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November 17, 2003

Ms. Blanca S. Bayo
Director, Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32301

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

Dear Ms. Bayo:

Enclosed is an original and fifteen (15) copies of The Florida Public Telecommunications Association's Notice of Filing the Direct Testimony of Bruce Renard, which we ask that you file in the captioned matter.

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 Certificate of Service.

Sincerely,

Brian A. Newman

BAN/wgp
Enclosures

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Florida Public) Telecommunications Association) for Expedited Review of BellSouth) Telecommunications, Inc.'s Tariffs) with respect to Rates for Payphone) Line Access, Usage, and Features.)	Docket No. 030300-TP Filed: November 17, 2003

FLORIDA PUBLIC TELECOMMUNICATIONS ASSOCIATION'S NOTICE OF FILING THE DIRECT TESTIMONY OF BRUCE RENARD

Florida Public Telecommunications Association ("FPTA") hereby serves notice of filing the Direct Testimony of Bruce Renard.

Respectfully submitted this 17th day of November, 2003.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Florida Public	)	Docket No.: DN 030300-TD
Telecommunications Association	)	
for Expedited Review of BellSouth	)	
Telecommunications, Inc.'s Tariffs	)	
with respect Rates for Payphone	)	
Line Access, Usage, and Features.	)	

DIRECT TESTIMONY OF BRUCE RENARD

ON BEHALF FO THE

FLORIDA PUBLIC TELECOMMUNICATIONS ASSOCIATION

NOVEMBER 17, 2003

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

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

Q. What is your education and employment background?

A. I attended Boston University and the State University of New York, at New Paltz, earning a B.A., *magna cum laude*, and earned a Juris Doctor degree from the University of Florida, with specializations in telecommunications and international trade law (1978 Cambridge/Warsaw program). After graduating from the University of Florida College of Law, I served as staff counsel and associate general counsel for the Florida Public Service Commission, with responsibilities in all areas of utility regulation and a specialty representing Florida's interests at the national level on key telecom issues. After leaving the Florida Public Service Commission, I engaged in the private practice of law with a specialization in telecommunications and utility law - representing a variety of national and regional telecom concerns before a wide range of state and federal forums. I then joined Peoples Telephone Company, Inc., the then largest non-local exchange company provider of pay telephone services in the United States, as its General Counsel and Vice President of Regulatory Affairs. At the end of 1998, Peoples Telephone Company merged with another publicly traded pay telephone service provider, Davel Communications, Inc. ("Davel"), where I served in a number of senior management roles, ultimately serving as President until the merger of Davel with PhoneTel Technologies, Inc. in mid-2002. In September of 2002, I accepted an appointment to serv as the Interim President of the American Public Communications Council ("APCC"), the national trade organization representing the independent payphone industry throughout the United States. I concluded that tenure in June of this year an assumed my current role as Executive Director for the FPTA and President of FPTA Technologies subsidiary in July. I also presently serve as President of Renard Consulting, Inc., providing regulatory and public affairs consulting services to telecom concerns nationwide.

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

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

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

promulgation of its *Payphone Orders* through which it implemented the payphone provisions of the Telecommunications Act of 1996 (the "Telecom Act").

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

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

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

A. Yes. The FCC has specifically relied on state regulators to implement the new services test requirements consistent with Section 276 of the Telecom Act and addressed in the *Second Wisconsin Order* for the stated purpose of assisting state regulatory bodies in applying the new services test to intrastate payphone line rates. Moreover, §276(c) of the Telecom Act states that the FCC's regulations requiring cost-based rates legally preempt all inconsistent state ratemaking criteria. In fact, the RBOC Coalition, which includes BellSouth, specifically challenged the FCC's authority to regulate intrastate payphone access rates. In the *Second Wisconsin Order*, the FCC found that it has jurisdiction over the intrastate payphone line rates charged by Regional Bell Operating Companies. *Second Wisconsin Order* (at ¶2). The United States District Court of Appeals for the District of Columbia finally confirmed the FCC's *Second Wisconsin Order* on July 11, 2003 and no further appeal was taken to the United States Supreme Court.

Q. How did the Federal Telecom Act cause the present proceeding here in Florida?

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

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

After the FCC's *Order on Reconsideration*, there was disparate application of the new services test in various state proceedings. Accordingly, on January 31, 2002, the FCC issued the *Second Wisconsin Order* 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 ¶2). In its *Second Wisconsin Order*, the FCC clarified and further interpreted the requirements of Section 276 of the Act and the application of the new services test specifically to pay telephone access rates.

In the *Second Wisconsin Order* the FCC found that: (i) Section 276 requires Regional Bell Operating Companies ("BOCs") to set their intrastate payphone line rates, including usage rates, in compliance with the new services test; (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 commonly known as "EUCL" to prevent double recovery of costs.

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

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

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

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

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

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

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

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

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

Q. Please explain how lower line costs will result in larger payphone availability to Florida's citizens.

A. Every time a PSP determines whether it will begin or continue to serve a particular payphone location, it must do a cost analysis. Sometimes this cost analysis is very formal and rigorous and sometimes it is "seat of the pants." In the end, however, no payphone service provider, LEC or otherwise, can serve a location if its costs for providing service at that location exceed its revenues. IN most circumstances, the PSP's single largest cost to provide service to any particular location is the cost of local access.

The FCC fully understood this economic effect of the free market when it required and then reaffirmed that all payphone access line rates to be reduced and to be cost based. Naturally, the amount of revenue available from a location is largely the result of the number of consumers who will be using the payphone there. However, as the cost of serving a location decreases, more potential and current locations become economically viable. This naturally results in the deployment of more payphones, particularly in rural and low-income areas where phones may have previously been unprofitable.

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

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

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

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

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

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

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

economically disadvantaged users of telecommunications service?

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

Q: Does this conclude your testimony?

A: Yes it does.