

December 19, 2003

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

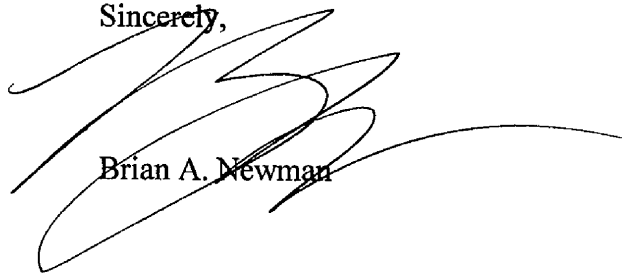
**In Re: Docket No. 030300-TP (Petition of Florida Public  
Telecommunications Association for Expedited  
Review of BellSouth Telecommunications, Inc.'s  
Tariffs with respect to Rates for Payphone Line  
Access, Usage, and Features**

Dear Ms. Bayo:

Enclosed is an original and fifteen (15) copies of The Florida Public Telecommunications Association's Notice of Filing Rebuttal Testimony of Don J. Wood, 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

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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. )

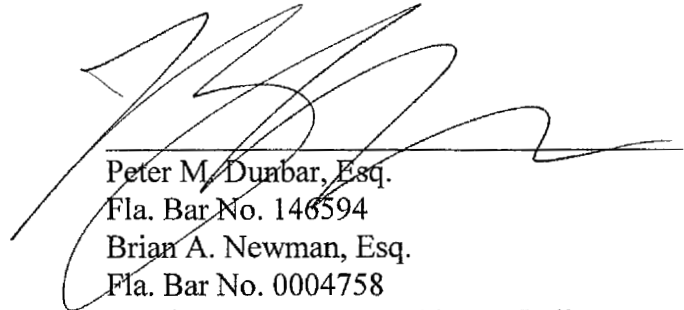
Docket No. 030300-TP

Filed: December 19, 2003.

**FLORIDA PUBLIC TELECOMMUNICATIONS ASSOCIATION'S**  
**NOTICE OF FILING REBUTTAL TESTIMONY OF**  
**DON J. WOOD**

Florida Public Telecommunications Association ("FPTA") hereby serves notice of filing the  
Rebuttal Testimony of Don J. Wood.

Respectfully submitted this 19<sup>th</sup> day of December, 2003.



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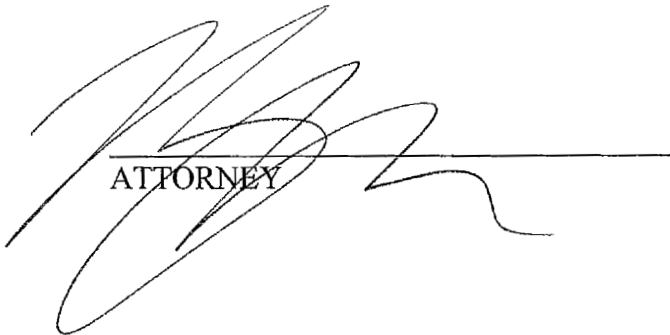
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Filing the Direct Testimony of Bruce Renard has been furnished by United States Mail this 19<sup>th</sup> day of December, 2003 to the following:

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ATTORNEY

1                   **FLORIDA PUBLIC TELECOMMUNICATIONS ASSOCIATION**

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

3                   **DOCKET NO. 030300-TP**

4                   **DECEMBER 19, 2003**

5  
6    Q.    PLEASE STATE YOUR NAME.

7    A.    My name is Don J. Wood.

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

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

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

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

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

7  
8 **Section 1: Bellsouth's Obligation To Tariff And Charge Compliant PTAS Rates**

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

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

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

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

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

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

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

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

29  
30

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

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

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

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

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

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

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



1 change the underlying cost methodology).

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

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

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

4

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

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

14           Ms. Blake first suggests that the *Second Wisconsin Order* established a  
15 change in the requirement that forward-looking economic costs must be used to  
16 calculate direct costs. In reality, the FCC stated clearly (¶ 43, not cited by Ms.  
17 Blake) that “contrary to the claims of the LEC Coalition, *the Commission’s*  
18 *longstanding precedent shows that we have used forward-looking cost*  
19 *methodologies where we have applied the new services test*” (emphasis added).  
20 There is no reason to confuse an explicit reaffirmation of “longstanding  
21 precedent” regarding the application of the new services test with a “change” in

1 the application of that same test.

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

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

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

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

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

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

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

21

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

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

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

1 such an adjustment effective April 15, 1997.

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

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

1 precedent” of the FCC.

2

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

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

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



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

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

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

4

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

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

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

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

9  
10 **Section 2: BellSouth’s Cost Analysis**

11 Q. WHAT METHODOLOGY HAS BELLSOUTH USED TO CALCULATE THE  
12 DIRECT COSTS OF PTAS SERVICE?

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

17  
18 Q. WHAT METHODOLOGY HAS BELLSOUTH USED TO CALCULATE  
19 OVERHEAD LOADINGS TO BE INCLUDED IN PTAS RATES AND DO  
20 YOU AGREE WITH BELLSOUTH’S UTILIZATION AND APPLICATION OF  
21 THAT METHODOLOGY IN THIS DOCKET?

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

11

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

14

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

1 Ms. Caldwell states (p. 4) that the FCC has “outlined ‘a flexible approach  
2 to calculating BOCs’ overhead allocation for intrastate payphone lines’.”  
3 Unfortunately, her quote is out of context. In the paragraphs preceding her cited  
4 language, the FCC (¶¶ 51-57) described the specific requirements of the  
5 methodologies previously used to develop compliant overhead loadings, including  
6 the explicit limitations inherent in the application of those methodologies. It also  
7 explicitly rejected claims of the LEC Coalition that the permitted flexibility  
8 should be broader: “the LEC Coalition argues that any overhead loading a BOC  
9 might choose is ‘reasonable’ for purposes of the new services test so long as it is  
10 justified by ‘some plausible benchmark’ ... We reject the LEC Coalition’s  
11 argument. As noted above, *under the new services test and our precedent*, BOCs  
12 bear the burden of affirmatively justifying their overhead allocations. In general,  
13 in our decisions applying the new services test to services offered to competitors,  
14 we have allowed the BOCs *some* flexibility in calculating overhead allocations,  
15 *but we have carefully reviewed the reasonableness* of the BOCs’ overhead  
16 allocations” (¶¶55-56, emphasis added). The FCC concluded: “we have *not*  
17 simply accepted any ‘plausible benchmark’ proffered by a BOC” (¶56, emphasis  
18 in original).

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

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

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

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

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

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

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

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

9  
10 Q. PLEASE DESCRIBE THE METHODOLOGY FOR THE DETERMINATION  
11 OF A CEILING FOR REASONABLE OVERHEAD LOADINGS AS  
12 DEVELOPED BY THE FCC IN THE *ONA TARIFF ORDER*.

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

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



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

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

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

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

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

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

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

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

3  
4    Q.    THE FCC'S SECOND WISCONSIN ORDER ALSO PERMITS THE USE OF  
5           THE METHODOLOGY SET FORTH IN THE *PHYSICAL CO-LOCATION*  
6           *TARIFF ORDER*. DID BELLSOUTH ELECT TO RELY UPON THIS  
7           METHODOLOGY?

8    A.    No.

9  
10   Q.   IF BELLSOUTH'S ONA TARIFF ORDER CALCULATION IS INACCURATE  
11          AND ITS APPLICATION LIMITED TO NON-ESSENTIAL FEATURES WITH  
12          LOW RATES, WHAT METHOD REMAINS FOR THE COMMISSION TO  
13          DEVELOP A REASONABLE OVERHEAD LOADING FOR THE PTAS  
14          RATES ASSOCIATED WITH THE LOCAL ACCESS LINE AND LOCAL  
15          USAGE?

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

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

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

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

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

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Q. THE UNE OVERHEAD LOADING ADOPTED BY THE COMMISSION APPLIES TO DIRECT COSTS BASED ON A TELRIC METHODOLOGY. BELLSOUTH'S DIRECT COSTS IN THIS PROCEEDING ARE BASED ON TSLRIC. DOES THIS MEAN THAT AN ADJUSTMENT TO THE OVERHEAD LOADING IS NEEDED?

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

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

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

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

7 A. Yes.

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

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

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**Section 3: Summary and Recommendations**

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

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

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

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

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

18  
19    Q.    DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

20    A.    Yes.