

ORIGINAL

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May 5, 2003

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COMMISSION
CLERK

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

Re: Docket No. 030300-TP (Petition of the Florida Public Telecommunications Association for Expedited Review of BellSouth Telecommunications Inc.'s Tariffs With Respect to Rates for Payphone Line Access, Usage, and Features)

Dear Ms. Bayó:

On April 15, 2003, BellSouth Telecommunications, Inc. ("BellSouth") filed its Motion to Dismiss in the above-listed docket, setting forth in detail the reasons this Commission should dismiss the Florida Public Telecommunications Association's claim for a refund in this docket.

In addition to the decisions that BellSouth cited in its brief, BellSouth respectfully requests that the Commission take administrative notice of the attached decision of the Kentucky Public Service Commission, which denied a similar claim for refunds sought by the Kentucky Payphone Association. The Kentucky Public Service Commission issued its decision on May 1, 2003. To BellSouth's knowledge, all three state commissions that have had an opportunity to address pay telephone refund requests have rejected such claims, and BellSouth urges this Commission to do likewise.

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.

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Enclosure

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White
Linda Dodson
David Dowds

Sincerely,
Meredith Mays
Meredith Mays (CM)

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**CERTIFICATE OF SERVICE
DOCKET NO. 030300-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and U.S. Mail this 5th day of May, 2003 to the following:

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Staff Counsel
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Meredith E. Mays (CA)

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DEREGULATION OF LOCAL EXCHANGE) ADMINISTRATIVE
COMPANIES' PAYPHONE SERVICE) CASE NO. 361

O R D E R

In 1999 the Commission established payphone access line rates for BellSouth Telecommunications Inc. ("BellSouth"), Cincinnati Bell Telephone Company ("CBT"), and Kentucky ALLTEL, Inc. ("ALLTEL") formerly known as GTE South Incorporated and Verizon South, Inc.¹ The Commission set payphone access line rates in accordance with Section 276 of the Telecommunications Act of 1996 that required state commissions to examine payphone access rates and ensure that they complied with the New Services Test.

On October 14, 2002, Kentucky Payphone Association ("KPA") filed a petition requesting that the Commission reopen Administrative Case No. 361. The KPA requested modification of the Commission's Orders based on an order from the Federal Communications Commission ("FCC"), referred to as the "Wisconsin Order,"² in which the FCC explained how it intended the state commissions to implement the New Services Test. Of issue in the Wisconsin Order is the treatment of the End User Common Line Charge ("EUCL") also known as the Subscriber Line Charge ("SLC"). The

¹ Administrative Case No. 361, January 5, 1999.

² In the matter of Wisconsin, Public Service Commission Order Directing Filings, CPD No. 00-01, FCC No. 0-25, Rel. January 31, 2002

Wisconsin Order directed state commissions to consider the revenue received from the SLC when determining cost-based rates that complied with the New Services Test.

The Staff has met with the parties in an informal conference and discussed the issues; additionally the parties have filed written responses and replies to each other. No party in the case has requested a formal hearing. Therefore, the Commission will rely on the written record for its decision.

In this Commission's Orders the SLC was not considered as a source of revenue for recovery of payphone access line rates. At the time the Commission made its decision there was no guidance from the FCC indicating that the SLC should be considered as a source of revenue for recovery of the payphone access line rate. The only guidance from the FCC's orders was that the SLC should be charged on all payphone access lines.³ Based on a review of the Wisconsin Order, this Commission believes that the KPA correctly understands the Wisconsin Order. Accordingly, carriers should reduce the amount of their payphone access line rates by an amount equal to the SLC.

The KPA also requested that the Local Exchange Carriers ("LECs") provide refunds of amounts paid for the SLC back to April 15, 1997, asserting that the rates that have been in place since that time have been in violation of the New Services Test and the findings of the Wisconsin Order. Section 276 required that, after April 15, 1997, payphone access line rates must comply with the New Services Test. Furthermore, if a state commission found that rates were not in compliance after April 15, 1997, refunds

³ In the matter of Implementation of the Payphone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128 and 91-35, Report and Order, Rel. September 20, 1996, at ¶ 187.

were to be issued retroactive to April 15, 1997. This Commission's January 5, 1999 Order did, in fact, require refunds to be given to payphone providers retroactive to April 15, 1997.

The Commission, however, disagrees with the KPA that refunds now should be given. The Commission made its 1999 decision based on the facts that were known at that time. The FCC had not provided any guidance with regard to the SLC in consideration of setting payphone access line rates. Additionally BellSouth, CBT and ALLTEL believe that refunds should not be given. If the KPA believed that the Commission had erred in its decision, it should have contested the Order. Rates are final until this Commission modifies them. They may not lawfully be changed and refunded based upon issues that were unknown at the time that they were set.

The KPA also petitions that the payphone access line rates be reduced by the amount of the SLC for BellSouth, CBT, and ALLTEL. The Wisconsin Order indicates that Section 276 is only applicable to Bell Operating Companies ("BOCs") but that a state commission may find it appropriate to apply the decisions in the Wisconsin Order to all LECs. CBT and ALLTEL both assert that since they are not BOCs, the Wisconsin Order should not apply to them. Since the Commission has previously held CBT and ALLTEL to the same standard as BellSouth, the only BOC in this state, it is appropriate that it should continue to do so. Section 276 of the Act was designed to make payphone services competitive. Applying the New Services Test to CBT and ALLTEL furthers that goal.

The Commission finds that the SLC should be considered a source of revenue for the recovery of the payphone access line rate in accordance with the Wisconsin Order. This finding should apply also to ALLTEL and CBT, but no refunds should be given for past amounts paid.

IT IS THEREFORE ORDERED that:

1. BellSouth, ALLTEL, and CBT shall provide a credit equal to the amount of the SLC for each payphone access line that is billed for service rendered after the date of this Order.
2. BellSouth, ALLTEL, and CBT shall modify their tariffs to include language incorporating the decision herein and file the modifications within 20 days of the date of this Order.

Done at Frankfort, Kentucky, this 1st day of May, 2003.

By the Commission

ATTEST:


Executive Director