to ensure an open pay telephone market. The FPTA protested the PAA order but subsequently withdrew its protest, and the Order became final on January 19, 1999.<sup>8</sup>

C. Procedural History: Current Docket

The FPTA filed its Petition for Expedited Review of BellSouth's Tariffs with Respect to Rates for Payphone Line Access, Usage, and Features on March 26, 2003. In doing so, the FPTA sought both refunds and new PTAS rates. At the time the FPTA filed its petition, the *Second Wisconsin Order* was on appeal. On July 11, 2003, the United States Court of Appeals, District of Columbia Circuit, affirmed the FCC's *Second Wisconsin Order*, which it found "establishes a rule that affects payphone line rates in every state."<sup>9</sup> The FCC's original *Payphone Orders* and the implementation of those orders through the *Wisconsin Orders*<sup>10</sup> form the basis of this proceeding.

D. Requested Relief

In FPTA's petition, the FPTA requested that this Commission implement the national policy mandates set forth in Section 276 of the Act and the standards established by the FCC in its original *Payphone Orders* and the *Wisconsin Orders*. As part of this proceeding, we are asked to determine whether BellSouth's current PTAS rates are compliant with the NST. If BellSouth's current PTAS rates do not meet the NST, or if we require that revisions be made to the PTAS rates, we are also asked to establish a prospective BellSouth monthly PTAS rate. In addition, we are asked to address whether BellSouth should refund to payphone service providers (PSPs): (i) the amount of the EUCL collected from PSPs between April 15, 1997 and November 10, 2003; and (ii) the difference between the PTAS rates BellSouth actually charged and collected from PSPs and PTAS rates which are compliant with Section 276 of the Act.

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<sup>8</sup> Order No. PSC-99-0493-FOF-TL ("Final PTAS Order").

<sup>9</sup> *New England Public Comm. Council, Inc. v. FCC*, 334 F.3d 69, 75 (D.C. Cir. 2003), cert. denied April 26, 2004 ("Appellate Order").

<sup>10</sup> The First Wisconsin Order and the Second Wisconsin Order may be collectively referred to as the "Wisconsin Orders."



II. Compliance with NST

It appears to this Commission that this issue is no longer a matter of controversy between the parties. BellSouth filed a revision to its General Subscriber Services Tariff (GSST), Section A7.4, to reduce its approved and effective PTAS rates by the amount of the federal end-user common line charge (EUCL) on October 27, 2003. This reduction became effective on November 10, 2003. Id. Moreover, both parties specifically stated that BellSouth's revised tariff eliminated the need for us to address this issue. Accordingly, we find that BellSouth's intrastate payphone line rates have been reduced by the amount of the interstate EUCL.

III. Required Date for Reduction of Intrastate Payphone Line Rates by the Amount of Interstate EUCL

A. Arguments

FPTA:

FPTA witnesses Renard and Wood contend that BellSouth should have reduced its intrastate payphone line rates by the amount of the interstate EUCL on or before April 15, 1997, the date provided in the FCC's *Payphone Clarification Order* for filing of payphone access services tariffs that complied with the NST. Moreover, witness Renard contends that "... the FCC's *Second Wisconsin Order* was specifically intended to provide the states with clear guidance on the implementation of Section 276 of the Telecom Act in this area, and did not create 'new law.'" According to witness Renard, "... the *Second Wisconsin Order* was not intended to implement a new requirement prospectively." The witness further states, "[t]he FCC made it very clear that the *Second Wisconsin Order*, which essentially affirmed all aspects of the *First Wisconsin Order*, only clarified existing law and the requirements of Section 276 of the Telecom Act as originally intended for application by Congress and the FCC." Id. Accordingly, witness Renard asserts that charging and collecting the EUCL, on top of an intrastate payphone line charge that had not "backed out" the EUCL costs any time after April 15, 1997, is a *per se* violation of applicable federal law. Id.

Next, witness Renard argues that BellSouth's position, regarding its obligation to voluntarily reduce its PTAS rates, turns the goals of Section 276 "completely on their heads." He contends that BellSouth had an affirmative obligation to reduce its rates by the EUCL charge from the "get go." Witness Renard argues that by assuming BellSouth's position, BellSouth would never be required to comply with the NST "... unless and until challenged by a third party ... ." Even then, the witness asserts that BellSouth's compliance would only be prospective. Id. Furthermore, witness Renard argues that BellSouth's "voluntary" tariff reduction reveals that even BellSouth doubted that its tariffs in place prior to October 26, 2003, were compliant with the NST. Id. As such, he asserts that BellSouth's tariff filing in October

ORDER NO. PSC-04-0974-FOF-TP  
DOCKET NO. 030300-TP  
PAGE 6

2003, which removed the EUCL, does not somehow "cleanse" the past double charging of EUCL.

BellSouth:

BellSouth witness Blake argues that BellSouth was not required to reduce its payphone line rates by the amount of the EUCL on a specified date. She asserts that "[a]t all times, BellSouth's rates have been charged pursuant to binding FPSC Orders and FCC Tariffs that have not been challenged, appealed or modified." Witness Blake contends that a Commission order remains in effect until modified, and rates are changed only upon a proper review of all necessary evidence and documentation by the Commission. According to witness Blake, these are the rates that were in effect and the rates that BellSouth was authorized and required to charge. Id.

Witness Blake argues that FPTA's arguments are flawed for several reasons. First, fluctuations in costs (up or down) do not automatically trigger a requirement that BellSouth change its rates. Witness Blake stated "[b]ecause PTAS rates were tied to basic business rates, BellSouth could have sought to raise its PTAS rates since 1999, although BellSouth has not done so." According to the witness, the FPTA, or any other party, can petition the Commission to re-examine rates, assuming that requirements or conditions have changed necessitating resetting tariffed rates. Witness Blake also asserts that BellSouth complied with the FCC's Payphone Orders when issued, and complied with this Commission's order issued on August 11, 1998, in Docket No. 970281-TL, setting rates in accordance with the FCC's NST. The witness also contends that the mere fact that the FCC issued additional clarification in its *Wisconsin Order*, does not require BOCs to automatically change their payphone rates. Id. According to witness Blake,

[t]o follow the FPTA's logic, any time costs change, a BOC should immediately revise its tariff rates. This would lead to an absurd situation. For example, any time a state commission issues an order in a generic cost docket, under the FPTA's reasoning, such an order would be obsolete the very next day if any of the BOC'S cost study inputs had changed.

Second, the witness emphasizes that the *Wisconsin Order* itself was appealed, not becoming final until July 11, 2003. Third, PTAS rates in Florida were tied to basic business rates (1FB), which witness Blake asserts have increased over time. Finally, the witness contends that the FPTA has ignored the fact that it chose not to pursue additional regulatory or legal action after the Commission approved BellSouth's PTAS rates, nor did FPTA seek any review of BellSouth's rates until the opening of this docket.<sup>11</sup>

<sup>11</sup> On September 1, 1998, the FPTA filed its petition protesting Order No. PSC-98-1088-FOF-TP, but it was withdrawn by the FPTA on December 31, 1998.

B. Analysis

We find that there is no FCC requirement obligating BellSouth to "voluntarily" or automatically change its payphone rates upon a change in costs, absent Commission review. We agree with BellSouth witness Blake that fluctuations in costs (up or down) do not automatically trigger a requirement that BellSouth amend its rates. To require BellSouth, or any other ILEC, to do so, creates "an absurd situation" which would require BellSouth to revise its payphone rates every time one of its costs changed. Moreover, we agree that "[a]t all times, BellSouth's rates have been charged pursuant to binding FPSC Orders and FCC Tariffs that have not been challenged, appealed or modified." Absent some challenge, appeal, or modification, the tariffed rates that BellSouth had in place at that time were the rates that were in effect and the rates that BellSouth was authorized and required to charge.

We also agree with FPTA witness Wood that the *Wisconsin Orders* reaffirmed and clarified existing FCC requirements and did not "change" those requirements. Additionally, we agree with BellSouth that "... the language of the *Wisconsin Orders* suggests that a state commission's review and implementation ... should be prospective in nature." Moreover, it appears that the *Second Wisconsin Order* does not address the prospective or retroactive application of the order, stating only that

... in establishing cost-based, state-tariffed charges 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<sup>12</sup>. ...

and,

[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. (¶61)

C. Decision

Based on the record in this proceeding and the above discussion, we find that there was no "date certain" that BellSouth was required to reduce its intrastate payphone rates by the amount of the intrastate EUCL. Any reductions must occur on a going-forward basis when this Commission reviews a BOC's payphone line rates for NST compliance, as it is doing here for BellSouth.

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<sup>12</sup> SLC is also referred to as EUCL.



IV. Refunds

A. Arguments

FPTA:

FPTA argues that the FCC has preempted state commissions in this subject area and, pursuant to the series of orders issued implementing Section 276 of the 1996 Act (*Payphone Orders*), as ultimately clarified by In the Matter of Wisconsin Public Service Commission, U.S. LEXIS 3066 (April 26, 2004), (*Wisconsin Orders*), this Commission must order refunds. According to FPTA, BellSouth did not reduce its PTAS rate by the amount of the federally tariffed EUCL during the period beginning April 15, 1997 and ending November 10, 2003, when BellSouth filed new tariffs correcting the error.

According to FPTA, the inception of the problem was our Order No. PSC-98-1088-FOF-TL, entered in Docket No. 970281-TL. FPTA alleges that in that Order we incorrectly determined that BellSouth's intrastate PTAS rates satisfied the new services test, despite the fact that BellSouth failed to reduce its intrastate PTAS rates by the amount of the federally tariffed EUCL. Therefore, urges FPTA, BellSouth over-recovered its costs from April 15, 1997 until November 10, 2003.

FPTA cites to 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); and Sunshine Util. v. Florida Pub. Serv. Comm'n, 577 So. 2d, 663 (Fla. 1<sup>st</sup> DCA 1991) as sources of our authority to alter previously entered final orders as an exception to the doctrine of administrative finality. According to Reedy Creek, "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." (*Id.* at 249). Additionally, claims FPTA, where there is a demonstrated public interest, this Commission has the authority to determine whether its prior order contained such a mistake and "has a duty to correct such errors." Sunshine Util. at 665.

FPTA notes that BellSouth was a member of the coalition involved in the Wisconsin matter that gave rise to the *Wisconsin Orders*. Therefore, argues FPTA, BellSouth cannot now claim that it reasonably relied to its detriment on the PSC's initial approval of BellSouth's state tariffs as a final resolution of the implementation of Section 276 of the Act. Additionally, because BellSouth fought this issue throughout its region, it should be well aware of the inconsistent and disparate applications of Section 276. Indeed, argues FPTA, BellSouth knew that the FCC's final interpretation and implementation of the new services test and this Commission's prior order could conflict.

FPTA argues that BellSouth promised to refund excess revenues when its agent sought and obtained a waiver of the statutory requirements. Accordingly, BellSouth is now estopped from claiming a refund cannot be awarded. FPTA notes that Michael K. Kellogg, as counsel to



the RBOC Coalition of which BellSouth was and is a member, promised the FCC that the Bell Operating Companies would issue refunds if the new statutory rate was lower than the existing rate. Therefore, BellSouth cannot claim it is prejudiced because the FPTA now asks the Commission to hold BellSouth to its promise. For the same reason, FPTA argues the statute of limitations does not apply in this particular matter. Additionally, FPTA notes that BellSouth continued to challenge the PTAS rate structure guidelines provided in Section 276 until July 11, 2003, the date on which the D.C. Circuit issued its decision in the appeal of the FCC's *Second Wisconsin Order*, a date that is more than three months after the FPTA filed its petition to establish these proceedings.

Citing *GTE Florida, Inc. v. Clark*, 668 So. 2d 971 (Fla. 1996), FPTA argues that it is clear that a refund is not automatically barred as retroactive ratemaking under Florida law. The cornerstone to the general prohibition on retroactive ratemaking is lack of notice and reliance. FPTA argues that BellSouth always had notice of the complicated and inconsistent application of the NST across the nation, particularly because BellSouth was the root cause of that inconsistent application. FPTA urges that, in its present capacity, this Commission is acting through the FCC's delegation of power to implement the Act and to promote the widespread deployment of payphones to the benefit of the general public. FPTA notes the FCC has broad authority under the Act to rectify over-compensation in violation of Section 276, through refunds when necessary, to ensure fair compensation. *MCI Telecom Corp. v. FCC*, 143 F.3d 606, 609 (D.C. 1998).

BellSouth:

BellSouth argues that refunds are not required, would not be appropriate in this case, and this Commission has no authority to order any refunds. According to BellSouth, well-established legal doctrines including, but not limited to, the prohibition against retroactive ratemaking, the filed-rate doctrine, and the doctrine of administrative finality, prohibit such relief. In addition to these well-established legal doctrines,

BellSouth urges that in *City of Miami v. Florida Public Service Commission*, 208 So.2d 249, 259 (Fla. 1968), the Florida Supreme Court clearly prohibited retroactive ratemaking.

Petitioner contends that in both orders the Commission departed from essential requirements of law by allowing both companies involved herein to retain those past charges deemed excessive rather than making said reduction orders retroactive.

\* \* \* \*

It is Petitioner's contention that said rate reductions should be made retroactive to October 1, 1963 with appropriate refunds to the ratepayers. We do not agree with

the petitioner's contention on this point. An examination of pertinent statutes leads us to conclude that the Commission would have no authority to make retroactive ratemaking orders.

The Court further explained that this Commission's statutory authority to set rates in Section 364.14 is prospective only since the authorizing statute limits rates to be fixed "thereafter." City of Miami at 260; and Section 364.14 (1)(c) ("the commission shall determine the just and reasonable rates, charges, tolls or rentals to be thereafter observed and in force and fix the same by order"). Thus, argues BellSouth, this Commission simply cannot revise rates established years past, and order corresponding refunds.

BellSouth notes that the doctrine of retroactive ratemaking was addressed in detail in our Docket No. 971663-WS, In re Petition of Florida Cities Water Company. In Order No. PSC-98-1583-FOF-WS, November 25, 1998, this Commission explained:

This Commission has consistently recognized that ratemaking is prospective and that retroactive ratemaking is prohibited . . . . The general principle of retroactive ratemaking is that new rates are not to be applied to past consumptions. The Courts have interpreted retroactive ratemaking to occur when an attempt is made to recover either past losses (under earnings) or over earnings in prospective rates . . . . In City of Miami, the petitioner argued that rates should have been reduced for prior period over earnings and that the excess earnings should be refunded. Both of these attempts were deemed to be retroactive ratemaking and thus were prohibited. (citations omitted).

BellSouth argues that this Commission's *PTAS Order*<sup>13</sup> and *Final PTAS Order*<sup>14</sup> have not been appealed, they have not been revoked or modified by the Commission, and they have not been suspended or vacated by any court. These Orders direct the manner in which BellSouth is to charge for payphone access lines in Florida, and BellSouth has been charging for payphone access lines in compliance with these Orders. BellSouth states it simply cannot be required to issue refunds for charging rates that comply with valid and effective Orders of the Commission. Any such refunds would violate the prohibition against retroactive ratemaking.

BellSouth argues the filed rate doctrine also prohibits the FPTA's claims for a refund. The "filed rate doctrine holds that where a regulated company has a rate for service on file with the applicable regulatory agency, the filed rate is the only rate that may be charged." Global Access Limited v. AT&T Corp., 978 F. Supp. 1068 (S.D. Fla. 1997); citing Florida Mun. Power Agency v. Florida Power & Light Co., 64 F.3d 614, 615 (11<sup>th</sup> Cir. 1995). Simply, BellSouth

<sup>13</sup> Order No. PSC-98-1088-FOF-TP, issued August 11, 1998, in Docket No. 970281-TL.

<sup>14</sup> Order No. PSC-99-0493-FOF-TP, issued January 19, 1999, in Docket No. 970281-TL.

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states, the filed rate doctrine precludes a party from disputing a filed rate. "Application of the filed rate doctrine can at times be harsh, but its justification lies in the principle that carriers should not be able to discriminate against customers in the setting of service rates; one rate – the filed rate – is the applicable rate for all . . . ." Global Access Limited, 978 F. Supp. at 1073; see also MCI Telecomm. Corp. v. Best Tel. Co., 898 F. Supp. 868, 872 (S.D. Fla. 1994).

Further emphasizing the filed rate doctrine, BellSouth notes that in Arizona Grocery Co. v. Atchison, T&SF Ry. Co., 284 U.S. 370, 390 (1932), the Supreme Court declared that

Where the Commission has upon complaint, and after hearing, declared what is the maximum reasonable rate to be charged by a carrier, it may not at a later time, and upon the same or additional evidence as to the fact situation existing when its previous order was promulgated, by declaring its own finding as to the reasonableness erroneous, subject a carrier which conformed thereto to the payment of reparation measured by what the Commission now holds it should have decided in the earlier proceeding to be a reasonable rate.

Since then, BellSouth states, federal appellate decisions consistently have held that a federal commission may not order refunds when it determines that a rate that it previously allowed to become effective is not appropriate. This principle is firmly grounded in sound public policy, argues BellSouth. Any other rule "would lead to endless consideration of matters previously presented to the Commission and the confusion about the effectiveness of Commission orders." Idaho Sugar v. Intermountain Gas Co., 100 Idaho 368, 373-74, 597 P.2d 1058, 1063-64 (1979).

BellSouth also argues that its position before the FCC when it sought a waiver of the intrastate tariff filing requirements does not justify a refund claim. After considering BellSouth's request for a waiver, the FCC issued an Order plainly stating that "[a] LEC who seeks to rely on the waiver granted in the instant Order 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." (*Second Waiver Order*, ¶¶2, 25) Because BellSouth's tariffed rates, which rates met the NST and were effective January 19, 1999, were not lower than existing rates, no refunds were due to FPTA members then and no refunds are due now. BellSouth maintains its actions are entirely consistent with its position in seeking a waiver from the FCC.

In cases analogous to the FPTA's Complaint, BellSouth observes state commissions in Alabama, Missouri, Ohio, and Kansas have all denied refund claims. For example, the Kansas Commission noted:

[a]ll Kansas local exchange companies have approved payphone line tariffs in place and there is no evidence they have not been billing payphone providers in accordance with those tariffs. Telephone companies are required to charge the



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rates set out in their approved tariffs. There is no basis for retroactive implementation of new tariffs, if we find the current tariffs must be revised.

Order, In Re: Matter of the Application of the Kansas Payphone Association Requesting the Commission Investigate and Revise the Dockets Concerning the Resale of Local Telephone Service by Independent Payphone Operators and Tariffs Pursuant to the FCC's "New services Test" Decision Issued January 31, 2002, Docket No. 02-KAPT-651-GIT (December 10, 2002).

Likewise, the Ohio Commission "rejects the PAO's request for refunds. Such refunds would constitute unlawful, retroactive ratemaking." Order, In Re: the Commission's Investigation into the Implementation of Section 276 of the Telecommunications Act of 1996 Regarding Pay Telephone Services, Case No. 96-1310-TP-COI (November 26, 2002). See also Order (April, 13, 2004), Southern Public Communication Association v. BellSouth Telecommunications, Inc., Docket No. 29172 (Ala. Pub. Serv. Comm'n) (the Alabama Public Service Commission dismissed an SPCA Complaint seeking refunds for the period before BellSouth made a tariff filing reducing its rates; the Alabama Commission found BellSouth's arguments "very persuasive") and Tari Christ d/b/a ANJ Communications, et al. v. Southwestern Bell Telephone Co., L.P., et al., Case No. TC-2003-0066 (Jan. 9, 2003) (the Missouri Public Service Commission granted motions to dismiss based upon the fact that the Complainants failed to state a claim upon which relief could be granted under the authorizing state statutes).

BellSouth also argues the FPTA's reliance on a March 16, 2004, Michigan decision is misplaced. In Michigan, a series of appeals occurred after the Commission addressed the ILEC's PTAS rates. Ultimately, after years of litigation, the Michigan commission approved lower tariff rates and ordered refunds. BellSouth notes the Michigan decision could only shed light on this matter if Florida's *Final PTAS Order* had been subjected to successive appeals and was never finalized. BellSouth argues the situation in Michigan is analogous to the situation in North Carolina (not Florida), insofar as the payphone associations in both Michigan and North Carolina appealed pre-*Wisconsin Order* commission rulings on PTAS rates. In Florida, the FPTA elected not to exercise its rights to pursue an appeal, and thus, according to BellSouth, its reliance on the Michigan decision is unreasonable.

BellSouth notes that in other states in its territory state commissions approved stipulations that included refunds. For example, the Louisiana Commission approved a Joint Stipulation between BellSouth and the Louisiana Payphone Association by Order No. U-22632 on August 3, 2001. The North Carolina Commission approved a settlement agreement dated December 4, 2002, between BellSouth and the North Carolina Payphone association in Docket No. P-100, Sub 84b. In each of these states, BellSouth argues, it voluntarily agreed to reduce its tariffed PTAS rates and to provide certain refunds. The approval of such voluntary settlements by these state commissions does not remotely resemble nor authorize the type of refunds the FPTA seeks here, contends BellSouth.



BellSouth urges that the only proceeding in which refunds were ordered after the issuance of the *Wisconsin Order* that is analogous to the instant case is the Kentucky Commission's decision last year, which is currently on appeal. Because that decision has been appealed, it is not final, and BellSouth states this Commission should disregard it. However, even if we were to rely upon the non-final decision of the Kentucky Commission, refunds were ordered from the date of the *Wisconsin Order*, not back to April 15, 1997.

B. Analysis

We believe the most significant factor in the determination of whether refunds may be ordered is the fact that the Commission's *Final PTAS Order* was protested, but the protest was subsequently withdrawn and the Order went into effect as a final Order. The FPTA was a party to the proceedings and had the opportunity to challenge the *PTAS Order* and the *Final PTAS Order*. The FPTA, however, decided not to challenge our orders in any forum, and for years its members have paid the rates that are set forth in BellSouth's filed tariffs (and that are consistent with the Commission's unchallenged orders). In seeking refunds, the FPTA indisputably is seeking relief for the payment of rates that were (and are) on file with this Commission. Moreover, the rates were (and are) consistent with unchallenged orders entered by this Commission.

For example, in *Sunshine Utilities v. FPSC*, the our staff discovered an error in rates in 1987, which related to rates set in a 1984 order. In 1988, we initiated an investigation into the possible error, and ultimately corrected prospectively the rate base computation error. We ordered the correction to the beginning of the 1988 investigation, not from the date of the 1984 order. In so ordering, the First District Court of Appeals ruled that the FPSC did not abuse its discretion.

Likewise, in *United Tel. Co. v. Mann*, 403 So.2d 962 (Fla. 1981), we ordered United Telephone to refund excess revenue collected during the pendency of a ratemaking proceeding. In *Mann*, after rate making proceedings began, we entered an interim order, followed by a subsequent order that concluded the proceeding. Refunds were deemed appropriate from the date of the interim order.

Similarly, in *Reedy Creek Util.*, we approved a stipulation in which Reedy Creek voluntarily agreed to make a refund in a prescribed manner. Reedy Creek computed the refund amount, and we 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, we 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 our authority to modify our 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 Peoples Gas, the FPSC sought to "correct" an earlier order. In that case, we had approved a territorial service agreement between gas distributors by order dated November 9, 1960. On June 24, 1965, almost five years later, we rescinded and withdrew the approval we had previously granted in 1960. In reversing our 1965 order, the Supreme Court of Florida criticized us for "second-guessing" its original order. The Court 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."

Additionally, the FPTA's reliance upon the 1997 waiver letter is inconsistent with the decision in In the Matter of Independent Payphone Ass'n of New York, Inc. v. Public Service Commission of the State of New York, 2004 WL 587624 (N.Y. App. Div., 3d Dep't, March 25, 2004). The FPTA suggests that what BellSouth and the FCC really meant was that even after the rates the Commission established in the *PTAS Order* and the *Final PTAS Order* became effective, and even after all parties declined to seek reconsideration or appeal such orders, BellSouth would agree to pay refunds, all the way back to April 15, 1997, if any person or entity could, at any unspecified time in the future, convince any commission or court that the Florida Commission really should have established different rates way back in 1999. The FPTA's argument defies the controlling legal principles discussed above and its refund claim should therefore be rejected.

#### C. Decision

We find that between April 15, 1997 and November 10, 2003, the rates charged by BellSouth to the PSPs were legally sustainable, and were consistent with BellSouth's tariffs and controlling orders of this Commission. Accordingly, we shall not order refunds to PSPs for that time period.

#### V. BellSouth's Compliance with New Services Test

##### A. Arguments

##### FPTA:

FPTA witness Wood argues that BellSouth's rates are not currently in compliance and probably were not in compliance as of August 11, 1998. He argues that all available evidence suggests that BellSouth's costs have trended downward over time and asserts that this

Commission's orders regarding UNE rates are consistent with such an observation. Furthermore, the witness asserts "... at a minimum BellSouth's rates became out of compliance immediately after the August 11, 1998 order was issued."

Witness Wood also contends that "the NST is a dynamic and ongoing process that recognizes changes in cost levels over time." As such, he suggests that "... BellSouth's rates exceed a cost-based level by a significant margin." *Id.* The witness asserts that his analysis of BellSouth's current rates seeks to answer four questions:

- (1) Are BellSouth's rates *cost based*?
- (2) Are BellSouth's rates *consistent with the requirements of section 276 of the Act*?
- (3) Are BellSouth's rates *nondiscriminatory*?
- (4) Are BellSouth's rates *consistent with the FCC's Computer III tariffing guidelines (i.e., in compliance with the so-called 'new services test')*?

He contends that each question is a distinct and independent area of inquiry. According to the witness, "[t]he FCC's NST is one, but only one, of these four independent criteria." In order for us to determine if BellSouth's rates meet each of these requirements, witness Wood asserts that any cost data "must be specific to the elements of payphone access service (including access lines, usage, and features) and must be fully documented."<sup>15</sup>

Witness Wood urges that we will need to examine three categories of costs: direct, shared, and common. Specifically, he asserts that the rates "... should equal - and should under no circumstances be greater than - the total of the direct, shared, and common costs that the ILECs *demonstrate* are reasonable and appropriate." *Id.* (emphasis in original) Witness Wood asserts that we must review the reported direct cost of providing the rate element, and the level of overhead loadings (BellSouth's calculation of shared and common costs) in order to determine if the ILEC has met its burden of demonstrating that the reported cost is reasonable. According to witness Wood, "a rate that exceeds the level of direct cost plus overhead (i.e., direct + shared + common costs) that an ILEC has demonstrated to be reasonable *cannot* meet the FCC requirements that such a rate be both cost based and compliant with the NST." (emphasis in original) In the absence of adequate cost documentation, witness Wood asserts that we should rely on our experience in arbitrations pursuant to §251 and establishing rates for UNEs when determining cost-based rates for payphone access services.

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<sup>15</sup> Witness Wood provides additional discussion related to access lines, usage, and features in his rebuttal testimony.



Witness Wood argues that BellSouth has relied upon a broad application of the methodology set forth in the *ONA Tariff Order*<sup>16</sup> to arrive at its overhead loading for PTAS rates. Based on that application, he addresses three fundamental problems with BellSouth's approach:

- (1) BellSouth did not actually apply the methodology contained in the *ONA Tariff Order*,
- (2) the methodology is for the purpose of developing a ceiling for overhead loadings, rather than for developing the level of a reasonable overhead loading, and
- (3) BellSouth has not demonstrated that it is reasonable to use a methodology developed and adopted specifically for the very low rates associated with non-essential switching features and to apply this methodology broadly to all rate elements, including the monthly access line rate.

He asserts "[t]he flexibility . . . clearly has limits: not all benchmarks are meaningful, and not all overhead loadings are applicable to all rates (specifically, unusually high overhead loadings are limited to rates that, because of very low direct costs, will still be low if a large overhead loading is added)." He goes on to argue that " . . . the BOCs bear the burden of justifying their overhead allocations and demonstrating compliance with our standards." *Id.*

Witness Wood contends that as a result, we should not accept BellSouth's broad conclusion that all of the FCC's requirements are infinitely flexible in their application. The witness contends that the FCC concluded that to determine the appropriate level of overhead loadings, states can use UNE overhead loadings (with an adjustment to include retail costs, if the LEC demonstrates that such costs exist), the methodology set forth in the *Physical Collocation Tariff Order*,<sup>17</sup> or the methodology set forth in the *ONA Tariff Order*. He asserts, however, that the FCC did *not* conclude that the methodologies could be altered to a LEC's liking, or that state regulators could rely upon the LEC's versions of these methodologies in order to ascertain whether existing or proposed rates are reasonable, or that all methodologies are applicable for all rates. *Id.* As such, FPTA witnesses Renard and Wood both propose that we adopt a prospective PTAS rate of \$18.04. That amount includes a EUCL of \$7.13 and an intrastate rate of \$10.91.<sup>18</sup>

<sup>16</sup> In the Matter of Open Network Architecture Tariffs of Bell Operating Companies, CC Docket No. 92-91, Order, 9 FCC Rcd 440 (Dec. 15, 1993)(*ONA Tariff Order*).

<sup>17</sup> 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*).

<sup>18</sup> FPTA's proposed rates use an overhead loading of 10%.

An additional \$0.22 per month would be required if the blocking and screening feature is added.<sup>19</sup> Id.

BellSouth:

BellSouth witness Blake asserts that "BellSouth's PTAS rates have been, and are currently, in compliance with the FCC's NST." She contends that BellSouth revised its PTAS tariff based on additional guidance provided by the FCC in the *Wisconsin Order* and the fact that the parties were unable to reach a mutually acceptable resolution of this matter. Witness Blake argues that in the event we decide to revisit BellSouth's rates, two aspects of the *Wisconsin Order's* clarification of the NST may be considered going-forward. First, "... a BOC must reduce the monthly per line charge determined under the NST by the amount of the applicable federal tariffed SLC [now EUCL]."<sup>20</sup> Second, the witness contends that the FCC provided additional guidelines on the calculation of overhead loadings, even though the underlying cost methodology in support of payphone rates remained unchanged. Id.

If we decide to revisit BellSouth's PTAS costs, witness Blake asserts that the cost study sponsored by witness Shell shows that BellSouth's cost to provide PTAS is \$24.36 including overhead loadings, on a statewide average basis. The average cost of \$24.36, less the federal EUCL charge of \$7.13,<sup>21</sup> results in a rate of \$17.23. Id. The witness argues that "[t]his revised statewide average rate is appropriate considering that the current Florida statewide UNE-P rate is \$15.12." Witness Blake also argues that FPTA witness Wood did not take into account the fact that BellSouth has already reduced its tariffed PTAS rates by the EUCL in his analysis. Furthermore, the witness contends that witness Wood also used a EUCL of \$7.84, instead of the current EUCL, which is \$7.13. Moreover, she contends that BellSouth's tariffed rates are not "well in excess of cost" for almost all rate groups and zones as FPTA witness Wood alleges. Despite claiming that UNE rates and costs are not an appropriate benchmark, the witness goes on to argue that BellSouth's proposed new monthly base rate<sup>22</sup> is comparable to the rate computed

<sup>19</sup> The blocking and screening feature charge was determined using BellSouth's proposed overhead loading of 50.42%. The blocking and screening feature helps prevent unauthorized calls from being placed or received at payphones.

<sup>20</sup> BellSouth filed a revision to its General Subscriber Services Tariff (GSST), Section A7.4, to reduce its approved and effective PTAS rates by the amount of the federal end-user common line charge (EUCL) on October 27, 2003, with an effective date of November 10, 2003. The revised tariff filing has been addressed in Section II of this Order.

<sup>21</sup> Tariff FCC No. 1, pp.4-7, EUCL for Multiline Business Subscriber, per individual line or trunk.

<sup>22</sup> Based on BellSouth's cost study filed with the testimony of Bernard Shell, the new statewide average monthly base rate would be \$17.23.



using witness Wood's analysis.<sup>23</sup> In any event, witness Blake asserts that BellSouth's rate of \$17.23 is not out of line with the PTAS rates in the other BellSouth states.

Likewise, BellSouth witness Shell asserts that UNE costs and rates are not an appropriate benchmark because the TELRIC methodology used in setting rates for unbundled network UNEs is encumbered by additional constraints not required for a TSLRIC analysis. He argues that the TELRIC results are distorted "... and understate the true forward-looking costs of the incumbents." Moreover, the witness contends that changes made by this Commission (e.g., to the cost of capital, depreciation, placing, and splicing inputs) further understate the actual costs BellSouth incurs. According to the witness, FPTA witness Wood's comparison of current rates to UNE rates "is meaningless."

BellSouth witness Shell asserts that BellSouth incurs substantial costs in addition to those that the TSLRIC methodology recognizes. According to the witness, the other costs are shared and common costs, or "overheads." The witness states that

[a] shared cost is incurred when producing two or more services but is not a direct cost caused uniquely by any one of those services. Common costs are costs that are incurred by a firm to produce all of its services, but cannot be directly attributed to (i.e., are not caused uniquely by) any single service or service combination that includes fewer than all of the services provided.

He offers several examples of such costs, including executive, accounting, vendor licensing fees, and legal costs. He adds that these costs are not included at the individual service level since only direct costs are considered in a TSLRIC analysis. Witness Shell argues that shared and common costs are "true costs" that should not be ignored. *Id.* He goes on to state "... if a company were to consistently set their rates at TSLRIC, the company would soon fail." *Id.*

The witness contends that consideration must be given to a reasonable level of contribution toward the overhead costs of the corporation. Moreover, the FCC described several options with respect to the development of an overhead factor.<sup>24</sup> According to witness Shell, "BellSouth chose to 'use ARMIS data relating to the plant categories used to provide payphone services in calculating an upper limit on overhead loadings.'" He asserts that BellSouth's decision is consistent with the FCC's evaluation of the reasonableness of Open Network Architecture (ONA) tariffs.<sup>25</sup> *Id.* Using the ONA methodology, he asserts that BellSouth's

<sup>23</sup> Witness Blake asserts that by taking the statewide average UNE-P rate of \$15.12, plus local usage of \$1.93 as used by Mr. Wood, \$17.05 is the resulting rate.

<sup>24</sup> The *Wisconsin Order* defines three methods of calculating overhead: (1) the UNE overhead factor methodology; (2) the methodology outlined in the FCC's *Physical Collocation Tariff Order*; and (3) the *ONA Tariff Methodology*.

<sup>25</sup> BellSouth's overhead calculations are contained in Exhibit DDC- 1. (Hearing Exhibit 13)

overhead loading percentage is 50.42%. Moreover, the witness asserts that BellSouth's cost study "... is fully documented and demonstrates the calculation of the overhead factor."

B. Analysis

We find that BellSouth's rates remain compliant with the NST and were legally sustainable and consistent with BellSouth's tariffs and controlling orders of this Commission between April 15, 1997 and November 10, 2003. We acknowledge that the FCC's *Payphone Orders* set forth a four-part test for PTAS rates requiring that state tariffs for payphone services be: (1) cost based; (2) consistent with Section 276; (3) nondiscriminatory; and (4) consistent with *Computer III* tariffing guidelines. As alluded to by FPTA witness Wood, "[t]he new services test is one, but only one, of the four applicable requirements." We agree, noting that these were the same standards we previously used to determine BellSouth's compliance with the NST in the *PTAS Order* and the *Final PTAS Order*. Since we issued those prior orders, BellSouth has updated and revised inputs to its underlying models which are reflected in the PTAS Study in this proceeding. We have found no persuasive evidence which would lead us to believe that BellSouth's PTAS rates are somehow not compliant with the NST.

However, BellSouth witness Blake asserts that should we decide to revisit BellSouth's rates, "... there are two aspects of the *Wisconsin Order*'s clarification of the new services test that may be considered on a prospective basis." We note that BellSouth has already effected the first, by reducing the monthly per line charge determined under the NST by the amount of the EUCL in its tariff filing. *Id.* The second relates to the "additional guidelines" associated with the calculation of the overhead loadings. *Id.* We believe that a modification to the overhead loading percentage is warranted based on the record in this proceeding.

We agree that BellSouth's use of the *ONA Tariff Order* methodology is permissible to determine overhead loadings. At the same time, we acknowledge that the *ONA Tariff Order* methodology is but one of three methodologies that may be used. BellSouth could have chosen to use the UNE overhead loadings methodology or those put forth in the *Physical Collocation Tariff Order* for its cost study, but did not. We believe that BellSouth was free to choose whichever methodology it desired in order to determine its overhead loading factor. Even FPTA witness Wood appears to realize this, citing to the *Second Wisconsin Order* (§§53-54) stating, "[t]he 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*." In addition, the Second Wisconsin Order added that in calculating an "upper limit on overhead loadings" for payphone services, "... any or all of these methods ..." could be used. *Id.* Accordingly, there is no "preferred" methodology. If there was, we believe that at the very least, the FCC would have specifically outlined which was the FCC-preferred method. In fact, we note that in Order FCC 02-25, §58, the FCC "... established a flexible approach to calculating the BOCs' overhead allocation for intrastate payphone line rates."



Even though BellSouth used one of the three acceptable methodologies to determine overhead loadings, we recognize that BellSouth still had an obligation to demonstrate the "reasonableness" of the resulting overhead loading. We note that the *Physical Collocation Tariff Order* and the *ONA Tariff Order* methodologies outlined by the FCC create "a ceiling" that must still be justified, and do not believe that BellSouth has met its burden here.

We note that FPTA witness Wood has suggested using a 10% overhead loading factor, while BellSouth has proposed using 50.42%. Despite his proposal, witness Wood still accepts BellSouth's 50.42% for the blocking and screening feature, stating "[w]hile I do not believe that BellSouth has in fact applied this methodology correctly in their analysis, I am giving them the benefit of the doubt and accepting the 50.42% . . . ." We believe that witness Wood's proposal seems unreasonably low and is not sufficiently supported in the record here. Moreover, even though he proposed an overhead loading factor of 10%, he appears unsure of that proposal, stating "I think it would be reasonable to go back to the UNE case and actually put just BellSouth's common factor in . . . which is well less than 10%." He also appears to acknowledge that some percentage above his proposal may be appropriate, stating ". . . the actual markup would be a little higher than 10 percent." *Id.*

On the other hand, BellSouth's proposed overhead loading percentage suggests an upper limit, or ceiling, for an "appropriate" overhead loading. As such, the overhead loading that results from using the *ONA Tariff Order* approach does not necessarily represent a "per se reasonable level." We agree with FPTA that BellSouth's proposed overhead factor "is well beyond reasonable." The allowance of such an overhead loading requires adequate justification and fact-specific evidence beyond the degree provided here.

We note that BellSouth witness Shell asserted that "[t]here is a small percentage of overlap in the category labeled 'direct and overhead' simply because the way the ONA methodology is set up . . ." (emphasis added). He went on to state, ". . . we feel like that was really insignificant because what we were trying to do is develop a reasonable overhead factor that would apply." We agree in part, but note that in determining a reasonable overhead factor, consideration should be given to avoiding any overlap. BellSouth knew there was an overlap of approximately 8%, yet made no adjustments in its proposed overhead loading to account for the overlap. BellSouth should have adjusted its proposed overhead loading by at least the amount of known overlap. Thus, one possible option would be to reduce BellSouth's proposed overhead loading by 8% (the overlap referenced by witness Shell), resulting in an overhead loading of 42.42%. However, because the 8% overlap was an approximate figure, additional modifications, or other options may be more appropriate. Instead, the parties' proposals bracket a "range of reasonableness," within which a more appropriate overhead loading may be found.



C. Decision

We did not find either party's proposed overhead factor to be adequately supported by the record, and find that BellSouth's proposed overhead factor is too high, while FPTA's factor is too low. Based on our analysis of the record, we adopt an overhead loading which represents the mid point between the parties' proposed overhead factors, using the parties' proposals as "upper" and "lower" limits. Given the lack of support proffered by the parties for their respective proposals, that is a reasonable compromise. Accordingly, BellSouth shall use 30.21% as its overhead loading percentage. Once BellSouth has made the change in its model and revised its tariff, the resulting total statewide average cost would be approximately \$21.07.<sup>26</sup> After taking the EUCL out, the resulting rate would be approximately \$13.94. A revised tariff, and all supporting documentation demonstrating the changes made, shall be filed within 30 days of the issuance of the order and approved administratively.

VI. Effective Date of Revisions

A. Arguments

FPTA:

FPTA argues that this Commission has the authority and must require BellSouth to reduce its intrastate rates for payphone access services. FPTA urges that compliant rates should be required to be in place as soon as reasonably practicable after our decision in this proceeding.

BellSouth:

BellSouth urges that its intrastate payphone rates have been and continue to be compliant with the NST. It argues that we can order it to revise prospectively its intrastate payphone rates and, if it does so, the appropriate, new services complaint[sic], statewide rate would be \$17.23, which accounts for the EUCL of \$7.13, and results in a total rate of \$24.36. However, BellSouth contends that refunds are not appropriate under any circumstance.

B. Analysis

There appears to be no dispute that this Commission can order BellSouth to revise its intrastate payphone rates, if deemed necessary. Both parties agree that we have the authority to order BellSouth to revise its intrastate payphone rates. Nor do we address here whether a revised intrastate payphone rate is required in this docket because, as we have addressed earlier in this Order, BellSouth's rates are now compliant. The only remaining point of contention concerns the effective date of any rate changes that we may order.

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<sup>26</sup> BellSouth and the FPTA agree that a statewide rate is preferable to multiple zone rates.

C. Decision

We have declined to revise BellSouth's rates retrospectively. Though this Commission has the authority to order BellSouth to revise its intrastate payphone rates, we have found that BellSouth's rates are now compliant, and, accordingly, an effective date need not be established.

VII. Refund Authority

A. Arguments

FPTA:

FPTA argues that for the reasons set forth in its post-hearing brief, we can and must require BellSouth to refund the difference between compliant rates and the rates actually charged to PSPs in the state of Florida. FPTA urges that, based upon the evidence presented during the course of these proceedings, BellSouth's rates are not, and have never been compliant with Section 276 of the Act.

According to FPTA, our prior Order does not forever relieve BellSouth of its obligations under federal law to offer cost-based PTAS rates in compliance with Section 276 of the Telecom Act. Therefore, FPTA urges us to find that BellSouth has an affirmative and continuing obligation to offer PTAS rates in compliance with Section 276 of the Act. According to FPTA, neither commission staff, nor any other third party should be burdened with the obligation to police BellSouth's PTAS rates to ensure compliance with federal law. Any other finding would turn Section 276 of the Telecommunications Act and the FCC's many subsequent orders interpreting Section 276 of the Act, particularly the *Wisconsin Orders*, directly on their heads.

FPTA argues that we cannot permit BellSouth to retain the unlawful profits it has collected by illegally overcharging payphone service providers. FPTA claims there can be no doubt that BellSouth has overcharged PSPs by charging and collecting EUCL charges and excessive rates. To allow BellSouth to retain those unlawful profits to the detriment of the payphone industry would continue to negatively impact the widespread deployment of payphones in the State of Florida, in violation of Section 276 of the Telecom Act.

BellSouth:

BellSouth argues that its intrastate payphone rates have been and continue to be compliant with the NST. Further, FPTA has no basis for claiming BellSouth's PTAS rates are not compliant with the new services test, much less noncompliant immediately after we issued the *Final PTAS Order*, which remains valid and effective. Nor can the FPTA, according to BellSouth, legitimately seek refunds based upon the difference between any unknown and future PTAS rates and the rates that were found to be effective in the *PTAS Order* and in the *Final*

ORDER NO. PSC-04-0974-FOF-TP  
DOCKET NO. 030300-TP  
PAGE 23

*PTAS Order.* Accordingly, argues BellSouth, though this Commission could order rate revisions prospectively, there is no basis upon which refunds could be justified.

B. Analysis

The question of whether BellSouth's rates became noncompliant was thoroughly discussed earlier in this Order and additional discussion of that issue would only be redundant. Accordingly, we simply reaffirm that we believe BellSouth's PTAS rates to have been compliant at all times during the pertinent time periods, between April 15, 1997 and November 10, 2003.

C. Decision

Between April 15, 1997 and November 10, 2003, the rates charged by BellSouth to the PSPs were legally sustainable, and were consistent with BellSouth's tariffs and controlling orders of this Commission. Therefore, BellSouth's rates never became noncompliant during the subject time period.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the specific findings set forth in this Order are approved in every respect. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 7th day of October, 2004.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By: Kay Flynn

Kay Flynn, Chief  
Bureau of Records

(SEAL)

LF



ORDER NO. PSC-04-0974-FOF-TP  
DOCKET NO. 030300-TP  
PAGE 24

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 the Commission Clerk and Administrative Services, 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 the Commission Clerk and Administrative Services 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.

# Case Assignment and Scheduling Record

## Section 1 - Bureau of Records and Hearing Services Completes

Docket No. 030300-TP Date Docketed: 03/26/2003 Title: 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.

Official Filing Date: \_\_\_\_\_  
Last Day to Suspend: \_\_\_\_\_

Expiration: \_\_\_\_\_

Referred to:  
("()" indicates OPR)

AUS CAF CCA (CMP) ECR EXT GCL MMS PIF  
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## Section 2 - OPR Completes and returns to CCA in 10 workdays.

## Time Schedule

Program/Module A18

### Staff Assignments

OPR Staff

Staff Counsel

OCRs ( )

( )

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Recommended assignments for hearing and/or deciding this case:

Full Commission \_\_\_\_\_ Commission Panel \_\_\_\_\_  
Hearing Examiner \_\_\_\_\_ Staff \_\_\_\_\_

Date filed with CCA: \_\_\_\_\_

Initials: OPR \_\_\_\_\_  
Staff Counsel \_\_\_\_\_

WARNING: THIS SCHEDULE IS AN INTERNAL PLANNING DOCUMENT.

IT IS TENTATIVE AND SUBJECT TO REVISION.

FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770

Current CASR revision level

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### Due Dates

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## Section 3 - Chairman Completes

Assignments are as follows:

- Hearing Officer(s)

Commissioners						Hrg. Exam.	Staff
ALL	JB	DS	BZ	BD	DV		

- Prehearing Officer

Commissioners					ADM
JB	DS	BZ	BD	DV	

DOCUMENT NO.

11991-05

Where panels are assigned the senior Commissioner is Panel Chairman; the identical panel decides the case.

Where one Commissioner, a Hearing Examiner or a Staff Member is assigned the full Commission decides the case.

Approved: \_\_\_\_\_

Date: / /





C

## Section 1 - Bureau of Records and Hearings Services Completes

Docket No. 030300-TP Date Docketed: 03/26/2003 Title: 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.

Company: BellSouth Telecommunications, Inc.  
Florida Public Telecommunications Association

Official Filing Date: \_\_\_\_\_  
Last Day to Suspend: \_\_\_\_\_  
Referred to: \_\_\_\_\_  
("C") indicates OPR)

Expiration: \_\_\_\_\_

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Section 2 - OPR Completes and returns to CCA in 10 workdays.

Time Schedule

Program Module A18

**WARNING: THIS SCHEDULE IS AN INTERNAL PLANNING DOCUMENT  
IT IS TENTATIVE AND SUBJECT TO REVISION.  
FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770**

## Staff Assignments

OPR Staff

D Dowds

1 Current CASR revision level

Due Dates

Previous Current

Staff Counsel

L Dodson

OCRs

Recommended assignments for hearing  
and/or deciding this case:

Full Commission X Commission Panel \_\_\_\_\_  
Hearing Examiner \_\_\_\_\_ Staff \_\_\_\_\_

Date filed with CCA: 08/27/2003

Initials: OPR \_\_\_\_\_  
Staff Counsel \_\_\_\_\_

1	Current CASR revision level	Due Dates	Previous	Current
1.	Close Docket or Revise CASR	NONE		09/17/2003
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## Section 3 - Chairman Completes

Assignments are as follows:

## - Hearing Officer(s)

Commissioners						Hrg	Staff
ALL	JB	DS	BZ	BD	DV	Exam	
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Where panels are assigned the senior Commissioner is Panel Chairman:  
the identical panel decides the case.

Where one Commissioner, a Hearing Examiner or a Staff Member is  
assigned the full Commission decides the case.

## - Prehearing Officer

Commissioners					ADM
JB	DS	BZ	BD	DV	
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Approved: LJ/smtDate: 08/27/2003

N

# Case Scheduling/Rescheduling Advice

Last Revised 09/04/2003 at 09:21

Page 1 of 1

Printed on 09/04/2003 at 09:22

To: ☒ Commissioner Deason ☒ Deputy Executive Director/EXA ☐ Economic Regulation Director  
☐ Commissioner Baez ☒ General Counsel Director ☐ External Affairs Director  
☒ Commissioner Bradley ☐ Auditing & Safety Director ☒ Court Reporter  
☒ Commissioner Davidson ☒ Comm. Clerk & ADM Services ☒ Staff Contact - David Dowds  
☒ Executive Director ☒ Competitive Markets/Enforcement ☐  
☒ Public Information Officer ☒ Consumer Affairs Director ☐

From: Office of Chairman Lila Jaber

Docket Number: 030300-TP

Docket Title: 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.

## 1. Schedule Information

Event	Former Date	New Date	Location	Time
Prehearing Conference		04/19/2004	Tallahassee, Room 148	1:30 PM - 3:00 PM
Hearing		05/12/2004	Tallahassee, Room 148	9:30 AM - 5:00 PM

## 2. Hearing/Prehearing Assignment Information

### Former Assignments

#### Hearing Officers

Commissioners						Hearing Exam.	Staff
ALL	JB	DS	BZ	BD	DV		

### Current Assignments

Commissioners						Hearing Exam.	Staff
ALL	JB	DS	BZ	BD	DV		
		X		X	X		

#### Prehearing Officer

Commissioners					
JB	DS	BZ	BD	DV	ADM

Commissioners					
JB	DS	BZ	BD	DV	ADM
				X	

Reason for Revision: A. New Assignment 1. Unavailability 2. Good Cause 3. Recused 4. Disqualified 5. See Remarks

Remarks:



## Section 1 - Bureau of Records and Hearings Services Completes

Docket No. 030300-TP Date Docketed: 03/26/2003 Title: 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.

Company: BellSouth Telecommunications, Inc.  
Florida Public Telecommunications Association

Official Filing Date: \_\_\_\_\_

Expiration: \_\_\_\_\_

Last Day to Suspend: \_\_\_\_\_

Referred to: \_\_\_\_\_

("C") indicates OPR

AUS CAF CCA (CMP) ECR EXT GCL MMS PIF

Section 2 - OPR Completes and returns to CCA in 10 workdays.

Time Schedule

Program Module A18

## Staff Assignments

OPR Staff

T Brown, D Dowds

Staff Counsel

L Dodson

OCRs

**WARNING: THIS SCHEDULE IS AN INTERNAL PLANNING DOCUMENT  
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FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770**

## Due Dates

Previous Current

2	Current CASR revision level	Previous	Current
1.	Order Establishing Procedure	NONE	09/15/2003
2.	Direct Testimony & Exhibits	NONE	11/17/2003
3.	Rebuttal Testimony & Exhibits	NONE	12/19/2003
4.	Prehearing Statements	NONE	03/22/2004
5.	Notice of Prehearing and Hearing	NONE	03/26/2004
6.	Prehearing	NONE	04/19/2004
7.	Transcript of Prehearing Due	NONE	04/26/2004
8.	Prehearing Order	NONE	05/03/2004
9.	Hearing	NONE	05/12/2004
10.	Transcript of Hearing Due	NONE	05/19/2004
11.	Briefs Due	NONE	06/15/2004
12.	Staff Recommendation	NONE	08/05/2004
13.	Agenda	NONE	08/17/2004
14.	Standard Order	NONE	09/07/2004
15.	Close Docket or Revise CASR	NONE	10/07/2004
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Recommended assignments for hearing and/or deciding this case:

Full Commission X Commission Panel \_\_\_\_\_  
Hearing Examiner \_\_\_\_\_ Staff \_\_\_\_\_

Date filed with CCA: 09/08/2003

Initials: OPR \_\_\_\_\_  
Staff Counsel \_\_\_\_\_

## Section 3 - Chairman Completes

Assignments are as follows:

CSRA

## - Hearing Officer(s)

Commissioners						Hrg	Staff
ALL	JB	DS	BZ	BD	DV	Exam	
X							

Where panels are assigned the senior Commissioner is Panel Chairman: the identical panel decides the case.

Where one Commissioner, a Hearing Examiner or a Staff Member is assigned the full Commission decides the case.

## - Prehearing Officer

Commissioners					ADM
JB	DS	BZ	BD	DV	
				X	

Approved: \_\_\_\_\_

Date: 09/08/2003

C

## Section 1 - Bureau of Records Completes

Docket No. 030300-TP Date Docketed: 03/26/2003 Title: 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.

Company: BellSouth Telecommunications, Inc.  
Florida Public Telecommunications Association

Official Filing Date: \_\_\_\_\_  
Last Day to Suspend: \_\_\_\_\_  
Referred to: \_\_\_\_\_  
("C") indicates OPR)

Expiration: \_\_\_\_\_

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Section 2 - OPR Completes and returns to CCA in 10 workdays.

Time Schedule

Program Module A18

**WARNING: THIS SCHEDULE IS AN INTERNAL PLANNING DOCUMENT  
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FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770**

## Staff Assignments

## OPR Staff

T Brown, D Dowds

3

## Current CASR revision level

## Due Dates

Previous Current

1. Staff Recommendation	08/05/2004	08/19/2004
2. Agenda	08/17/2004	08/31/2004
3. Standard Order	09/07/2004	09/20/2004
4. Close Docket or Revise CASR	10/07/2004	10/21/2004

## Staff Counsel

L Fordham, A Teitzman

## OCRs

Recommended assignments for hearing  
and/or deciding this case:

Full Commission \_\_\_\_\_ Commission Panel X  
Hearing Examiner \_\_\_\_\_ Staff \_\_\_\_\_

Date filed with CCA: 07/09/2004

Initials: OPR \_\_\_\_\_  
Staff Counsel \_\_\_\_\_

## Section 3 - Chairman Completes

Assignments are as follows:

## - Hearing Officer(s)

Commissioners						Hrg	Staff
ALL	BZ	DS	JB	BD	DV	Exam	
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Where panels are assigned the senior Commissioner is Panel Chairman:  
the identical panel decides the case.

Where one Commissioner, a Hearing Examiner or a Staff Member is  
assigned the full Commission decides the case.

## - Prehearing Officer

Commissioners					ADM
BZ	DS	JB	BD	DV	
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Approved: BIB/RMSDate: Pending 7/22/04

## Section 1 - Bureau of Records Complete

Docket No. 030300-TP Date Docketed: 03/26/2003 Title: 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.

Company: BellSouth Telecommunications, Inc.  
Florida Public Telecommunications Association

Official Filing Date: \_\_\_\_\_  
Last Day to Suspend: \_\_\_\_\_  
Referred to: \_\_\_\_\_  
("C") indicates OPR)

Expiration: \_\_\_\_\_

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Section 2 - OPR Completes and returns to CCA in 10 workdays.

Time Schedule

Program Module A18

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FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770**

## Staff Assignments

OPR Staff

T Brown, D Dowds

4

Current CASR revision level

Due Dates  
Previous Current

1. Staff Recommendation	08/19/2004	08/26/2004
2. Agenda	08/31/2004	09/07/2004
3. Standard Order	09/20/2004	09/27/2004
4. Close Docket or Revise CASR	10/21/2004	10/27/2004
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Recommended assignments for hearing  
and/or deciding this case:

Full Commission \_\_\_\_\_ Commission Panel X  
Hearing Examiner \_\_\_\_\_ Staff \_\_\_\_\_

Date filed with CCA: 08/04/2004

Initials: OPR \_\_\_\_\_  
Staff Counsel \_\_\_\_\_

## Section 3 - Chairman Completes

Assignments are as follows:

## - Hearing Officer(s)

Commissioners						Hrg	Staff
ALL	BZ	DS	JB	BD	DV	Exam	
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Where panels are assigned the senior Commissioner is Panel Chairman:  
the identical panel decides the case.

Where one Commissioner, a Hearing Examiner or a Staff Member is  
assigned the full Commission decides the case.

## - Prehearing Officer

Commissioners					ADM
BZ	DS	JB	BD	DV	
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Approved: 1313/AmDate: 08/04/2004



## Section 1 - Bureau of Records Completes

Docket No. 030300-TP Date Docketed: 03/26/2003 Title: 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.

Company: BellSouth Telecommunications, Inc.  
Florida Public Telecommunications  
Associati

Official Filing Date:

Expiration:

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Section 2 - OPR Completes and returns to CCA in 10 workdays.

Time Schedule

Program Module A18

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FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770

## Staff Assignments

Due Dates

OPR Staff	T Brown, D Dowds	5	Current CASR revision level	Due Dates	
				Previous	Current
		1.	Staff Recommendation	08/26/2004	09/09/2004
		2.	Agenda	09/07/2004	09/21/2004
		3.	Standard Order	09/27/2004	10/11/2004
		4.	Close Docket or Revise CASR	10/27/2004	11/10/2004
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Staff Counsel	L Fordham, A Teitzman	8.			
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Recommended assignments for hearing  
and/or deciding this case:

Full Commission \_\_\_\_\_ Commission Panel X  
Hearing Examiner \_\_\_\_\_ Staff \_\_\_\_\_

Date filed with CCA: 08/26/2004

Initials: OPR

Staff Counsel

## Section 3 - Chairman Completes

Assignments are as follows:

- Hearing Officer(s)

- Prehearing Officer

Commissioners						Hrg Exam	Staff
ALL	BZ	DS	JB	BD	DV		
		X		X	X		

Commissioners					ADM
BZ	DS	JB	BD	DV	
				X	

Where panels are assigned the senior Commissioner is Panel Chairman:  
the identical panel decides the case.

Where one Commissioner, a Hearing Examiner or a Staff Member is  
assigned the full Commission decides the case.

Approved: B3B/AmDate: Pending 9/10/04

STATE OF FLORIDA

COMMISSIONERS:

LILA A. JABER, CHAIRMAN  
J. TERRY DEASON  
BRAULIO L. BAEZ  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON



DIVISION OF THE COMMISSION CLERK &  
ADMINISTRATIVE SERVICES  
BLANCA S. BAYÓ  
DIRECTOR  
(850) 413-6770 (CLERK)  
(850) 413-6330 (ADMIN)

## Public Service Commission

March 27, 2003

Brian A. Newman, Esquire  
Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.  
Post Office Box 10095  
Tallahassee, Florida 32302-2095

Re: Docket No. 030300-TP

Dear Mr. Newman:

This will acknowledge receipt of a 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, which was filed in this office on March 26, 2003, and assigned the above-referenced docket number. Appropriate staff members will be advised.

Mediation may be available to resolve any dispute in this docket. If mediation is conducted, it does not affect a substantially interested person's right to an administrative hearing. For more information, contact the Office of General Counsel at (850) 413-6248 or FAX (850) 413-7180.

Division of the Commission Clerk and Administrative Services  
Florida Public Service Commission

DOCUMENT NO.

1199105

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD • TALLAHASSEE, FL 32399-0850

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PSC Website: <http://www.floridapsc.com>

Internet E-mail: [contact@psc.state.fl.us](mailto:contact@psc.state.fl.us)

CCA Official Filing:

4/17/03\*\*\*\*\*10:18 AM\*\*\*\*\*Matilda Sanders\*\*\*\*\*1

Matilda Sanders

0509-FOF

From: LaSandra Givens  
Sent: Thursday, April 17, 2003 10:15 AM  
To: CCA - Orders / Notices  
Subject: Order / Notice Submitted

2

Date and Time: 4/17/03 10:15:00 AM  
Docket Number: 030300-TP  
Filename / Path: 030300A.ALC  
Order Type: Signed / Hand Deliver

RECEIVED-FPSC  
03 APR 17 AM 10:51  
COMMISSION  
CLERK

ORDER AUTHORIZING QUALIFIED REPRESENTATIVE STATUS

3/1



Tamela Jefferson

0538-PCO

From: LaSandra Givens  
Sent: Thursday, April 24, 2003 1:33 PM  
To: CCA - Orders / Notices  
Subject: Order / Notice Submitted

Date and Time: 4/24/03 1:32:00 PM  
Docket Number: 030300-tp  
Filename / Path: 030300ext.lhd  
Order Type: Signed / Hand Deliver

order granting motion for extension of time

signed by a commissioner/hard copy hand delivered

RECEIVED-FPSC  
03 APR 24 PM 3:48  
COMMISSION  
CLERK  
man

3/1

CCA Official Filing:

4/29/03\*\*\*\*\*11:04 AM\*\*\*\*\*Matilda Sanders\*\*\*\*\*1

Matilda Sanders

0558 - FDP

From: LaSandra Givens  
Sent: Tuesday, April 29, 2003 10:58 AM  
To: CCA - Orders / Notices  
Subject: Order / Notice Submitted

2

Date and Time: 4/29/03 10:57:00 AM  
Docket Number: 030300-TP  
Filename / Path: 030300A.ALC  
Order Type: Signed / Hand Deliver

RECEIVED-FPSC  
03 APR 29 PM 1:37  
COMMISSION  
CLERK

ORDER AUTHORIZING QUALIFIED REPRESENTATIVE STATUS

SIGNED BY A COMMISSIONER/HAND DELIVERED

3/1

CCA Official Filing:

5/8/03\*\*\*\*\*9:51 AM\*\*\*\*\*Matilda Sanders\*\*\*\*\*1

Matilda Sanders

6583-FOF

From: Janice Banka  
Sent: Thursday, May 08, 2003 9:51 AM  
To: CCA - Orders / Notices  
Subject: Order / Notice Submitted

2

Date and Time: 5/8/03 9:50:00 AM  
Docket Number: 030300-TP  
Filename / Path: 030300a.alc  
Order Type: Signed / Hand Deliver

RECEIVED-FPSC  
03 MAY -8 AM 10:36  
COMMISSION  
CLERK

Order Authorizing Qualified Representative Status.

Number of pages in order - 2.

Thanks "J"

 3/1



**ANGELA B. GREEN, P.A.**

ATTORNEY AT LAW

8527 S.E. 71st Avenue  
Ocala, Florida 34472

Telephone: (352) 347-9038  
Facsimile: (352) 347-9048  
Mobile: (352) 208-4866  
E-mail: [abgreen@angelabgreen.com](mailto:abgreen@angelabgreen.com)

May 22, 2003

Blanca S. Bayó, Director  
Division of the Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

-----VIA FACSIMILE-----

Re: Docket No. 030300-TP

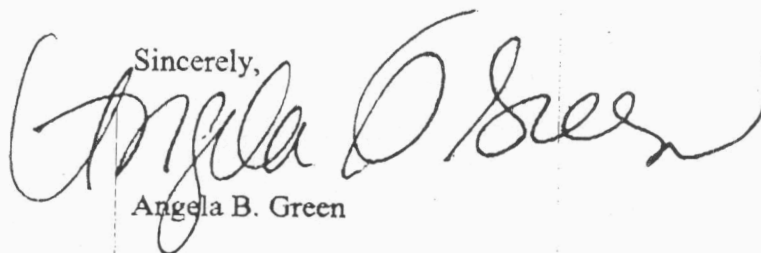
Dear Ms. Bayó:

Please add my name and address to the mailing list as an interested entity in the above-referenced docket. Please address all correspondence regarding the docket as follows:

Angela B. Green  
Angela B. Green, P.A.  
8527 S.E. 71st Avenue  
Ocala, Florida 34472

Thank you for your assistance.

Sincerely,



Angela B. Green

030300\_mailing\_list.doc

Done 5/23/03

CCA Official Filing:

5/23/03\*\*\*\*\*8:43 AM\*\*\*\*\*Matilda Sanders\*\*\*\*\*1

Matilda Sanders

01622-PCO

From: LaSandra Givens  
Sent: Friday, May 23, 2003 8:40 AM  
To: CCA - Orders / Notices  
Subject: Order / Notice Submitted

3

Date and Time: 5/23/03 8:39:00 AM  
Docket Number: 030300-TP  
Filename / Path: 030300EXP.LHD  
Order Type: Signed / Hand Deliver

RECEIVED-FPSC  
03 MAY 23 AM 10:40  
COMMISSION  
CLERK

ORDER DENYING REQUEST FOR EXPEDITED RELIEF

SIGNED BY A COMMISSIONER/HAND DELIVERED

13/1

CCA Official Filing  
7/16/03\*\*\*\*\*

2:06 PM\*\*\*\*\*

Matilda Sanders\*\*\*\*\*1

Matilda Sanders

0828 - FOF

From: LaSandra Givens  
Sent: Wednesday, July 16, 2003 1:50 PM  
To: CCA - Orders / Notices  
Subject: Order / Notice Submitted

11

Date and Time: 7/16/03 1:49:00 PM  
Docket Number: 030300-TP  
Filename / Path: 030300MDIS.LHD

ORDER DENYING MOTION TO DISMISS

4/1



**Matilda Sanders**

---

**From:** LaSandra Givens  
**Sent:** Friday, July 18, 2003 1:08 PM  
**To:** CCA - Orders / Notices  
**Subject:** Order / Notice Submitted

188

**Date and Time:** 7/18/03 1:06:00 PM  
**Docket Number:** 030300  
**Filename / Path:** 030300id.lhd  
**Notice Type:** Memo for Issuance

Please issue the above referenced memo to all parties of record and interested persons

4/1

Matilda Sanders

1066 - PCO

From: Jackie Schindler  
Sent: Wednesday, September 24, 2003 2:57 PM  
To: CCA - Orders / Notices  
Subject: Order / Notice Submitted

14

Date and Time: 9/24/2003 2:55:00 PM  
Docket Number: 030300-tp  
Filename / Path: 030300oeprev.lhd  
Order Type: Signed / Hand Deliver

*attach's online.*

An Order Establishing Procedure has been signed and moved to GC Orders to be issued TODAY per COMMISSIONER DAVIDSON'S REQUEST.

Order will be there shortly.

Thanks!

js

3/1

RECEIVED-FPSC  
03 SEP 24 PM 3:04  
COMMISSION  
CLERK

STATE OF FLORIDA

COMMISSIONERS:  
LILA A. JABER, CHAIRMAN  
J. TERRY DEASON  
BRAULIO L. BAEZ  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON



DIVISION OF THE COMMISSION CLERK &  
ADMINISTRATIVE SERVICES  
BLANCA S. BAYO  
DIRECTOR  
(850) 413-6770 (CLERK)  
(850) 413-6330 (ADMIN)

Public Service Commission

ACKNOWLEDGMENT

DATE: 11.17.03

TO: Meredith Mays  
FROM: Therri, Division of the Commission Clerk and  
Administrative Services

RE: Acknowledgment of Receipt of Confidential Filing

11558-03

This will acknowledge receipt of a CONFIDENTIAL DOCUMENT filed in Docket No.

030300-TP or (if filed in an undocketed matter) concerning \_\_\_\_\_

DDC-1 & DDC-2 (exhibits), and

filed on behalf of BellSouth / Mays. The

document will be maintained in locked storage.

Any questions regarding this matter should be directed to Kay Flynn at (850) 413-6770.

PSC/CCA019-C (Rev 01/03)

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STATE OF FLORIDA

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BRAULIO L. BAEZ  
RUDOLPH "RUDY" BRADLEY  
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BLANCA S. BAYO  
DIRECTOR  
(850) 413-6770 (CLERK)  
(850) 413-6330 (ADMIN)

Public Service Commission

ACKNOWLEDGMENT

DATE: 12/8/03

TO: Bell South

FROM: T. Henry, Division of the Commission Clerk and  
Administrative Services

RE: Acknowledgment of Receipt of Confidential Filing

12631-03

This will acknowledge receipt of a CONFIDENTIAL DOCUMENT filed in Docket No.

030300-TIP or (if filed in an undocketed matter) concerning \_\_\_\_\_

Direct Testimony Exhibits DDC-1 & DDC-2, and

filed on behalf of M. Mays. The

document will be maintained in locked storage.

Any questions regarding this matter should be directed to Kay Flynn at (850) 413-6770.

PSC/CCA019-C (Rev 01/03)

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Internet E-mail: [contact@psc.state.fl.us](mailto:contact@psc.state.fl.us)

ANGELA B. GREEN, P.A.

ATTORNEY AT LAW

9281 SE 70th Terrace  
Ocala, Florida 34472-3460

Telephone: (352) 347-9038  
Facsimile: (352) 347-9048  
Mobile: (352) 208-4866  
E-mail: [abgreen@angelabgreen.com](mailto:abgreen@angelabgreen.com)

January 14, 2004

Ms. Nonnye Grant  
Division of the Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

\*\*\*VIA FACSIMILE\*\*\*

COMMISSION  
CLERK

01 JAN 14 PM 12:12

RECEIVED-FPSC

Re: Office Address Change 030300-TP

Dear Ms. Grant:

*Nonnye*

Currently, my office is registered to receive copies of several notices: hearings, rulemaking, and other workshops. I will need you to update my office address for these mailings. I am also requesting that I remain on the mailing list for these notices. My new office address appears on the letterhead above and is:

Angela B. Green, P.A.  
9281 SE 70th Terrace  
Ocala, FL 34472-3460

My telephone number and facsimile numbers have not changed. They remain as shown above. My e-mail address is also unchanged.

I appreciate your assistance with this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,

*Angela B. Green*  
Angela B. Green

*Del*  
m/ 8527 S.E. 71st Avenue  
Ocala, FL 34472-3465

*on*  
NH  
NR  
NW ) T

*Done*  
01/14/04  
*Kmp*

*1-14-04*  
*Cy to Hwy*

Matilda Sanders

0055 - CPO

From: Jackie Schindler  
Sent: Tuesday, January 20, 2004 11:12 AM  
To: CCA - Orders / Notices; LaSandra Givens  
Subject: Order / Notice Submitted

4

Date and Time: 1/20/2004 10:53:00 AM  
Docket Number: 030300-tp  
Filename / Path: 030300conf1.lhd.DOC

an order granting request for confidential classification of document no. 12631-03 has been moved to gc orders for issuance

js

3/1

RECEIVED-FPSC  
04 JAN 20 PM 2:11  
COMMISSION  
CLERK

**Matilda Sanders**

---

From: Jackie Schindler  
Sent: Friday, March 26, 2004 12:26 PM  
To: CCA - Orders / Notices  
Subject: Order / Notice Submitted

3

Date and Time: 3/26/2004 12:25:00 PM  
Docket Number: 030300-tp  
Filename / Path: notice of hearing and prehearing.doc  
Notice Type: Prehearing/Hearing

a notice of hearing and prehearing has been moved to gc orders for issuance today

CCS✓

matilda - this notice was done using benjie's new notice template so it should have all the bookmarks you need...

thanks

js

MCTD Hearings (Telecom)

40/3 + 303 Myr/clrks for  
TL 720





**Public Service Commission**  
**-M-E-M-O-R-A-N-D-U-M-**

---

**DATE:** April 23, 2004

**TO:** Blanca S. Bayó, Director, Division of the Commission Clerk and Administrative Services

**FROM:** Jane Faurot, Chief, Office of Hearing Reporter Services, Division of the Commission Clerk and Administrative Services

**RE:** DOCKET NO. 030300-TP, PREHEARING HELD 04/19/04.

---

RE: PETITION FOR EXPEDITED REVIEW OF BELL SOUTH 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.

DOCUMENT NOS.: 04788-04, 04/22/04

The transcript for the above proceedings has been completed and is forwarded for placement in the docket file, including attachments.

Please note that Staff distribution of this transcript was made to:

LEGAL, CMP

Acknowledged BY:

A handwritten signature in cursive script, appearing to read "Pamela C. Galt", written over a horizontal line.

JF/rIm

COMMISSIONERS:  
BRAULIO L. BAEZ, CHAIRMAN  
J. TERRY DEASON  
LILA A. JABER  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

STATE OF FLORIDA



DIVISION OF THE COMMISSION CLERK &  
ADMINISTRATIVE SERVICES  
BLANCA S. BAYÓ  
DIRECTOR  
(850) 413-6770 (CLERK)  
(850) 413-6330 (ADMIN)

# Public Service Commission

## ACKNOWLEDGMENT

DATE: 5.3.04

TO: Meredith Mays  
FROM: Thermy, Division of the Commission Clerk and  
Administrative Services  
RE: Acknowledgment of Receipt of Confidential Filing

05116-04

This will acknowledge receipt of a CONFIDENTIAL DOCUMENT filed in Docket No.

030300-TP  
~~030300~~ or (if filed in an undocketed matter) concerning \_\_\_\_\_

FPTA 1st Int., and  
filed on behalf of BellSouth / Mays. The  
document will be maintained in locked storage.

Any questions regarding this matter should be directed to Kay Flynn at (850) 413-6770.

PSC/CCA019-C (Rev 01/04)

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STATE OF FLORIDA

COMMISSIONERS:  
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J. TERRY DEASON  
LILA A. JABER  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON



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BLANCA S. BAYÓ  
DIRECTOR  
(850) 413-6770 (CLERK)  
(850) 413-6330 (ADMIN)

# Public Service Commission

## ACKNOWLEDGMENT

DATE: 5.5.04

TO: Meredith Mays  
FROM: Thermy, Division of the Commission Clerk and  
Administrative Services  
RE: Acknowledgment of Receipt of Confidential Filing

05266-04

This will acknowledge receipt of a CONFIDENTIAL DOCUMENT filed in Docket No.

030300-TP or (if filed in an undocketed matter) concerning Responses to FPTA 1st Int. #9, and  
filed on behalf of BellSouth/Mays. The  
document will be maintained in locked storage.

Any questions regarding this matter should be directed to Kay Flynn at (850) 413-6770.

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Internet E-mail: [contact@psc.state.fl.us](mailto:contact@psc.state.fl.us)





Ruth Nettles  
Florida Public Service Commission  
2540 Shumard Oak Blvd  
Tallahassee, FL 32399-0850  
Fax: 850-413-7118

Re: Docket No. 030300-T

Please make the following address change to your records:

Florida Public Telecommunications Association  
9432 Baymeadows Rd Suite 140  
Jacksonville, Florida 32256

Phone: 904-425-6050  
Fax: 904-425-6010

Executive Director: Bruce Renard  
Email: [brenard@fpta.com](mailto:brenard@fpta.com)

Office Manager: Margaret Carner  
Email: [mcarner@fpta.com](mailto:mcarner@fpta.com)

Website: <http://www.fpta.com>

RECEIVED-FPSC  
MAY -5 PM 3:12  
COMMISSION  
CLERK

Done  
05/05/04  
KMP



5/5/2004\*\*\*\*\*

2:02 PM\*\*\*\*\*

Matilda Sanders\*\*\*\*\*1

Matilda Sanders

0470 -PHO

From: Jackie Schindler  
Sent: Wednesday, May 05, 2004 1:54 PM  
To: CCA - Orders / Notices  
Subject: Order / Notice Submitted

14

Date and Time: 5/5/2004 1:53:00 PM  
Docket Number: 030300-tp  
Filename / Path: phorder.doc  
Order Type: Signed / Hand Deliver

a prehearing order has been signed and moved to gc orders for issuance today - i'll bring it to you shortly -

PLEASE MAKE 15 EXTRA COPIES FOR LEGAL - THANKS!!!

js

RECEIVED-TPSC  
MAY -5 PM 2:03  
COMMISSION  
CLERK

5/0



**Public Service Commission**  
**-M-E-M-O-R-A-N-D-U-M-**

---

**DATE:** May 19, 2004

**TO:** Blanca S. Bayó, Director, Division of the Commission Clerk and Administrative Services

**FROM:** Jane Faurot, Chief, Office of Hearing Reporter Services, Division of the Commission Clerk and Administrative Services

**RE:** DOCKET NO. 030300-TP, HEARING HELD 05/12/04.

---

**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.

DOCUMENT NOS.: 05687-04, 05/18/04  
05688-04, 05/18/04

The transcript for the above proceedings has been completed and is forwarded for placement in the docket file, including attachments.

Please note that Staff distribution of this transcript was made to:

LEGAL, CMP

Acknowledged BY:

A handwritten signature in cursive script, appearing to read "J. Faurot", written over a horizontal line.

JF/rlm

**TOBIN & REYES, P.A.**

LAW OFFICES

7251 WEST PALMETTO PARK ROAD

SUITE 205

BOCA RATON, FLORIDA 33433-3487

TELEPHONE (561) 620-0656

FACSIMILE (561) 620-0657

DAVID S. TOBIN

RICARDO A. REYES

JOSEPH R. GIBSON

WRITER'S E-MAIL

[dst@tobinreyes.com](mailto:dst@tobinreyes.com)

June 15, 2004

*Via Hand Delivery*

Ms. Blanca S. Bayo  
Division of Commission Clerk and  
Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

RECEIVED-FPSC  
04 JUN 16 AM 10:06  
COMMISSION  
CLERK

Re: 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**

Dear Ms. Bayo:

Enclosed please find an original and fifteen copies of the Florida Public Telecommunications Association, Inc.'s Post-Hearing Brief, which we ask that you file in the above referenced docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached certificate of service.

*Place in correspondence  
file. This is a duplicate  
of 06634-04 filed  
6/15/04.*

Very truly yours,

TOBIN & REYES, P.A.



David S. Tobin

Enclosure

Cc: All Parties of 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 Rates for Payphone       )  
Line Access, Usage, and Features.       )

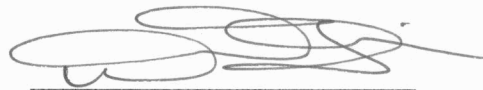
Docket No.: DN 030300-TD

June 15, 2004

I HEREBY CERTIFY that one copy of FPTA's Post-Hearing Brief has been furnished this 15<sup>th</sup> day of June, 2004, to the following:

Meredith E. Mays  
Regulatory Counsel  
BellSouth Corporation  
Legal Department  
675 West Peachtree Street  
Suite 4300  
Atlanta, Georgia 30375-0001

Nancy White  
General Counsel – Florida  
BellSouth Telecommunications, Inc.  
150 West Flagler Street  
Suite 1910  
Miami, Florida 33130



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)



**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

Filed: June 15, 2004

**POST-HEARING BRIEF OF  
THE FLORIDA PUBLIC TELECOMMUNICATIONS ASSOCIATION, INC.**

The Florida Public Telecommunications Association, Inc. ("FPTA") respectfully submits this Post-Hearing Brief.

**STATEMENT OF BASIC POSITION**

On February 2, 1996, the Telecommunications Act of 1996 (the "Act") became law. The Telecommunications Act of 1996 was an unusually important legislative enactment that changed the landscape of telecommunications regulation in our country. Through this comprehensive amendment to the Communications Act of 1934, Congress sought to establish a pro-competitive national telecommunications policy. Congress' express purpose for passing Section 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."

Also in 1996, the FCC passed a series of *Payphone Orders* that provided specific standards for the implementation of Section 276 of the Act, many of which were not new standards but had been in place for many years, including the *Computer III Guidelines*. In

the 1996 *Payphone Orders*, the FCC required all LECs file intrastate tariffs for payphone access services that: (a) were cost-based, (b) consistent with Section 276 of the Act, (c) non-discriminatory and (d) in compliance with the FCC's new services test. Notwithstanding those long-standing requirements, BellSouth's PTAS rates have to date never complied with those requirements. BellSouth's recent "voluntary" reduction of its PTAS rates by the amount of the federal EUCL charges and proposed rate reductions in these proceedings concede that to be true.

Through two letters from Michael Kellogg, as counsel to the RBOC Coalition of which BellSouth was and is a member, BellSouth acknowledged the FCC's requirement that it certify that its PTAS rates be compliant with Section 276 and the *Payphone Orders*, but requested a waiver indicating that it needed more time to comply with that requirement. The FCC granted BellSouth's waiver request that enabled BellSouth to collect significant amounts in dial around compensation. However, that waiver was contingent on BellSouth's intrastate PTAS rates being in compliance with Section 276 of the Act. Notwithstanding the commitment, BellSouth made no changes to its Florida intrastate payphone rates and, as a result, its rates have to date never complied with those requirements.

Subsequently, BellSouth and the other RBOCs utilized their significant resources to delay implementation of Section 276 of the Act. As a result, the many state payphone associations, including the FPTA, along with the national payphone association, the American Public Communications Council (the "APCC"), worked in concert to seek out the FCC's assistance to clarify the requirements of Section 276 of the Act.

The result of those efforts was the FCC's issuance of two orders. As early as March of 2000, the FCC's Common Carrier Bureau (the "Bureau") issued the *First Wisconsin Order*, and then in January of 2002, the FCC issued the *Second Wisconsin Order*. The FCC's original *Payphone Orders* and the implementation of those orders through the *Wisconsin Orders* form the basis of these proceedings and provide this Commission with the principles that must be applied to ensure that BellSouth's intrastate PTAS rates comply with Section 276 of the Act.

In the *Wisconsin Order*, the FCC specifically found that "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 their own telephone services." Payphone service is on-demand dial tone/per use wireline, high quality service available twenty-four hours per day, seven days per week, 365 days per year. 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 make 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. Moreover, payphones provide vital access to this nation's telecommunications infrastructure for Florida's poorest citizens and tourists, two very important groups of citizens who deserve this Commission's protection.

FPTA has requested that this Commission implement the national policy mandates set forth in Section 276 of the Act and to implement the standards established by the FCC in its original *Payphone Orders* and the *Wisconsin Orders*. The FPTA is requesting that this Commission establish a prospective BellSouth monthly PTAS rate of

\$18.04, which includes the federal EUCL charge and permits BellSouth to fully recover both its direct costs and a reasonable allocation of overhead. The FPTA is also requesting that this Commission require BellSouth to refund to PSPs: (i) the amount of the EUCL unlawfully collected from PSPs Between April 15, 1997 and November 10, 2003; and (ii) the difference between the excessive rates BellSouth actually charged and collected from PSPs and what would have been a proper intrastate PTAS rate compliant with Section 276 of the Act since this Commission's prior orders.

### **BACKGROUND**

The 1996 Act generally "sought to promote competition and...secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid development of new telecommunications services." Specifically, in Section 276 Congress directed the FCC to issue new regulations designed "to promote competition among payphone service providers and promote the widespread deployment of payphones services to the benefit of the general public..." Moreover, Congress specifically provided 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."

In making its determination in these proceedings, this Commission's final decision must be based upon (a) the Act, particularly Section 276 of the Act; and (b) the FCC's orders implementing Section 276 of the Act. Commencing in the fall of 1996, the FCC issued a series of Orders implementing Section 276 of the Act<sup>1</sup>. The *Payphone*

---

<sup>1</sup>*Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecom Act of 1996*, CC Docket 96-128, *First Report and Order*, 11 FCC Rcd. 20541 (1996); *Order on Reconsideration*, 11FCC Rcd. 21233 (1996), *aff'd in*



*Orders* generally prescribe a four-part standard for determining whether local exchange carrier intrastate PTAS rates meet the requirements of Section 276 as implemented by the FCC: whether those rates are (1) cost based; (2) consistent with the requirements of Section 276 of the Act; (3) nondiscriminatory; and (4) consistent with the FCC's *Computer III* tariffing guidelines (i.e., in compliance with the so-called "new services test"). The FCC specifically relied "on the states to ensure that the basic payphone line service is tariffed in accordance with the requirements of Section 276." *Order on Reconsideration*.

The FCC's Common Carrier Bureau, in reinforcing that the requirements of Section 276 must be applied to existing, previously-tariffed, intrastate payphone services, reiterated the four part test as follows:

"Tariffs for payphone services, including unbundled features and functions filed with the states, pursuant to the Payphone Reclassification proceeding, must be cost-based, consistent with Section 276, non-discriminatory and consistent with Computer III tariffing guidelines[(i.e., the new services test)]."

Essentially, this test requires that the charge for a rate element not exceed the direct cost plus a reasonable allocation of overhead (defined as joint and common costs).

---

*part and remanded in part sub nom., Ill. Public Telecomms. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997); *First Clarification Order*, 12 FCC Rcd. 20997 (Com. Car. Bur. 1997); *Second Clarification Order*, 12 FCC Rcd. 21370 (Com. Car. Bur. 1997); *Second Report and Order*, 13 FCC Rcd. 1778 (1997), *aff'd in part and remanded in part. Sub nom., MCI Telecoms Corp. v. FCC*, 143 F.3d 606 (D.C. Cir. 1998); *Third Report and Order on Reconsideration of the Second Report and Order*, 14 FCC Rcd. 2545 (1999), *aff'd*, *American Public Communications Council, Inc. v. FCC*, 215 F.3d 51 (D.C. Cir. 2000); *In the Matter of Wisconsin Public Service Commission Order Directing Filings*, 15 FCC Rcd. 9978 (Com. Car. Bur. 2000) ("*First Wisconsin Order*"); and *Memorandum Opinion and Order*, 17 FCC Rcd. 2051 (2002) ("*Second Wisconsin Order*") (the *First Wisconsin Order* and the *Second Wisconsin Order* may be collectively referred to as the "*Wisconsin*

FPTA believes that there is no disagreement on the applicability of the foregoing four-part standard to the issues that are before this Commission.

### THE QUID PRO QUO

Section 276 of the Act also required the FCC to prescribe regulations that, among other things, would “establish a per call compensation plan to ensure that payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone...” 47 U.S. C. §276(b)(1)(A). In implementing this requirement, the FCC made it clear that once the Regional Bell Operating Companies (“RBOC”)(i.e., BellSouth) were able to certify that they had met the other requirements imposed on them by Section 276, as implemented by the FCC, the RBOCs could also receive such compensation. The burden was placed squarely on the RBOCs to show that that they met this burden.

“Accordingly, we conclude that LECs will be eligible for compensation like the other PSPs when they have completed the requirements for implementing our payphone regulatory scheme to implement Section 276.”  
(*Order on Reconsideration* at paragraph 131)

The Bureau’s clarification of this requirement prompted the RBOCs to request a waiver to meet the intrastate tariff compliance requirement, without delaying their receipt of dial around compensation. In doing so, the RBOCs conceded that the then *Payphone Orders* “mandate that the payphone services a LEC tariffs at the state level are subject to the new services test.” *Second Clarification Order* at paragraph 18. As a further incentive for the FCC to provide them with additional time, the RBOCs voluntarily

---

*Orders*”) (unless individually referred to, collectively hereinafter the “*Payphone Orders*”).

committed "to reimburse or provide credit to those purchasing the services back to April 15, 1997 ... to the extent that the new tariff rates are lower than existing ones." *Second Clarification Order* at paragraph 18. Based upon those representations, the FCC granted all LECs an additional 45 days to bring their intrastate tariffs into compliance with the FCC's rules, but allowed them to begin to collect dial around compensation on April 15, 1997.

Those decisions established a clear *quid pro quo*. To be eligible to receive dial around compensation, BellSouth must have had in place intrastate tariffs that met the FCC's requirements for Section 276 of the Act, i.e., the four part test, by no later than May 19, 1997. In return for the right to collect dial around compensation, if an RBOC's intrastate PTAS rates subsequently were found not in compliance with the requirements of Section 276, the RBOC was obligated to refund or credit the difference.

Based upon that promise, BellSouth began collecting dial around compensation as of April 15, 1997. Based upon the number of payphones operated by BellSouth between April 15, 1997 and the date that BellSouth ceased providing payphone services, BellSouth has collected Millions of Dollars in dial around compensation (conservative estimates place this amount at more than \$59 Million). Notwithstanding the fact that BellSouth has collected Millions of Dollars in dial around compensation, BellSouth's Florida intrastate PTAS rates have never been in compliance with Section 276 of the Act.

### **THE WISCONSIN ORDERS**

In the aftermath of the 1996 *Payphone Orders*, proceedings were initiated by various state commissions, including this Commission, to apply the FCC's payphone requirements. Those states' applications of the FCC pricing requirements (including the

new services test) to PTAS were, in many instances, disparate and not in furtherance of Congress' and the FCC's initiative. As those decisions were issued, state regulators, PSPs and others sought advice and clarification from the FCC concerning the mandates of the agency's initial actions. Ultimately, the FCC adopted the two *Wisconsin Orders* in response to those efforts to provide guidance to PSPs, the local exchange companies and state regulators regarding the proper interpretation of the 1996 *Payphone Orders*.

The Bureau's *First Wisconsin Order* and the FCC's *Second Wisconsin Order* were both issued to address "unnecessary confusion and delay in the implementation of Payphone Order-compliant tariff filings" (*First Wisconsin Order* Paragraph 8) and "disparate applications of the new services test in various state proceedings" (*Second Wisconsin Order* paragraph 2). The FCC, in both cases, was responding to the RBOCS' many efforts to delay or otherwise prevent the implementation of the original 1996 *Payphone Orders*. Accordingly, the FCC gave clear direction in the *Second Wisconsin Order* that it issued that order for the specific purpose to "...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." (*Second Wisconsin Order*, at Paragraph 2).

The *Wisconsin Orders* did not change or add to the original requirements. Rather, the FCC simply clarified what its long-standing policies and requirements had been. As the Michigan Public Service Commission recently held in its Section 276 proceedings:

"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."



In the *First Wisconsin Order*, the Bureau provided state regulators with a framework for the application of the new services test to PTAS rates that simply reiterated "longstanding new services test policy." In that order, the Common Carrier Bureau relied upon the methodologies and principles the FCC had utilized in prior new services test cases. The principles of that order are as follows:

1. "Costs must be determined by the use of an appropriate forward looking, economic cost methodology that is consistent with the principles the Commission set forth in the *Local Competition First Report and Order*." (at paragraph 9).
2. "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. 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." (at paragraph 10).
3. "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." (at paragraph 11)
4. "Absent justification, LECs may not recover a greater share of overheads in rates for the service under review than they recover from comparable services...For the purpose of justifying overhead actions, 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." (at paragraph 11)
5. "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." (at paragraph 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 service, plus a "just and reasonable portion of the carrier's overhead costs." (at paragraph 9)

6. "In order to avoid a double 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." (at paragraph 12)

In the *Second Wisconsin Order*, the FCC affirmed almost all of the conclusions of the Bureau's *First Wisconsin Order* and provided the following important clarifications:

1. "[In the *Reconsideration Order*], we confirmed that, even if LEC payphone tariffs were filed at the state level, they should nonetheless comply with Section 276 as implemented by the FCC and, as such should be cost-based, nondiscriminatory and consistent with both Section 276 and our own Computer III tariffing guidelines." (at paragraph 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 for computing rates for comparable services offered to competitors." (at paragraph 24)
3. "The Commission's longstanding precedent shows that we have used forward-looking cost methodologies where we have applied the new services test." (at paragraph 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.” (at paragraph 49)

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 line services.” The LECs can include such “retail” costs if they can demonstrate that these costs are attributable to payphone line services.” (emphasis added, at paragraph 50)
6. With regard to calculation of acceptable overhead loadings, the FCC confirmed that payphone access service rates developed using UNE overheads “are in full compliance” with both the Act and the *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 (at paragraphs 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.” (at paragraph 56)
8. The FCC specifically and directly rejected the Coalition’s argument that ILECs are “free to apply to payphone service rates whatever markup over direct costs is incorporated in their business line rates.” (at paragraph 55)
9. The FCC specifically and directly rejected the Coalition’s argument that “the *Payphone Features Order* supports the proposition that any overhead allocation within a wide range is “reasonable” for purposes of the new services

test.” (at paragraph 57). The FCC rejected the argument that the rate to cost ratio of 4.8x adopted in that Order was applicable in the context of setting rates for any other payphone services, instead describing the allowance of such an overhead loading as “very fact specific”, based on “adequate justification” provided in that investigation, and applicable only to “payphone features whose monthly costs did not exceed a few cents per line.” (at paragraph 57).

In those instances in which it provided important clarifications, the FCC also utilized longstanding policies and methodologies included in the 1996 *Payphone Orders* and other orders in which it dealt with competitive services, such as the *Local Competition Order*, the *ONA Tariff Order* and the *Physical Collocation Tariff Order*. None of those clarifications introduced new principles or requirements. Rather, the clarifications included policies, precedents and methodologies that were previously included in the 1996 *Payphone Orders*, or other FCC orders which (i) dealt with the application of the new services test to other competitive services and (ii) predate the 1996 *Payphone Orders*. The *Payphone Orders* and the principles embodied therein provide the primary framework for this Commission’s analysis of BellSouth’s PTAS rates.

BellSouth would have this Commission believe that it did not understand how to apply the new services test to PTAS rates prior to the *Second Wisconsin Order*. In fact, at the hearing BellSouth argued that in the *Second Wisconsin Order*, the FCC “detailed how you go about implementing the new services test and included some specific guidelines on the overhead” (Hearing transcript, p. 19, lines 22-24). BellSouth has at all times understood how to calculate a Section 276 compliant intrastate PTAS rate. However, it elected not to do so for its benefit, and to the detriment of the independent payphone industry in the State of Florida.

BellSouth participated in the proceedings that formed the basis of the FCC's *Second Wisconsin Order*. In fact, Mr. Shell testified that BellSouth "probably did participate in the *ONA Tariff Order* in the early 1990s." (Hearing Transcript, p. 256, lines 19-21). Despite (i) participating in those proceedings, (ii) creation of rates for competitive services utilizing the new services test (such as UNEs) and (iii) significant legal and cost expertise, BellSouth would like this Commission to believe it could not have created compliant intrastate PTAS rates without the "guidance" provided by the FCC in the *Second Wisconsin Order*. Such an argument is without merit.

### **PROCEDURAL HISTORY**

On August 11, 1998, in Docket No. 970281-TL, this Commission issued an Order concluding that BellSouth's PTAS rates, which were and remain BellSouth's 1FB business line rates, are consistent with Section 276 of the Act. Unfortunately, this Commission was asked to consider those rates at a time when the RBOCs, including BellSouth, were using their considerable resources to prevent and otherwise delay the implementation of Section 276 of the Act. In fact, at the time of this Commission's prior decision, BellSouth was still arguing to the FCC that the new services test was not even applicable to pay telephone access rates.

During the time period in question, the independent payphone industry made a concerted decision to pursue clarification and guidance from the FCC through its partner, the APCC, the national payphone industry association that would allow state regulators, including Florida, to act consistent with the FCC's implementation of Section 276. State payphone associations and independent payphone providers simply could not afford to



present the question of unlawful PTAS rates simultaneously to federal regulators and public service commissions across the country, particularly given the RBOCs efforts to prevent implementation of Section 276 and their unlimited resources to combat those types of proceedings. In fact, Messrs. Renard and Wood participated extensively in the industry's efforts to cause the FCC to provide the necessary guidance to cause the RBOCs to comply with Section 276. As Mr. Wood stated at the hearing in response to BellSouth's question concerning the FCC's First *Wisconsin Order*:

“...there were quite a few ex parte meetings at the bureau level prior to the bureau order or prior to this being taken up by the bureau in terms of deciding Wisconsin, and the discussion was whether the commission was going to, or the bureau was going to take up the issue to provide guidance independently of any state request such as Wisconsin. When the Wisconsin letter came in, the bureau took the opportunity to do both, and the FCC at the commission level in the next order was very clear it was taking the opportunity to do both. ...[H]aving been involved in all those meetings about how important it was to get clarification from the states, I'm not comfortable with the characterization that says this was just about, ever just about Wisconsin, because that's just not true.”  
(Hearing Transcript, p. 169, lines 6-22)

Additionally, in those prior proceedings BellSouth failed to provide this Commission with a calculation of the overhead allocation included in the PTAS rates, failed to justify that overhead allocation and failed to provide this Commission with any methodology to determine that overhead allocation. Such a failure is no surprise when BellSouth was arguing to the FCC that any overhead allocation within an extremely wide range is “reasonable” for purposes of the new services test. (Second *Wisconsin Order*, at paragraph 57). In the *Second Wisconsin Order*, the FCC explicitly rejected BellSouth's argument. Since that time, the FPTA has provided this Commission with significant new

information in the form of FCC clarification with federal court confirmation on the precise issues in this docket that confirm the arguments made by the APCC and its partner state associations. Those clarifications are a reiteration of the requirements that the FCC set forth in its 1996 *Payphone Orders*, and merely restate and clarify “what the law according to the agency is and has been.”

BellSouth will argue that the FPTA’s failure to participate fully in those proceedings, file a motion for reconsideration or file an appeal of this Commission’s prior decision should cause this Commission to deny the relief requested by the FPTA. BellSouth takes that position despite the undisputed evidence that BellSouth’s PTAS rates at the time of this Commission’s prior orders violated Section 276 of the Act. Such an argument is predictable because BellSouth has no other argument. BellSouth cannot argue that its rates are compliant with Section 276, because they were not compliant at the time those orders were issued and they remain non-compliant today.

### **IMPORTANCE OF PAYPHONES**

In its *Second 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.” *Second Wisconsin Order* at paragraph 3.

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.

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 - \$39,999	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.

While BellSouth may argue that the telephone penetration rate for households with an annual income of less than \$10,000 has increased somewhat in Florida since 1993, it remains at well less than one hundred percent. And as Mr. Wood noted during the hearing, those households are "... not 100[%], and times several million people, that leaves a lot of people without a telephone. (Hearing Transcript, p. 176, lines 15-18).

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.

In response to Commission Staff's First Request for Production of Documents, Item No. 3, FPTA provided this Commission with letters from various community service organizations urging the FCC to implement the new services test to ensure the continued widespread availability of payphones. Those community service organizations provided that encouragement to the FCC because of the importance communications link that payphones provide to their constituency

Messrs. Renard and Wood have testified that lowering the PTAS rate will help to ensure the widespread deployment of pay telephones in the State of Florida. In fact, it has been undisputed in these proceedings that, as Mr. Wood testified "... the line rate, by far and away [is] the greatest contributor to whether the provider can keep the phone in place or not. It matters more than, far more than anything else." (Hearing Transcript p. 178 at lines 4-7)

The relief requested by the FPTA in these proceedings will play a critical role in ensuring that Florida's citizens and tourists continue to have access to payphone services. That is particularly true based upon BellSouth's recent exit from the payphone industry. BellSouth, the single largest payphone provider in the State of Florida, completed its exit from the payphone business in its nine-state region, including Florida, earlier this year. Now, more than ever, the payphone industry is in need of action by this Commission. This Commission is acting under the authority granted by the FCC in furtherance of Congress' goal to "promote the widespread deployment of payphone services to the benefit of the general public." As Mr. Wood testified "Widespread deployment includes keeping as many phones as possible for the benefit of the general public." It does not necessarily mean adding payphones where none exist. Requiring BellSouth to provide the lowest possible rate will ensure that the declining payphone industry will continue to provide public communications to Florida's citizens.



## ARGUMENTS

**Issue 1(a): Has BellSouth reduced its intrastate payphone line rates by the amount of the interstate EUCL? If not, has BellSouth ceased charging the EUCL on payphone lines?**

BellSouth filed a revision to its General Subscriber Service Tariff, Section A7.4 to reduce the Florida payphone rates by the EUCL amount on October 27, 2003, which became effective November 19, 2003. It is important for this Commission to understand that notwithstanding its tariff revision, BellSouth continues to charge and collect EUCL from payphone services providers in the State of Florida. It is also important to note that BellSouth filed its tariff revision on the eve of filing testimony in these proceedings. It is apparent that BellSouth did not desire to file testimony in this case in which it would have to admit that it so blatantly violated federal law. Moreover, BellSouth's "voluntary" reduction of the PTAS rates by the amount of the EUCL in effect concedes that BellSouth's PTAS rates were never in compliance with the requirements set by the FCC.

**Issue 1(b): As of what date was BellSouth required to reduce its intrastate payphone line rates by the amount of the interstate EUCL?**

BellSouth was required to reduce its intrastate payphone line rates by the amount of the interstate EUCL on or before April 15, 1997. Paragraph 12 of the *First Wisconsin Order* provides:

We also note that the forward-looking cost studies 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 facilities involved."

The requirement that BellSouth reduce its intrastate payphone line rates by the amount of the interstate EUCL was affirmed by the FCC in the *Second Wisconsin Order*. The FCC confirmed that "...in establishing its cost based, state tariffed charge for payphone line service, a BOC must reduce the monthly line charge determined under the new services test by the amount of the applicable federally tariffed SLC." (*Second Wisconsin Order*, at paragraph 61). There can be no dispute that the new services test was applicable to intrastate PTAS rates on and after April 15, 1997. Therefore, BellSouth was obligated to "reduce the monthly line charge determined under the new services test by the amount of the applicable federally tariffed" EUCL on or before April 15, 1997.

**Issue 1(c): Can the FPSC order refunds to PSPs for the time period bracketed between (a) and (b)? If so, what is the amount of any required refunds and how should any refunds be effected?**

Yes, the Commission must order refunds. 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 required under the *Payphone Orders*, as ultimately clarified by the *Wisconsin Orders*. 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."

There is no dispute that a Bell Operating Company must reduce the monthly PTAS line charge determined under the new services test by the amount of the federally tariffed EUCL (Direct Testimony of Kathy Blake, p. 8; Hearing Transcript, p. 216, lines 14-21). Despite the clear requirement that the intrastate PTAS rate must be reduced by

the amount of the federally tariffed EUCL, BellSouth failed to account for the amount of the EUCL from April 15, 1997 through November 10, 2003.

In Order Nos. PSC-98-1088-FOF-TL and PSC-99-0493-FOF-TL in Docket No. 970281-TL, this Commission incorrectly determined that BellSouth's intrastate PTAS rates satisfied the new services test. It did so, despite clear evidence that BellSouth failed to reduce its intrastate PTAS rates by the amount of the federally tariffed EUCL. As a result, BellSouth double-recovered or at least over recovered its costs from April 15, 1997 until November 10, 2004, a period of seven years, six months and 26 days.

This Commission's prior decision is in direct conflict with the FCC's *Wisconsin Orders*. This Commission must correct its prior decision and cause BellSouth to refund to PSPs the unlawful profits it collected since April 15, 1997, especially since BellSouth has been permitted to collect and keep millions of dollars in dial around compensation and in view of BellSouth's commitment to implement Section 276 compliant rates from April 15, 1997 forward. To allow BellSouth to retain those unlawful profits to the detriment of the payphone industry would only serve to negatively impact the widespread deployment of payphones in the State of Florida in violation of Section 276 of the Telecom Act. These dollars are a mere "blip" on BellSouth's financial radar, but will provide an extremely significant financial event for the remaining payphone providers in Florida.

In its present capacity, this Commission is acting through the FCC's delegation of power to implement the Act and to promote the widespread deployment of payphones to the benefit of the general public. The FCC has broad authority under the Act to rectify over-compensation in violation of Section 276 through refunds when necessary to ensure

fair compensation. See *MCI Telecom Corp. v. FCC*, 143 F3d 606, 609 (D.C. 1998). Accordingly this Commission 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 Section 276 of the Act.

Even if this Commission looks to Florida law, state law requires that this Commission correct its prior decisions. This Commission has the inherent power to modify its prior orders by the reason of the nature of the agency and the functions it is empowered to perform. See *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. 1<sup>st</sup> DCA 1991). For example, "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." *Reedy Creek Util. Co. v. Florida Pub. Serv. Comm'n*, 418 So.2d 249 (Fla. 1982). The Florida courts have long recognized an exception to the doctrine of administrative finality where there is a demonstrated public interest. See *Peoples Gas Systems, Inc. v. Mason*, 187 So2d 335 (Fla. 1966); *Austin Tupler Trucking, Inc. v. Hawkins*, 377 So. 2d 679 (Fla. 1979). Where there is a demonstrated public interest, this Commission has the authority to determine whether its prior order contained such a mistake and "has a duty to correct such errors." *Sunshine Util. v. Florida Pub. Serv. Comm'n*, 577 So.2d 663, at 665 (Fla. 1<sup>st</sup> DCA 1991).

In these proceedings, this Commission is charged with furthering Congress' intent "to promote competition among payphone service providers and promote the widespread deployment of payphones services to the benefit of the general public..." In its efforts to

provide this Commission with the clear direction necessary to properly implement Section 276 of the Act in the *Wisconsin Order*, the FCC also found that payphones play a vital role in this country's telecommunications systems.

“[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. Thus, 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.

Ensuring that the citizens of Florida have access to public payphones in the BellSouth region of the State of Florida is clearly a “demonstrated public interest” as found by Congress and the FCC. Accordingly, this Commission must ensure that Florida's citizens and tourists have access to public payphones, despite BellSouth's decision to exit the payphone business and remove hundreds of thousands of payphones in the State of Florida.

BellSouth argues that it cannot be required to issue refunds in these proceedings because it has charged “rates that comply with valid and effective Orders of the Commission.” BellSouth argues that it is not required to pay any refunds to PSPs based upon the prohibition against retroactive ratemaking and the filed rate doctrine. Those legal doctrines are based in equity, and in this case equity demands that this Commission grant FPTA's requested relief.

Florida law requires the Commission to determine rates based on equitable considerations. *GTE Florida Inc. v. Clark*, 668 So. 2d 971 (Fla. 1996). 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 because it has not, and cannot demonstrate any reasonable reliance on the PSC's prior order.

It is undisputed that BellSouth was a member of the coalition involved in the Wisconsin matter that gave rise to the Bureau's adoption of the first *Wisconsin Order* and the FCC's *Second Wisconsin Order*. BellSouth cannot now claim that that it reasonably relied to its detriment on the PSC's initial approval of BellSouth's state tariffs as a final resolution of the implementation of Section 276 of the Act. BellSouth's coalition expended considerable effort and resources to prevent and delay the implementation of Section 276. BellSouth cannot now be permitted to rely on that delay. Moreover, BellSouth fought this issue throughout its region (and as a member of the RBOC coalition across the nation) and was, therefore, well aware of the inconsistent application of Section 276 to RBOCs' rates. Surely BellSouth knew the FCC had to resolve the disparate applications of Section 276 as it did in the *Wisconsin Orders*. Indeed, the lack of conformity in state approaches implementing Section 276 was an express foundation of the *Wisconsin Orders*. See *First Wisconsin Order* at paragraph 2 n.10. Accordingly, BellSouth knew the FCC's final interpretation and implementation of the new services test could conflict with this Commission's prior order and require it to refund any overcharges back to the PSPs.

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. 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. Based upon that

promise, BellSouth collected millions of dollars in dial around compensation. BellSouth cannot claim it is prejudiced because the FPTA now asks the Commission to hold BellSouth to its promise.

Finally, BellSouth has misconstrued Florida law to absolutely bar a refund in this instance. It is clear that a refund is not automatically barred as retroactive rate making under Florida law. *See GTE Florida Inc. v. Clark*, 668 So. 2d 971 (Fla. 1996). The cornerstone to the general prohibition on retroactive ratemaking is lack of notice and reliance. Here, BellSouth always had notice of ongoing events involving the implementation of §276. Again, BellSouth can not reasonably argue it did not have notice of the complicated and inconsistent application of the new services test across the nation, particularly when it and its RBOC brethren were the cause and root of that inconsistent application.

BellSouth profited from its flagrant disregard of Section 276. BellSouth should not be permitted to retain the unlawful profits it derived from such blatant disregard for federal law and the FCC's many orders interpreting Section 276.

BellSouth may argue that FCC requirements limit the operative statute of limitations for a refund to a two-year period. Such an argument is without merit. First, the statute of limitations would only be applicable to proceedings based upon a complaint filed with the FCC, i.e., a company alleging that another took action that caused it damages. This is not such a proceeding. Rather, the FPTA is requesting that this Commission ensure that BellSouth has complied with Federal Law. Moreover, the RBOCs, including BellSouth, waived any applicable statute of limitations when it agreed to provide refunds or credits to payphone service providers as a part of the letters from

Michael K. Kellogg, counsel to the RBOC Coalition, to Mary Beth Richards. As a result of that promise, BellSouth collected millions of dollars in dial around compensation. BellSouth cannot be permitted to keep the millions of dollars in dial around compensation it collected without living up to the promise which permitted it to collect that compensation.

Additionally, the principles that this Commission must apply to BellSouth's intrastate PTAS rates to ensure that those rates comply with Section 276 of the Act have been the subject of administrative and judicial review since the adoption of the Act. In fact, BellSouth continued to challenge those long standing principles until July 11, 2003, the date on which the United States Court of Appeals for the District of Columbia Circuit, issued its decision in the appeal of the FCC's *Second Wisconsin Order*; a date that is more than three months after the FPTA filed its petition to establish these proceedings.

The amount of the refund should be the amount paid to BellSouth by payphone service providers for EUCL since April 15, 1997. Based upon the evidence utilized by BellSouth at the hearing in these proceedings, BellSouth has the information necessary to calculate the number of payphone lines it provided to PSPs in the State of Florida since April 15, 1997. The refund amount can be calculated as the product of (i) the number of PTAS lines provided to PSPs by BellSouth since April 15, 1997 and (ii) the amount of the EUCL charged by BellSouth during those periods as set forth in the record of these proceedings. (See BellSouth's responses to FPTA's 1<sup>st</sup> Set of Interrogatories, Item No 24)

The FPTA will cooperate with BellSouth to facilitate the refund and will utilize 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 to the applicable payphone service providers. FPTA will work with BellSouth to obtain the information necessary to calculate the applicable refund and present an invoice to BellSouth. Ultimately, BellSouth can pay the refund amount to the FPTA which will then distribute the applicable amount to payphone service providers.

**Issue 2. In Docket No. 970281-TL, PAA Order No. PSC-98-1088-FOF-TL, issued on August 11, 1998, this Commission determined BellSouth's intrastate payphone rates to be in compliance with the FCC's "new services" test.**

**Issue 2(a): Are BellSouth's intrastate payphone rates no longer compliant with the new services test? If so, when did they become noncompliant?**

Based on the evidence presented by BellSouth and FPTA in this proceeding, the Commission must conclude that BellSouth's PTAS rates are not, and never have been, compliant with the FCC's pricing requirements, including the new services test. In fact, at no time during the course of these proceedings has BellSouth argued that its rates are in compliance with Section 276 of the Act. To the contrary, BellSouth has proposed a reduction in its existing rates; it now proposes a statewide average rate of \$24.36 (which includes the federally tariffed \$7.13 EUCL charge). BellSouth is currently charging intrastate PTAS rates that are significantly higher than this. BellSouth currently assesses a rate group-specific PTAS rate of between \$26.93 and \$36.23 (including a \$7.13 EUCL charge). The current statewide average rate lies between \$26.93 and \$36.23 (based on FPTA's general knowledge of payphone locations, it is likely that the average is much

closer to the \$36.23 end of the range), but must be significantly higher than BellSouth's new rate proposal.

BellSouth would have the Commission believe that its decision to (1) reduce the existing rates by the amount of the EUCL, and (2) propose a further reduction when converting to a statewide average rate structure, is purely magnanimous and in no way reflective of a need to reduce rates in order to be in compliance with the FCC requirements. FPTA suggests that BellSouth's actions indicate exactly the opposite: that BellSouth's proposed reduction of its PTAS rates represents a concession that its existing rates (and its rates in effect prior to the "voluntary" reduction in the rates by the amount of the EUCL) are not in compliance with Section 276 of the Act and the specific pricing requirements established by the FCC.

Since the effective date of PAA Order No. PSC-98-1088-FOF-TL, BellSouth's costs have continuously trended downward. Despite that trend, BellSouth has failed to reduce its PTAS rates. To see clear evidence of that trend, this Commission must only look to its decisions concerning UNE pricing. UNE pricing provides this Commission with analogous service element costs because (1) the network elements required for BellSouth to provide payphone services are identical to those required to provide UNE services, to wit: (i) a local loop, (ii) a switch line port and (iii) local usage, and (2) the pricing standard established by the Act and FCC rules is essentially identical: UNE prices must be "based on cost," and PTAS prices must be "cost based." BellSouth has offered no theory as to why this Commission should believe that "based on cost" and "cost based" should have completely different meanings when pricing an equivalent telecommunications functionality.



The following table provides the cost based UNE rates approved by this Commission which reinforces the downward trend for BellSouth's costs to provide PTAS services:

<u>Date</u>	<u>Zone 1</u> <u>Rate</u>	<u>Zone 2</u> <u>Rate</u>	<u>Zone 3</u> <u>Rate</u>
02/22/2000	\$13.75	\$20.13	\$44.40
05/24/2001	\$11.74	\$16.26	\$30.75
10/18/2001	\$12.79	\$17.27	\$33.36
09/27/2002	\$10.69	\$15.20	\$26.97

The vast majority of payphones in Florida are located in either UNE Zone 1 or UNE Zone 2. Between February 22, 2000 and September 27, 2002, the UNE Zone 1 rate decreased 22%, while the UNE Zone 2 rate decreased 24%; all based upon cost studies filed by BellSouth and this Commission's application of the a cost-based pricing requirement (including the use of the TELRIC/TSLRIC methodology) to the results of those cost studies. Notwithstanding, BellSouth's intrastate PTAS rates have remained constant. In fact, BellSouth's intrastate PTAS rates, which are the equivalent of BellSouth's 1FB business line rates in Florida, have not been reduced since prior to April 15, 1997.

Because the network and operations costs incurred by BellSouth change on a continuous basis and at a discreet level, it is impossible for FPTA to provide the exact date on which BellSouth's PTAS rates became non-compliant. However, it is apparent from a review of the UNE rates that BellSouth's intrastate PTAS rates have not been compliant at least since the effective date of PAA Order No. PSC-98-1088-FOF-TL.

**Issue 2(b): If BellSouth's intrastate payphone rates are not compliant with the new services test, at what rate levels will BellSouth's intrastate payphone rates comply with the new services test?**

Based upon the cost study attached to Ms. Caldwell's direct testimony filed by BellSouth in these proceedings, BellSouth's intrastate payphone rates must be \$18.04, including the federal EUCL charge. FPTA and BellSouth cannot agree on the rate level at which BellSouth's rates will comply with the new services test in these proceedings. However, the basis of that disagreement is limited to the magnitude of the overhead loading factor and methodology utilized by BellSouth to justify that overhead loading.

FPTA does not dispute BellSouth's calculation of direct costs and its use of the TSLRIC analysis. The TSLRIC and TELRIC methodologies of computing the direct costs are one and the same and, as applied by BellSouth in this context, yield the same calculation of direct costs (BellSouth treats all non traffic-sensitive network costs as direct costs in its PTAS cost study, thereby eliminating the possibility that a TELRIC methodology will yield a different assignment of costs to the "direct" and "shared" categories than BellSouth's TSLRIC study does). As applied by BellSouth, the *only* difference between the TSLRIC and TELRIC methodologies is that its TELRIC analysis does not consider the retail costs of the service.

The parties' fundamental disagreement regarding cost-based pricing for the elements of PTAS service is based on BellSouth's purported use of the FCC's *ONA Tariff Order* methodology to compute the overhead loading factor utilized by BellSouth in calculating its proposed statewide average rate.

The burden for justifying any proposed overhead loading above a calculation of direct cost is clear: the FCC has repeatedly and consistently said that with respect to the

overhead loading factors, the BOCs, including BellSouth, must justify the methodology used. See, e.g., the *First Wisconsin Order* at paragraphs 51-52. In the *First Wisconsin Order*, at paragraph 11, the FCC stated with respect to use of UNE overhead loadings:

“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.”

BellSouth has not explained or justified its departure from Commission-approved overheads for UNEs.

In the *Second Wisconsin Order*, the FCC reaffirmed this conclusion and sanctioned the use of two additional overhead allocation methodologies that “are also consistent with our precedent regarding overhead assignments to new services provided to competitors.” *Second Wisconsin Order*, at paragraph 52. These two additional approved methodologies were employed in the FCC’s *Physical Collocation Tariff Order* and the *ONA Tariff Order*. BellSouth did not attempt to apply the FCC’s *Physical Collocation Tariff Order* methodology, but instead relied exclusively on its version of the *ONA Tariff Order* methodology.

BellSouth has not justified the extremely high (greater than 50% markup above its own measure of direct cost) overhead loading factor included in its proposed statewide average rate of \$24.36 as required by the *Wisconsin Orders*. In fact, BellSouth has presented no evidence to support its assertion that a more than 50% overhead loading factor is reasonable.

BellSouth's overhead analysis, such as it is, fails to meet the applicable standard for several reasons: First, BellSouth does not actually apply the methodology approved by the FCC. Second, in direct contrast to the methodology relied upon to establish rates for UNEs, the methodology used by BellSouth to calculate an overhead loading in this proceeding has never been evaluated or approved by this Commission. Third, BellSouth chose a methodology that would be applicable to optional PTAS features, but is not applicable to the essential elements of PTAS (such as the monthly line charges) that FPTA members must purchase in order to operate. Fourth, BellSouth concedes that its approach will result in a double-counting of certain costs (and an overstatement of overhead costs), but fails to accurately quantify this overstatement and makes no corresponding adjustment to its rate proposal.

In the *Second Wisconsin Order*, at paragraph 54, the FCC permits the BOCs (and when reviewing these calculations, state regulators) to utilize "the same method" and "the methodology" for the calculation of overhead loadings previously relied upon by the FCC; notably absent from the FCC orders is any suggestion that a BOC can modify either of the FCC's methodologies to its own liking. BellSouth generally claims that it used the methodology approved by the FCC in its *ONA Tariff Order* to calculate the overhead costs allocated to PTAS services and included in its proposed \$24.36 statewide average rate. A closer reading of Ms. Caldwell's testimony (direct at p. 7, rebuttal at p. 3) reveals that BellSouth claims simply to have chosen to "use ARMIS data relating to the plant categories used to provide payphone services in calculating an upper limit on overhead loadings." While the FCC's *ONA Tariff Order* methodology does rely on ARMIS data, it goes on to require a specific and detailed calculation based on this information that

BellSouth did not perform. Ms. Caldwell asserts that simply a choice to “use ARMIS data” is “consistent with the FCC’s evaluation of the reasonableness of ONA tariffs,” but provides no support whatsoever for the position that the detailed calculations contained in the FCC’s *ONA Tariff Order* should simply be ignored.

Second, the *ONA Tariff Order* methodology is not one that has been approved by this Commission. In his testimony, Mr. Shell stated “The direct cost was based on models previously approved, but the overhead was not necessarily based on the models previously approved by the Commission.” (emphasis added, Hearing Transcript, p. 262, lines 10-16) This Commission has never approved the use of the *ONA Tariff Order* methodology and should not attempt to utilize such a complex methodology for the first time in these proceedings; particularly when another previously approved and utilized methodology is available to the Commission.

Third, the *ONA Tariff Order* methodology is inappropriate for PTAS rates. The *ONA Tariff Order* dealt with the pricing of “Basic Service Elements” or “BSEs,” as distinguished from “Basic Serving Arrangements” or “BSAs.” In defining a BSE, Mr. Shell testified as follows: “BSEs denote an optional network capability associated with a BSA.” (emphasis added, Hearing Transcript, p. 266). Mr. Shell also provided this Commission with examples of BSEs such as hunt group, uniform call distribution and simplified desk interface (Hearing Transcript, p. 266), all of which represent optional network capabilities in an ONA context. None of the elements utilized by BellSouth to provide PTAS are, by definition, optional BSEs. Rather, each of those service elements, a local loop, a switch line port, and local usage, are the equivalent to essential Basic Service Arrangements, or BSAs. (Hearing Transcript, pp. 266-267). Like BSAs, the



elements of PTAS service are not optional, and also like BSAs, should not be priced based on the FCC's *ONA Tariff Order* methodology.

Mr. Shell conceded in his testimony that the FCC "...didn't use [the *ONA Tariff Methodology*] for basic serving arrangements" and went on to argue that the FCC "...didn't tell us to look at it and see if it's appropriate. They said you can use it." (Hearing Transcript, pp. 267-268). A review of the FCC's orders indicates that there is no basis whatsoever for BellSouth's position that the FCC has concluded that all methodologies are equally applicable in all contexts (if it had done so, the FCC would not have developed and used different methodologies to develop overhead loadings in its own applications of the new services test) or that the FCC has precluded state regulators from determining whether a given methodology is reasonable, appropriate or even meaningful for a given application. It is apparent from Mr. Shell's own testimony regarding the optional nature of BSEs that it is inappropriate to utilize the *ONA Tariff Order* methodology in calculating the overhead allocations for a service that consists entirely of essential network functionality (the equivalent of BSAs). Ultimately, BellSouth utilized the overhead allocation methodology that it did to confuse this Commission and because it produced the highest overhead "ceiling" that BellSouth thought it could possibly justify.

Finally, BellSouth's concedes that its alternative version of the *ONA Tariff Order* methodology is flawed and results in the double-counting of certain costs. Mr. Shell testified that BellSouth double-counted certain costs in calculating the overhead allocation:

"And we determined about maybe eight percent of the costs in the direct and overhead that may be in our direct study.

But we feel like that was really insignificant because what we were trying to do is develop a reasonable overhead factor that would apply.” (emphasis added, Hearing Transcript, pp. 272, 273)

While Mr. Shell considers double counting to the extent of “eight percent” of costs to be insignificant, the FPTA does not. Similarly, while BellSouth may consider a calculation that leads to a confidence level in the result best characterized as “about maybe” a given percentage, FPTA does not and does not believe that the FCC has ever permitted rates to be justified on the basis of an “about maybe” calculation. Based upon the testimony of Ms. Caldwell and Mr. Shell, this Commission must find that BellSouth has not justified the overhead loading factor proposed in these proceedings.

The FPTA has proposed an overhead loading factor of more than ten percent to be utilized in these proceedings. As Mr. Wood testified:

“[The FPTA is] applying a ten percent to [BellSouth’s] calculation of direct and shared cost. So it’s essentially a ten percent common factor. But, of course, the FCC defines overhead as shared and common, so the actual markup would be a little higher than ten percent...It is consistent with what other states have done. It is higher than what ... this Commission authorized for UNEs, which it has characterized as it has with ... payphone service as a wholesale service. I think it would be reasonable to go back to the UNE case and actually put just BellSouth’s common factor in from that case, which is well less than ten percent. I went higher to account for the possibility, as the FCC pointed out, that there might be some retail related costs. Now technically, BellSouth is supposed to demonstrate their existence and their association with payphone service, which it hasn’t done here. But to go ahead and put something in for that, I took [BellSouth’s] common cost, wholesale common cost factor and marked it up and increased it to ten percent.” (Hearing Transcript, pp. 178-179)

Based upon all the evidence presented, this Commission must approve the more than ten percent overhead allocation percentage proposed by FPTA.

As previously stated, UNE pricing provides this Commission with the most analogous service costs because the network elements required for BellSouth to provide payphone services are identical to those required to provide UNE services. The FCC has approved the UNE method of allocating overhead for use by this Commission in calculating compliant PTAS rates. This Commission has utilized that method in the past and should utilize it calculate the overhead allocation in these proceedings. This Commission must simply look to its own UNE proceedings to establish a reasonable overhead allocation for use in these proceedings.

While the FCC has specifically found that BellSouth may include certain "retail" costs in its prices for PTAS, it can only do so if it demonstrates that these costs are attributable to payphone line services. BellSouth has not justified the inclusion of any retail costs that are "attributable to payphone lines services" in these proceedings. BellSouth is unable to identify any specific retail services it provides in connection with PTAS that it doesn't provide as a part of UNEs. (Hearing Transcript, pp. 271 and 272). Notwithstanding, FPTA has included an amount for BellSouth's retail services in its proposed statewide average intrastate rate of \$18.04.

**Issue 2 (c): Can this Commission order BellSouth to revise its intrastate payphone rates? If so, as of what date should any such rate changes be effective?**

Yes. It is undisputed that this Commission has the authority and must 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.

**Issue 2(d): If BellSouth's payphone rates became noncompliant with the new services test, can the FPSC order refunds to PSPs 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. For the reasons set forth in response to Issue 1(c) in this post-hearing brief, this Commission can and must require BellSouth to refund the difference between compliant rates and the rates actually charged to PSPs in the state of Florida. Based upon the evidence presented during the course of these proceedings, BellSouth's rates are not, and have never been compliant with Section 276.

This Commission's prior Order does not forever relieve BellSouth of its obligations under Federal law to offer cost-based PTAS rates in compliance with Section 276 of the Telecom Act. The Commission must find that BellSouth has an affirmative and continuing obligation to offer PTAS rates in compliance with Section 276 of the Act. Neither the FPTA, Commission Staff, nor any other third party should be burdened with the obligation to police BellSouth's PTAS rates to ensure compliance with Federal law. Any other finding would turn Section 276 of the Telecommunications Act and the FCC's many subsequent orders interpreting Section 276 of the Act, particularly the *Wisconsin Orders*, directly on its head.

This Commission cannot permit BellSouth to retain the unlawful profits it has collected by illegally overcharging payphone service providers. There can be no doubt that BellSouth has overcharged PSPs by charging and collecting EUCL charges and excessive rates. To allow BellSouth to retain those unlawful profits to the detriment of

the payphone industry would continue to negatively impact the widespread deployment of payphones in the State of Florida in violation of Section 276 of the Telecom Act.

Respectfully submitted this 15<sup>th</sup> day of June, 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)



Matilda Sanders

0626-CFO

From: Jackie Schindler  
Sent: Tuesday, June 22, 2004 3:27 PM  
To: CCA - Orders / Notices  
Subject: Order / Notice Submitted

Date and Time: 6/22/2004 3:25:00 PM  
Docket Number: 030300-tp  
Filename / Path: confidentiality.doc  
Order Type: Signed / Hand Deliver

*attach's not online.*

RECEIVED-FRC  
JUN 23 AM 10:44  
COMMISSION  
CLERK

an order granting bst's request for specified confidential classification od cn 05266-04 (xref dn 05116-04) has been signed and moved to gc orders for issuance on wednesday

thanks

js

matilda - this order has two pages of attachments which will come with the signed order tomorrow - the attachments are not on line

3/10  
mailed



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Florida Cable Telecommunications Association

---

Steve Wilkerson, President

VIA FACSIMILE

July 1, 2004

Ms. Blanca S. Bayo, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

RECEIVED-FPSC  
04 JUL - 1 AM 10:55  
COMMISSION  
CLERK

**RE: FPSC Docket No. 030300-TP**

Dear Ms. Bayo:

I am writing to request that the Florida Cable Telecommunications Association, Inc. ("FCTA") be placed on the mailing list of persons interested in monitoring the above-referenced docket. Please send all mailings to the following:

Michael A. Gross  
Vice President, Regulatory Affairs & Regulatory Counsel  
Florida Cable Telecommunications Association, Inc.  
246 E. 6<sup>th</sup> Avenue, Suite 100  
Tallahassee, FL 32303  
850/681-1990 Tel.  
850/681-9676 Fax  
E-Mail Address: mgross@fcta.com.

Thank you for your assistance in this matter. Please contact me with any questions.

Sincerely,

Michael A. Gross  
Vice President, Regulatory Affairs  
& Regulatory Counsel

MAG:mj

Done  
07/02/04  
Kmp ✓

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECEIVED-FPSC  
AUG 18 AM 10:28  
COMMISSION  
CLERK

---

**DATE:** August 17, 2004  
**TO:** Blanca Bayo, Director, Division of Commission Clerk and Administration  
**FROM:** Cayce Hinton, Chief Advisor to Commissioner Deason *CH*  
**RE:** Intercepted Communications From an Interested Party Received in Docket No:  
030300TP

---

This office has received the attached correspondence from Veronica Valentine, Executive Director, Child Guidance Center. The correspondence has not been viewed by Commissioner Deason. Under the terms of the advisory opinion from the Commission on Ethics (issued July 24, 1991 as COE 91-31-JULY 19, 1991), the following letter does not constitute an ex parte communication by virtue of the fact that Ms. Valentine is not a party of record and the letter was not shown to the Commissioner. Because it is not deemed to be an ex parte communication, it does not require dissemination to parties pursuant to the provisions of Section 350.042, Florida Statutes. However, in such cases Commissioner Deason has requested that a copy of the correspondence and this memo be, as a matter of routine, placed in the correspondence side of the file in this docket.

CHH:mm



5776 St. Augustine Road  
Jacksonville, FL 32207-8046  
(904) 448-4700  
Fax (904) 448-4723

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August 3, 2004

Honorable Braulio L Baez, Chairman  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

RECEIVED  
AUG 11 2004  
Florida Public Service Comm.  
Commissioner Deason

Re: Docket No. 030300-TP; Petition for Expedited Review of BCI's PTAS Rate

Dear Chairman Baez:

Child Guidance Center serves a large number of clients in Northeast Florida that have a need for public payphones. When a member of our community is in trouble and reaches out for help, there must be an available and affordable avenue by which to call those in the community that can help. Those seeking assistance may only try once. *They must be able to contact that lifeline.* If there is no phone in the home, or no comfort level for calling from home, payphones are often their only means of communication.

In the face of this need, I have serious concerns that more and more payphones are being removed in Florida. The fact that BellSouth, formerly the largest payphone provider in the State, has exited entirely from the payphone business earlier this year is dramatic evidence of the validity of these concerns. I have been advised that many payphones are no longer profitable due to a dwindling number of calls and the cost of operating the payphones. It is also my understanding that the largest component of the cost incurred by the remaining payphone providers is the cost of the telephone line.

In this regard, I am aware that the FPSC has a proceeding pending to make sure that BellSouth refunds past overcharges to payphone providers and that payphone line rates charged by BellSouth are priced on a low cost, "lifeline" basis to promote widespread payphone deployment going forward. It is my desire that these goals be attained so that the clients we serve will have a payphone when they need one, by which to reach the Child Guidance Center and the hundreds of other community services organizations like ourselves across Florida.

Chairman Baez, please take whatever action is necessary to make sure payphones are available for everyone here in our State. With over 90% of our clients at the poverty level, payphones remain essential. Thank you for your consideration on this most important issue.

Respectfully,

Veronica W. Valentine, Ed.D.  
Executive Director

c: FPSC Commissioners; Executive Director  
FPSC Commissioners: Rudolph "Rudy" Bradley  
Charles M. Davidson  
J. Terry Deason  
Lila A. Jaber  
Mary Andrews Bane, FPSC Executive Director



[www.childguidancecenter.org](http://www.childguidancecenter.org)





**Public Service Commission**  
**-M-E-M-O-R-A-N-D-U-M-**

---

**DATE:** June 21, 2004  
**TO:** Blanca Bayó, Director, Commission Clerk and Administrative Services  
**FROM:** Jane Faurot, Chief, Office of Hearing Reporter Services  
**RE:** DOCKET NO. 030300-TP, HEARING HELD 05/12/04.

---

Attached for filing are Exhibits 1 through 14, representing a complete filing of the exhibits identified and admitted into the record during the proceedings held in the above docket.

Acknowledged BY:

*Tamela B. Jefferson*

JF/rlm



BRAULIO L. BAEZ  
CHAIRMAN

STATE OF FLORIDA



CAPITAL CIRCLE OFFICE CENTER  
2540 Shumard Oak  
Boulevard  
Tallahassee, FL 32399-0850  
(850) 413-6042

Public Service Commission

MEMORANDUM

TO: Blanca Bayó, Commission Clerk  
FROM: Manuel Arisso, Advisor to Chairman Baez  
RE: Docket No. 030300-TP  
DATE: August 12, 2004

RECEIVED-FPSC  
04 AUG 12 PM 3:35  
COMMISSION  
CLERK

Chairman Baez received the attached letter in connection with the above referenced docket. However, he has not seen the correspondence; no *ex parte* communication has taken place.

Please place this in the correspondence side of the docket file.

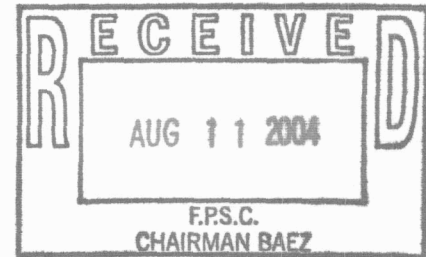


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August 3, 2004

Honorable Braulio L Baez, Chairman  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850



Re: Docket No. 030300-TP; Petition for Expedited Review of BCI's PTAS Rate

Dear Chairman Baez:

Child Guidance Center serves a large number of clients in Northeast Florida that have a need for public payphones. When a member of our community is in trouble and reaches out for help, there must be an available and affordable avenue by which to call those in the community that can help. Those seeking assistance may only try once. *They must be able to contact that lifeline.* If there is no phone in the home, or no comfort level for calling from home, payphones are often their only means of communication.

In the face of this need, I have serious concerns that more and more payphones are being removed in Florida. The fact that BellSouth, formerly the largest payphone provider in the State, has exited entirely from the payphone business earlier this year is dramatic evidence of the validity of these concerns. I have been advised that many payphones are no longer profitable due to a dwindling number of calls and the cost of operating the payphones. It is also my understanding that the largest component of the cost incurred by the remaining payphone providers is the cost of the telephone line.

In this regard, I am aware that the FPSC has a proceeding pending to make sure that BellSouth refunds past overcharges to payphone providers and that payphone line rates charged by BellSouth are priced on a low cost, "lifeline" basis to promote widespread payphone deployment going forward. It is my desire that these goals be attained so that the clients we serve will have a payphone when they need one, by which to reach the Child Guidance Center and the hundreds of other community services organizations like ourselves across Florida.

Chairman Baez, please take whatever action is necessary to make sure payphones are available for everyone here in our State. With over 90% of our clients at the poverty level, payphones remain essential. Thank you for your consideration on this most important issue.

Respectfully,

Veronica W. Valentine, Ed.D.  
Executive Director

c: FPSC Commissioners; Executive Director  
FPSC Commissioners: Rudolph "Rudy" Bradley  
Charles M. Davidson  
J. Terry Deason  
Lila A. Jaber  
Mary Andrews Bane, FPSC Executive Director



[www.childguidancecenter.org](http://www.childguidancecenter.org)



ORIGINAL

STATE OF FLORIDA



COMMISSIONERS:  
BRAULIO L. BAEZ, CHAIRMAN  
J. TERRY DEASON  
LILA A. JABER  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

EXECUTIVE DIRECTOR  
MARY ANDREWS BANE  
(850) 413-6068

Public Service Commission

August 24, 2004

RECEIVED-FPSC  
04 AUG 24 PM 2:34  
COMMISSION  
CLERK

Veronica W. Valentine, Ed.D.  
Executive Director  
Child Guidance Center  
5776 St. Augustine Road  
Jacksonville, FL 32207-8046

Re: Docket No. 030300-TP; 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

Dear Dr. Valentine:

Because the above docket is pending before the Commission, Chairman Baez has asked me to respond to your letter.

I share your concern that the citizens and visitors of this state have affordable and reliable payphone service available to them, whenever needed. The Florida Public Telecommunications Association (FPTA) filed its petition for review of BellSouth's PTAS rates for similar reasons. Like you, I am aware of the decreasing number of payphones within this state. However, this docket addresses the appropriateness of BellSouth's rates for payphone access services in Florida and does not specifically address the "availability" of payphones.

In its petition, the FPTA requested that this Commission implement the national policy mandates set forth in Section 276 of the Telecommunications Act of 1996 and the standards established in proceedings before the FCC. As part of the current proceeding before this Commission, we are tasked with determining whether BellSouth's current PTAS rates are compliant with FCC pricing guidelines, or whether revisions need to be made on a prospective basis to BellSouth's PTAS rates. In addition, this Commission will also address whether BellSouth should refund to payphone service providers (PSPs): (i) the amount of the end user common line charge (EUCL) collected from PSPs between April 15, 1997 and November 10, 2003; and (ii) if BellSouth rates are determined to be non-compliant as of a certain date, any difference in the amount BellSouth actually charged PSPs from the date of non-compliance until such time as compliant rates are in effect.

Veronica W. Valentine, Ed.D.

Page 2

August 24, 2004

I will place a copy of this letter in the docket's correspondence file. Staff's recommendation should be filed on August 26, 2004, with this Commission scheduled to vote on staff's recommendation at the September 7, 2004 Agenda Conference. An order is expected on September 27, 2004. The status of this docket can be monitored through the Commission's website at <http://www.floridapsc.com> and I encourage you to do so.

If I may be of further assistance, please do not hesitate to contact me. You may also contact the docket coordinator, Todd Brown, at (850) 413-6550 for additional information.

Sincerely,

A handwritten signature in cursive script that reads "Mary A. Bane".

Mary A. Bane  
Executive Director

MAB/tba

cc: Mr. Todd Brown  
Docket File

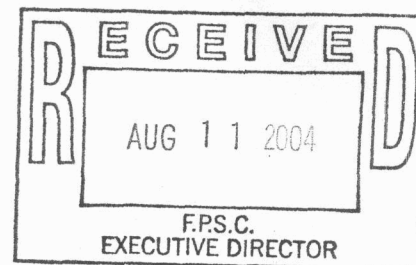


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Over 50 Years Providing Solutions...  
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August 3, 2004

Honorable Braulio L Baez, Chairman  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850



Re: Docket No. 030300-TP; Petition for Expedited Review of BCI's PTAS Rate

Dear Chairman Baez:

Child Guidance Center serves a large number of clients in Northeast Florida that have a need for public payphones. When a member of our community is in trouble and reaches out for help, there must be an available and affordable avenue by which to call those in the community that can help. Those seeking assistance may only try once. *They must be able to contact that lifeline.* If there is no phone in the home, or no comfort level for calling from home, payphones are often their only means of communication.

In the face of this need, I have serious concerns that more and more payphones are being removed in Florida. The fact that BellSouth, formerly the largest payphone provider in the State, has exited entirely from the payphone business earlier this year is dramatic evidence of the validity of these concerns. I have been advised that many payphones are no longer profitable due to a dwindling number of calls and the cost of operating the payphones. It is also my understanding that the largest component of the cost incurred by the remaining payphone providers is the cost of the telephone line.

In this regard, I am aware that the FPSC has a proceeding pending to make sure that BellSouth refunds past overcharges to payphone providers and that payphone line rates charged by BellSouth are priced on a low cost, "lifeline" basis to promote widespread payphone deployment going forward. It is my desire that these goals be attained so that the clients we serve will have a payphone when they need one, by which to reach the Child Guidance Center and the hundreds of other community services organizations like ourselves across Florida.

Chairman Baez, please take whatever action is necessary to make sure payphones are available for everyone here in our State. With over 90% of our clients at the poverty level, payphones remain essential. Thank you for your consideration on this most important issue.

Respectfully,

Veronica W. Valentine, Ed.D.  
Executive Director

c: FPSC Commissioners; Executive Director  
FPSC Commissioners: Rudolph "Rudy" Bradley  
Charles M. Davidson  
J. Terry Deason  
Lila A. Jaber  
Mary Andrews Bane, FPSC Executive Director



[www.childguidancecenter.org](http://www.childguidancecenter.org)





**Kay Flynn**

030300-TP

**From:** Kay Flynn  
**Sent:** Wednesday, September 15, 2004 2:58 PM  
**To:** Rose Thompson  
**Cc:** Hong Wang; Kim Griffin; Blanca Bayo  
**Subject:** FW: Item 30 on September 21 Agenda

**Tracking: Recipient Read**

Rose Thompson Read: 9/15/2004 2:58 PM  
Hong Wang Read: 9/15/2004 2:58 PM  
Kim Griffin  
Blanca Bayo

Rose, please see Lee Fordham's e-mail below, and on the vote sheet make a type-and-strike correction in the language in 1(c) and 2(d)--strike over "FPTA's members" and add "all payphone service providers".

Let me know if questions.

Kay

---

**From:** Mary Bane  
**Sent:** Wednesday, September 15, 2004 11:03 AM  
**To:** Lee Fordham  
**Cc:** Rick Melson; Todd Brown; Beth Keating; Manuel Arisso; Chuck Hill; Betty Ashby; Kay Flynn  
**Subject:** RE: Item 30 on September 21 Agenda

O.K. Please make sure that Manuel knows you will be making a verbal correction at agenda conference.

---

**From:** Lee Fordham  
**Sent:** Wednesday, September 15, 2004 10:59 AM  
**To:** Mary Bane  
**Cc:** Rick Melson; Todd Brown; Beth Keating  
**Subject:** Item 30 on September 21 Agenda

Good morning, Mary

I am requesting permission to make a slight clarification/correction to wording in Issue 1(c) and Issue 2(d). The Prehearing Order had modified the term "members of the FPTA" in those two locations to read "all payphone service providers." However, in drafting the Recommendation, the wording from the original Procedural Order was used.

I think it necessary to clarify that inconsistency, making certain that the Commission's ruling applies to "all payphone service providers," as reflected in the body of the Recommendation.

9/15/2004

BRAULIO L. BAEZ  
CHAIRMAN

STATE OF FLORIDA



CAPITAL CIRCLE OFFICE CENTER  
2540 Shumard Oak  
Boulevard  
Tallahassee, FL 32399-0850  
(850) 413-6042

Public Service Commission

RECEIVED-FPSC  
04 SEP 23 AM 9:39  
COMMISSION  
CLERK

MEMORANDUM

TO: Blanca Bayó, Commission Clerk  
FROM: Manuel Arisso, Advisor to Chairman Baez  
RE: Docket No. 030300-TP  
DATE: September 22, 2004

Chairman Baez received these attached letters in connection with the above referenced docket. He has not seen the correspondence, nor is it *ex parte* communication.

Please place this in the correspondence side of the docket file.

## Saving Lives • Building Hope • Ending Violence



Honorable Braulio L Baez, ~~Commissioner~~ VIOLENCE • RAPE CRISIS  
 Florida Public Service Commission  
 2540 Shumard Oak Blvd.  
 Tallahassee, Florida 32399-0850

Re: Docket No. 030300-TP; Petition for Expedited Review of BCI's PTAS Rate  
 (Item # 30; 09-21-04 Agenda Conference)

Dear Chairman Baez:

As the Assistant Director of the Refuge House, the local domestic and sexual violence center, we serve a large number of citizens here in Florida that have a need for public payphones on which to contact us. When a member of our community is in trouble and reaches out for help, there must be an available and affordable avenue by which to call for help. Those seeking assistance may only try once. *They must be able to contact that lifeline.* If there is no phone in the home, or no comfort level for calling from home, payphones are often their only means of communication.

In the face of this need, I have serious concerns that more and more payphones are being removed in Florida. The fact that BellSouth, formerly the largest payphone provider in the State, has exited entirely from the payphone business earlier this year is dramatic evidence of the validity of these concerns. I have been advised that many payphones are no longer profitable due to a dwindling number of calls and the cost of operating the payphones. It is also my understanding that the largest component of the cost incurred by the remaining payphone providers is the cost of the telephone line.

Chairman Baez, please take whatever action is necessary to make sure payphones are available for everyone here in our State. Thank you for your consideration on this most important issue.

Sincerely,

*Maureen O'Neil*

Maureen O'Neil  
 Assistant Director, Refuge House



P. O. Box 20910 • Tallahassee, FL 32316  
 Office (850) 922-6062 • Fax (850) 413-0395  
 24-Hour Hotline (850) 681-2111 or (800) 500-1119  
 E-Mail: Refuge.House@talstar.com



Apalachicola  
 (850) 653 3313

Crawfordville  
 (850) 926-9005

Madison  
 (850) 973-4144

Monticello  
 (850) 342-3518

Perry  
 (850) 584-8808

Quincy  
 (850) 627-9377

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F.C.A.D.V.  
425 Office Plaza Drive  
Tallahassee, FL 32301  
Office (850) 425-2749  
FAX (850) 425-3091



"Together we can end domestic violence"

No. 1379

Florida Coalition Against Domestic Violence

Sep. 20, 2004 4:36 PM

President  
Peany Merrill  
First Vice President  
Dorcas Egan  
Second Vice President  
Kathy Herrmann  
Recording Secretary  
Theresa Harrison  
Treasurer  
M. R. Warren  
Past President  
Ellen Siler

Honorable Braulio L. Baez, Chairman  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Re: Docket No. 030300-TP; Petition for Expedited Review of BCI's PTAS Rate  
(Item # 30; 09-21-04 Agenda Conference)

Dear Chairman Baez:

Years ago, when the Public Service Commission (PSC) was deliberating about how to establish policy regarding the use and operation of cellular telephones in Florida, the PSC was proactive in alerting the domestic violence intervention community about the pending issues to be voted on by the PSC. At that time, numerous battered women's shelters across the state provided written and oral testimony to the PSC. As a result of that process, acceptable solutions for all were achieved.

The FCADV membership, consisting of 40 certified domestic violence centers in Florida, serves a large number of victims that have an obvious need for public payphones so they can call the centers on an emergency basis in addition to seeking assistance from law enforcement. Since this issue was brought to our attention today, FCADV and its domestic violence centers do not have sufficient time to provide a meaningful response. However, I can say that FCADV is very concerned that the elimination of pay phones would remove the ability for many battered women to call police or the domestic violence shelters; thus potentially causing them to remain in danger. Please remember that the majority of homicides of women are a result of domestic violence and that the majority of those women who are killed by their partner are killed during the time period that they are fleeing or otherwise separating from their abuser. As you can imagine, it is a matter of life or death for them to have the ability to make a call to police.

I urge the PSC to vote against this issue, and request that they mirror the process from years ago when addressing the cellular phone issues and require the phone companies to convene and create acceptable alternatives to eliminating pay phones.

Chairman Baez, please render whatever action is necessary to ensure payphones are available for everyone here in our State. Thank you for your consideration on this most important issue.

Respectfully,

Tiffany Carr  
Executive Director

Cc: FPSC Commissioners; Executive Director

Abuse Counseling and Treatment, Inc.  
Advocates for Victims - SafeSpace  
Aid to Victims of Domestic Abuse, Inc.  
Another Way  
Betty Griffin House  
CASA-Community Action Steps Abuse  
Center for Abuse and Rape  
Emergency Services, Inc.  
Citrus County Abuse Shelter Association  
Dawn Center of Hernando County  
Domestic Abuse Council, Inc.  
Domestic Abuse Shelter, Inc.  
Family Life Center/Safehouse  
Women's Center  
over House of Northwest Florida, Inc.  
Fletcher House, Inc.  
House of Love and Shelter Council, Inc.  
The Haven of Holiness  
Community Services  
Holy Now of Ocala, Inc.  
Hope Family Services, Inc.  
Hubbard House, Inc.  
Loc Center House  
Martha's House, Inc.  
Miami-Dade Advocates for Victims  
Ocala Rape Crisis/Domestic  
Violence Center  
Peaceful Paths  
once River Domestic Violence Center  
Quigley House, Inc.  
Refuge House, Inc.  
Safehouse of Seminole County  
Safe Place and Rape Crisis Center  
SafeSpace, Inc.  
The Salvation Army/Brevard County  
Domestic Violence Program  
Salvation Army Domestic Violence  
Program of West Pasco  
Sereno Barker, Inc.  
Shelter for Abuse Victims & Children, Inc.  
Shelter House, Inc.  
Shelter of Pasco County, Inc.  
The Spring of Tampa Bay, Inc.  
Vivid Victims  
Women in Distress of Broward  
County, Inc.  
YWCA Harmony House



CREATING CONNECTIONS  
BUILDING COMMUNITY

P.O. Box 5164  
Largo, FL 33779

Phone  
(727) 518 - 3344

Fax  
(727) 518 - 3353

Website  
[www.211tampabay.info](http://www.211tampabay.info)

2-1-1

Community  
Voice Mail Pinellas

HealthNet  
Pinellas

Pinellas Safe Start  
Partnership Center

Volunteer  
Action Center

Programs Funded by:

Juvenile Welfare Board

United Way of Tampa Bay

Pinellas County Government

Department of Housing  
and Urban Development

City of St. Petersburg

City of Clearwater

Pinellas County  
Community Foundation

Department of  
Children and Families

Family Continuity  
Programs, Inc.

United Way of Hernando

Help-A-Child, Inc.



Honorable Braulio L Baez, Chairman  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Docket No. 030300-TP; Petition for Expedited Review of BCI's PTAS  
Rate

(Item # 30; 09-21-04 Agenda Conference)

Dear Chairman Baez:

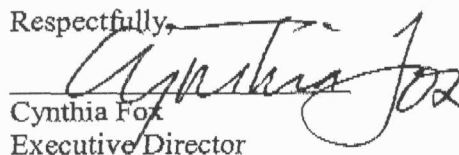
Community Voice Mail Pinellas serves a large number of citizens in Pinellas County that need public payphones to use our service. Community Voice Mail Pinellas provides free personalized voicemail boxes to help homeless and low income individuals connect with housing, employment, healthcare, and social services. We also provide a free 800 number to homeless individuals through a HUD grant so that homeless clients can check their voicemail from any Verizon payphone.

Community Voice Mail Pinellas has concerns that more and more payphones are being removed in Florida. We understand that many payphones are no longer profitable due to a dwindling number of calls and the cost of operating the payphones. It is also our understanding that the largest component of the cost incurred by the remaining payphone providers is the cost of the telephone line.

In this regard, we are aware that the FPSC has a proceeding pending to make sure that BellSouth refunds past overcharges to payphone providers and that payphone line rates charged by BellSouth are priced on a low cost, "lifeline" basis to promote widespread payphone deployment going forward. We hope this goal can be attained so that the Community Voice Mail participants we serve will have a payphone when they need one.

Chairman Baez, please take whatever action is necessary to make sure payphones are available for everyone who needs one. With 65% of CVM's clients considered homeless or chronically homeless, payphones remain essential to this mobile and disadvantaged group of people. Thank you for your consideration on this important issue.

Respectfully,

  
Cynthia Fox  
Executive Director



**Miami Coalition for the Homeless, Inc.**

2125 Biscayne Boulevard, Suite 225

Miami, FL 33137

Tel: 305.571.8101

Fax: 305.571.8157

info@miamihomeless.org

www.miamihomeless.org

Honorable Braulio L. Baez, Chairman  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Re: Item #30; 09-21-04 Agenda Conference

Dear Chairman Baez:

As the Executive Director of the Miami Coalition for the Homeless, we serve a large number of people experiencing homelessness in Miami Dade County that have a need for public payphones. For those trying to access housing and services there must be an available and affordable avenue by which to call those in the community who can provide assistance. In most instances for people experiencing homelessness payphones are their only means of communication.

For the homeless payphones often represent a communications "lifeline." Payphones provide 24/7/365 free access to "911" and have proven invaluable in times of emergency. With an estimated 4,000 people homeless on any given night in Miami-Dade County this becomes a very important issue.

I am aware that the FPSC has a proceeding pending to make sure that BellSouth refunds past overcharges to payphone providers and that payphone line rates charged by BellSouth are priced on a low cost basis to promote widespread payphone deployment going forward. It is my desire that theses goals be attained so that homeless people will have a payphone when they need one, by which to access badly needed housing and services in the community.

Chairman Baez, please take whatever action is necessary to make sure payphones are available for everyone in our State. With the City of Miami having one of the highest poverty rates in the country, payphones remain essential. Thank you for your consideration of this most important issue.

Sincerely,

Benjamin J. Burton  
Executive Director  
Miami Coalition for the Homeless, Inc.





**Public Service Commission**  
**-M-E-M-O-R-A-N-D-U-M-**

---

**DATE:** October 4, 2004

**TO:** Blanca S. Bayó, Director, Division of the Commission Clerk and Administrative Services

**FROM:** Jane Faurot, Chief, Office of Hearing Reporter Services, Division of the Commission Clerk and Administrative Services

**RE:** DOCKET NO. 030300-EI, AGENDA HELD 09-21-04.

---

**RE:** PETITION FOR EXPEDITED REVIEW OF BELL SOUTH 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.

DOCUMENT NO.: 10451-04, 09/28/04

The transcript for the above proceedings has been completed and is forwarded for placement in the docket file, including attachments.

Please note that Staff distribution of this transcript was made to:

LEGAL, CMP

Acknowledged BY:

A handwritten signature, possibly "JF", written in ink.

---

JF/rlm

**Matilda Sanders**

---

**From:** Jackie Schindler  
**Sent:** Thursday, October 07, 2004 12:40 PM  
**To:** CCA - Orders / Notices  
**Subject:** Order / Notice Submitted

**Date and Time:** 10/7/2004 12:39:00 PM  
**Docket Number:** 030300  
**Filename / Path:** 030300or.doc

A final order on arbitration of complaint has been move to gc orders for issuance today

Thanks

js

*6 mailed*

STATE OF FLORIDA

COMMISSIONERS:  
BRAULIO L. BAEZ, CHAIRMAN  
J. TERRY DEASON  
LILA A. JABER  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON



CAPITAL CIRCLE OFFICE CENTER  
2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FL 32399-0850

**Public Service Commission**

November 24, 2004

Thomas D. Hall, Clerk  
Supreme Court of Florida  
Supreme Court Building  
Tallahassee, Florida 32301

**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)**

Dear Mr. Hall:

Enclosed is a certified copy of a Notice of Appeal, filed in this office on November 22, 2004, on behalf of Florida Public Telecommunications Association, Inc. Also enclosed is a copy of Order No. PSC-04-0974-FOF-TP, the order on appeal.

Sincerely,

Kay Flynn, Chief  
Bureau of Records

KF/mhl  
Enclosure

cc: David S. Tobin, Esquire  
Nancy B. White, Esquire  
Meredith Mays, Esquire  
R. Douglas Lackey, Esquire  
J. Phillip Carver, Esquire  
David Smith, Office of the General Counsel

COMMISSIONERS:  
BRAULIO L. BAEZ, CHAIRMAN  
J. TERRY DEASON  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON  
LISA POLAK EDGAR

STATE OF FLORIDA



DIVISION OF THE COMMISSION CLERK &  
ADMINISTRATIVE SERVICES  
BLANCA S. BAYÓ  
DIRECTOR  
(850) 413-6770 (CLERK)  
(850) 413-6330 (ADMIN)

## Public Service Commission

January 27, 2005

Ms. Nancy H. Sims  
BellSouth Telecommunications, Inc.  
150 South Monroe Street, Suite 400  
Tallahassee, Florida 32301-1556

**Re: Return of Confidential Documents to the Source, Docket No. 030300-TP**

Dear Ms. Sims:

Commission staff have advised that Confidential Document Nos. 11558-03, 12631-03, 05116-04, and 05266-04, filed on behalf of BellSouth Telecommunications, Inc. can be returned to the source. The documents are enclosed.

Please do not hesitate to contact me if you have any questions concerning return of this material.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kay Flynn".

Kay Flynn, Chief  
Bureau of Records

KF/mhl  
Enclosure

cc: Todd M. Brown, Division of Competitive Markets and Enforcement  
Lee Fordham, Office of the General Counsel

RECEIVED

DATE 2.18.05

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