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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

COMMISSION  
CLERK

In the Matter of )  
)  
Implementation of the Pay Telephone )  
Reclassification and Compensation Provisions )  
of the Telecommunications Act of 1996 )  
  
Petition of the Florida Public Telecommunications )  
Association, Inc. for a Declaratory Ruling and for )  
an Order of Preemption Concerning the Refund of )  
Payphone Line Rate Charges )

CC Docket No. 96-128

PETITION OF THE FLORIDA PUBLIC TELECOMMUNICATIONS  
ASSOCIATION, INC. FOR A DECLARATORY RULING  
AND FOR AN ORDER OF PREEMPTION

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January 31, 2006

DOCUMENT NUMBER-DATE

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Contents

I.	Introduction and Statement of Interest .....	1
II.	Statutory Background .....	2
III.	Regulatory Background .....	3
	1. The <i>Payphone Orders</i> .....	3
	2. The BOCs' Request to Temporarily Waive the Requirement to File NST-Compliant Tariffs in Exchange for Later Reimbursement or Crediting of Charges Collected in Excess of Subsequently Filed NST-Compliant Tariffs .....	4
	3. The <i>Wisconsin Orders</i> .....	6
IV.	Non-Compliant Rates and Regulatory Proceedings in the State of Florida .....	7
V.	Conclusion and Prayer for Relief .....	12
	Certificate of Service .....	14
	Exhibit "A": Excerpt from the Direct Testimony of Kathy K. Blake Before the Florida Public Service Commission, Docket No. 030300-TP, November 17, 2003 .....	Appendix

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**PETITION OF THE FLORIDA PUBLIC TELECOMMUNICATIONS  
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AND FOR AN ORDER OF PREEMPTION**

**I. Introduction and Statement of Interest**

The Florida Public Telecommunications Association, Inc. (FPTA), on behalf of itself and its members, respectfully petitions the Federal Communications Commission (FCC, or the Commission), pursuant to Sections 1.1 and 1.2 of the Commission's rules and section 276 of the Telecommunications Act of 1996 (the Act),<sup>1</sup> to issue a Declaratory Ruling with respect to the rights of independent payphone services providers (PSPs) in the State of Florida, and to issue an Order preempting a final ruling of the Florida Public Service Commission (FPSC) which directly conflicts with section 276 of the Act and the Commission's rules, regulations and orders.<sup>2</sup>

FPTA is a trade association that serves the legal, regulatory and legislative interests of

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<sup>1</sup>47 U.S.C. §§ 151-614.

<sup>2</sup>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, Florida Public Service Comm'n., Docket No. 030300-TP, Oct. 7, 2004 (FPSC Payphone Order).*

independent PSPs and related public telecommunications providers in Florida. FPTA seeks to improve the financial and operational viability of payphone services in Florida through advocacy on the local, state, and federal levels. A majority of the public pay telephones operated by FPTA membership are located in the Florida operating territory of BellSouth Telecommunications, Inc. (BellSouth) and were utilizing payphone local access lines provided by BellSouth during a substantial portion of the time period relevant to the instant Petition.

In this proceeding, petitioners urge the Commission to: (1) declare that BellSouth's collection of the end user common line (EUCL) charges (also sometimes referred to as subscriber line charges, or SLCs) in addition to unadjusted local payphone access line charges from April 15, 1997 until November 10, 2003 was inconsistent with section 276 of the Act as implemented by the Commission's rules and Orders, (2) issue an Order preempting the the FPSC decision that is inconsistent with the Commission's regulations and (3) require BellSouth to refund to the relevant PSPs, any and all amounts it collected between April 15, 1997 and November 10, 2003 in excess of charges that would have been consistent with Section 276 of the Act, including the equivalent of any EUCL amounts collected in said period, with interest.

## **II. Statutory Background**

Congress enacted section 276 of the Act "to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public."<sup>3</sup> The Act forbids any Bell operating company (BOC) from "subsidiz[ing] its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations" or from "prefer[ing] or discriminat[ing] in favor of its payphone

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<sup>3</sup>47 U.S.C. § 276(b)(1).

service.”<sup>4</sup> The Commission was required to prescribe a set of nonstructural safeguards for BOC payphone service, “which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90-623) proceeding.”<sup>5</sup> In section 276(c), the Act states 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.”<sup>6</sup>

### III. Regulatory Background

#### A. The Payphone Orders

These statutory requirements contained in section 276 were implemented through a series of Commission Orders as a result of administrative proceedings and related court challenges.<sup>7</sup> The *Payphone Orders* provided standards and guidelines for compliance with section 276 that required regional BOCs (also sometimes referred to as LECs), including BellSouth, to file cost-based, non-discriminatory intrastate tariffs for payphone local access

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<sup>4</sup>47 U.S.C. § 276(a). “Payphone service” is defined as the “provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services.” 47 U.S.C. § 276(d).

<sup>5</sup>47 U.S.C. 276(b)(1)(C). See *In the Matter of Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards*, CC Docket No. 90-623, Report and Order, 6 FCC Rcd 7571 (Dec. 20, 1991) (*Computer III*).

<sup>6</sup>47 U.S.C. § 276(c).

<sup>7</sup>See *Implementation of the Pay Telephone and Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541 (Sept. 20, 1996) (*First Payphone Order*), Order on Reconsideration, 11 FCC Rcd 21233 (Nov. 8, 1996), *aff’d in part and remanded in part*, Illinois Pub. Telecomm’s. Ass’n. v. FCC, 117 F.3d 555 (D.C.Cir. 1997) (*Payphone Reconsideration Order*); Second Report and Order, 13 FCC Rcd 1778 (Oct. 9, 1997) (*Second Payphone Order*), *vacated and remanded*, MCI Telecomm’s. Corp. v. FCC, 143 F.3d 606 (D.C.Cir. 1998); Third Report and Order and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545 (Feb. 4, 1999), *aff’d*, American Pub. Communications Council v. FCC, 215 F.3d 51 (D.C.Cir. 2000). The *First Payphone Order* and the *Payphone Reconsideration Order* are known collectively as the *Payphone Orders*.

interconnection services that complied with the Commission's "new services test" (NST).<sup>8</sup>

As part of its implementation of the payphone reclassification and compensation provisions of the Act, the Commission determined that LECs would not be eligible to receive dial around compensation on their own payphones unless and until they had filed tariffs that met the requirements of the NST and the other prescriptions of the *Payphone Orders*. The Commission stated clearly that the "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."<sup>9</sup>

B. The BOCs' Request to Temporarily Waive the Requirement to File NST-Compliant Tariffs in Exchange for Later Reimbursement or Crediting of Charges Collected in Excess of Subsequently Filed NST-Compliant Tariffs

In response to these regulatory requirements, a coalition of regional BOCs (which included BellSouth) and Ameritech (participating in its individual capacity) jointly requested that the Common Carrier Bureau temporarily waive the requirement to file NST-compliant intrastate tariffs, without the failure to file such rates resulting in a delay of the regional BOCs' eligibility to receive dial around compensation. In response, the Common Carrier Bureau granted the LECs a limited 45-day waiver of the obligation to file NST-compliant intrastate rates.<sup>10</sup>

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<sup>8</sup>The "new services test" is a cost-based test that establishes the direct cost of providing a new service by setting the direct cost of providing the new service as a floor to which a LEC may add a reasonable amount of overhead. *See In the Matter of Wisconsin Public Service Commission*, Case No. Bureau/CPD No. 00-01, Memorandum Opinion and Order, 17 FCC Rcd.2051 (rel. Jan. 31, 2002) (*Commission Wisconsin Order*) at para. 12, and source cited therein.

<sup>9</sup>*Payphone Reconsideration Order*, at para. 131.

<sup>10</sup>*See Implementation of the Pay Telephone and Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order, DA 97-678, 12 FCC Rcd 20997 (Com. Car. Bur., rel. Apr. 4, 1997) (*Bureau Waiver Order*), and Order, 12 FCC Rcd 21370 (Com. Car. Bur., rel. Apr. 15, 1997) (*Bureau Refund Order*) at para. 19 ("...we waive for 45 days from the April 4, 1997 release date of the Bureau Waiver Order the requirement that LEC intrastate tariffs for payphone services comply with the 'new services' test of the federal guidelines, as set forth in paragraph 163 of the Order on Reconsideration and clarified in the Bureau

Upon granting the limited waiver, the *Bureau Refund Order* noted that

[t]he RBOC Coalition concedes that the Commission's payphone orders, as clarified by the Bureau Waiver Order, mandate that the payphone services a LEC tariffs at the state level are subject to the new services test and that the requisite cost-support data must be submitted to the individual states.<sup>11</sup>

In addition, the *Bureau Refund Order* allowed for "existing intrastate payphone service tariffs [to] continue in effect until the intrastate tariffs filed pursuant to this Order become effective,"<sup>12</sup> but that regional BOCs may nonetheless begin collecting dial around compensation as of April 15, 1997. In exchange for the waiver, the *Bureau Refund Order* noted that

[t]he RBOC coalition [including BellSouth] committed, once the new intrastate tariffs are effective, to reimburse or provide credit to its customers for these payphone services from April 15, 1997, if newly filed tariffed rates, when effective, are lower than the existing rates.<sup>13</sup>

Accordingly, the *Bureau Refund Order* expressly and unambiguously conditioned entitlement to the limited waiver and the collection by LECs of dial around compensation on the later refund or credit of any line charges collected in excess of subsequently filed NST-compliant rates, 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.<sup>14</sup>

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Waiver Order").

<sup>11</sup> *Bureau Refund Order*, at para. 18.

<sup>12</sup> *Id.* at para. 19.

<sup>13</sup> *Id.* at para. 20.

<sup>14</sup> *Id.* at para. 2.

C. The Wisconsin Orders

Without relinquishing any of its jurisdiction to determine LEC compliance with section 276 of the Act, the *Payphone Orders* placed initial reliance on state commissions to ensure that rates, terms, and conditions applicable to the provision of basic payphone access lines met the requirements of the statute. Accordingly, various state commissions initiated proceedings to comply with the Commission's implementation of section 276. Jurisdictional and procedural disputes arose at the state level, typified by developments in Wisconsin, where state regulators issued a Letter Order on November 6, 1997 to the effect that the state utility commission lacked jurisdiction to determine whether rates charged by LECs to PSPs complied with section 276 of the Act.<sup>15</sup> The Common Carrier Bureau responded by requiring the four largest LECs in Wisconsin to submit to the FCC tariffs for intrastate payphone service offerings together with all supporting documentation necessary to demonstrate compliance with the requirements of section 276 as implemented by the Commission.<sup>16</sup>

A coalition of LECs, including BellSouth, sought review of the *Bureau Wisconsin Order* before the full Commission.<sup>17</sup> The Commission granted the review, but declined to withdraw or stay the Bureau's Order. Instead, the *Commission Wisconsin Order* provided state regulators with detailed guidance regarding the proper interpretation of section 276 of the Act, the *Payphone*

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<sup>15</sup>See *In the Matter of Wisconsin Public Service Commission: Order Directing Filings*, DA No. 00-347, Order, 15 FCC Rcd 9978 (Mar. 2, 2000)(*Bureau Wisconsin Order*) at para. 3.

<sup>16</sup>*Id.*

<sup>17</sup>See *In the Matter of Wisconsin Public Service Commission: Order Directing Filings*, Bureau/CPD No. 00-01, Memorandum Opinion and Order, FCC 02-25, 17 FCC Rcd. 2051 (rel. Jan. 31, 2002) (*Commission Wisconsin Order*) *aff'd sub nom.* *New England Pub. Comm'n's. Council, Inc. v. FCC*, 334 F.3d 69 (2003) (*The Bureau Wisconsin Order* and the *Commission Wisconsin Order* are known collectively as the *Wisconsin Orders*).



*Orders*, and, in particular, how state regulators must determine whether rates charged to PSPs are NST-compliant.<sup>18</sup>

In large part, the Commission simply reiterated its long-standing policies and requirements with respect to NST-compliant rates by relying on the methodologies and principles utilized in prior NST cases, much of which had already been set forth in the *Bureau Wisconsin Order*. In particular, the Commission instructed that

[u]nder the new services test, the BOC may not charge more for payphone line service than is necessary to recover from PSPs all monthly recurring direct and overhead costs incurred by BOCs in providing payphone lines. ... If an incumbent BOC files in its state tariff a charge that fully recovers ... unseparated costs and also assesses on the PSP its federally tariffed SLC [or EUCL charge], the BOC will over-recover its costs, and the PSP will over-pay, in violation of the new services test and the cost-based rates requirement of the *Payphone Orders*.<sup>19</sup>

Accordingly, the *Commission Wisconsin Order* made clear that

[a]t whatever point in time a state reviews a BOC's payphone line rates for compliance with the new services test, it *must* apply an offset for the SLC [or EUCL charge] that is then in effect.<sup>20</sup>

Thus, state tariffed charges for payphone line services cannot be in compliance with section 276, the Commission's *Payphone Orders*, or the NST unless they have been reduced by the amount of the applicable federally tariffed EUCL charges.

#### **IV. Non-Compliant Rates and Regulatory Proceedings in the State of Florida**

In the State of Florida, BellSouth began collecting dial around compensation on April 15,

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<sup>18</sup>*Commission Wisconsin Order*, at paras. 43-65.

<sup>19</sup>*Id.* at para. 60.

<sup>20</sup>*Id.* at para. 61 (emphasis supplied).

1997, binding itself thereby to the conditions set forth in the *Bureau Refund Order*. However, despite its obligation to file intrastate tariffs that complied with the Commission's implementation of section 276 no later than May 19, 1997, BellSouth continued to collect payphone line rates that were equivalent to its 1FB business line rate (which had been in effect since well before passage of the 1996 Act), and made no attempt to bring its PSP line charges into compliance with section 276, the Commission's *Payphone Orders*, or the NST until October 27, 2003. On that date BellSouth filed a revision to BellSouth's General Subscriber Service Tariff, section A7.4, effective November 10, 2003, which, tellingly, reduced its Florida payphone rates by *exactly the amount of its federally tariffed EUCL charges*. Thus, contrary to the Commission's mandate that NST-compliant intrastate payphone access line rates must be reduced by the amount of the federally tariffed EUCL charges by May 19, 1997, BellSouth nonetheless continued to charge and collect from April 15, 1997 through November 10, 2003 rates that were not NST-compliant because these rates failed to reflect any reduction or provide any credit for the collection of the EUCL charge.

Because BellSouth's intrastate payphone tariffs between April 15, 1997 and November 10, 2003 did not comply with section 276 of the Act and, in particular, the new services test as mandated by the Commission, BellSouth is obligated under the express terms of the *Bureau Refund Order* to provide a refund, with interest, in the amount that the actual rates charged to the PSPs during that period exceeded NST-compliant rates.

Moreover, BellSouth has been unjustly enriched not simply through the collection of excessive and unlawful payphone line charges, but, based on the number of payphones operated by BellSouth between April 15, 1997 and the date that BellSouth ceased providing payphone

services in Florida, FPTA believes BellSouth also collected tens of millions of dollars in dial around compensation, notwithstanding the fact that BellSouth's Florida intrastate payphone access rates were plainly not in compliance with the rules and requirements established by the Commission.

On March 26, 2003, FPTA filed a Petition for Expedited Review of BellSouth's Tariffs with Respect to Rates for Payphone Line Access, Usage, and Features before the FPSC.<sup>21</sup> FPTA requested the Florida regulators to review BellSouth's tariffs with respect to rates for payphone line access, usage and features in light of the specific clarifications set forth in the *Commission Wisconsin Order*. In its petition, the FPTA requested the FPSC to order BellSouth to file reduced prospective cost-based rates that complied with applicable federal requirements and to make a refund of the difference between the rates charged by BellSouth since April 15, 1997 and the amount of the compliant rates that should have been charged.

Not only was the extent of the October 2003 reduction represented in BellSouth's revised tariff probative—*i.e.*, the precise amount of the federally tariffed EUCL charge—but so was its timing. The tariff revision was filed by BellSouth immediately prior its submission of sworn testimony in the FPSC proceeding.<sup>22</sup> Thus, BellSouth brought the PSP line rates into compliance at the last possible opportunity before the FPSC convened its first contested evidentiary hearing on the issue of the lawfulness of its PSP tariffs. FPTA submits that BellSouth's reduction of its Florida payphone line rates by the precise amount of the EUCL charge on the eve of the FPSC

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<sup>21</sup>See *FPSC Payphone Order*.

<sup>22</sup>BellSouth filed its revised tariff on October 27, 2003, effective November 10, 2003, and submitted the testimony of Kathy K. Blake, BellSouth Director of Policy Implementation, on November 17, 2003. See Exhibit "A" to this Petition, pages 1, 8, and 9 of the Blake testimony.

hearing was not coincidental, but a cynical maneuver by BellSouth that would permit it to declare at the hearing that its currently filed tariffs were lawful and in compliance with FCC requirements.

FPTA's Petition before the FPSC raised, *inter alia*, the following two issues for evidentiary hearing:

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? and,

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's responses to these questions, set forth in pertinent part in Exhibit "A" hereto, acknowledged (1) that it had an obligation to reduce its monthly payphone line charge (under the NST) by the amount of the federally tariffed EUCL charge, (2) that it did not believe that it was required to do so on any specific date, and (3) that it did so approximately three weeks immediately prior to the hearing, more than six years after the issuance of the *Payphone Orders*, the *Bureau Waiver Order*, and *Bureau Refund Order*. In light of the Commission's express mandate in the *Commission Wisconsin Order* that at "whatever point in time" a state reviews a BOC's PSP line charges for compliance with the NST the federally tariffed EUCL charge must be backed out,<sup>23</sup> the intervening passage of time can have no legal effect on either BellSouth's obligation to charge line rates that comply with the Commission's implementation of section 276 of the Act or on BellSouth's obligation under the *Bureau Refund Order* to refund or credit line charges it collected that were in excess of NST-compliant rates.

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<sup>23</sup>See note 20, *supra*, and accompanying text.

BellSouth was, as a matter of law, obligated to reduce its monthly line charges by the amount of the applicable federally tariffed EUCL charge effective April 15, 1997 and plainly did not do so. Rather, it waited until November 2003 to file FCC- and NST-compliant rates, only after it felt compelled to comply under the pressure of an evidentiary hearing on the relevant issues. Nonetheless, on October 7, 2004, the *FPSC Payphone Order* denied FPTA's request for a refund of the excess charges. The Florida commission found that BellSouth's pre-existing payphone line rates were consistent with the requirements of section 276 of the Act notwithstanding the double recovery that resulted from continuing to charge PSPs pre-existing business line rates with no EUCL credit. The FPSC's determined that even though BellSouth charged and collected the EUCL charge on top of the intrastate payphone line charges during the period April 15, 1997 through November 10, 2003, the "rates charged by BellSouth to the PSPs were legally sustainable."<sup>24</sup> This finding misinterprets and contravenes section 276(b)(1)(C) of the Act, the Commission's *Payphone Orders* and *Wisconsin Orders*, and is contrary to the essential requirements of law. Similarly, the FPSC's failure to order a refund of those overcharges contravenes the clear mandate of the *Bureau Refund Order* and fails to hold BellSouth to its underlying commitment as memorialized in that Order.

The *FPSC Payphone Order* constitutes a state requirement that is inconsistent with the Commission's regulations. Accordingly, it must be preempted under the mandate of section 276(c) of the Act, which requires that "the Commission's regulations on such matters *shall preempt* such State requirements."<sup>25</sup>

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<sup>24</sup>*Id.*, at 14.

<sup>25</sup>47 U.S.C. § 276(c) (emphasis supplied).

## V. Conclusion and Prayer for Relief

To allow BellSouth to retain non-compliant over-charges to the material detriment of the citizens of Florida and the affected PSPs in the state contravenes the public interest and frustrates the policy of the “widespread deployment” of payphones mandated under section 276 of the Act. Thus, it is incumbent upon the Commission to preempt and correct the *FPSC Payphone Order* by (1) declaring that BellSouth’s payphone line charges from April 15, 1997 through November 10, 2003 were unlawful and non-compliant during that period due to the continued collection of the EUCL charge (or any other charges in excess of NST-compliant tariffs) and (2) requiring BellSouth to refund to the relevant PSPs any and all excess charges it collected during that period, with interest. Such Commission action is especially warranted in light of the fact that BellSouth has been permitted to collect and retain tens of millions of dollars in dial around compensation during this period based on its commitment to implement section 276-compliant rates from April 15, 1997 forward and to refund any excess charges collected after that date.

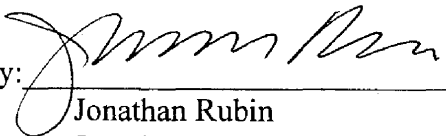
WHEREFORE, the FPTA requests that the Commission:

- A. Issue a declaratory ruling finding that to the extent they exceeded NST-compliant tariffs BellSouth’s line charges to PSPs from April 15, 1997 through November 10, 2003 did not comply with the Commission’s regulations or the essential requirements of law;
- B. Order BellSouth to refund to all affected PSPs in the State of Florida an amount equal to the EUCL payments and any other non-NST-compliant charges made to BellSouth by such PSPs between April 15, 1997 through November 10, 2003, with interest;

- C. Issue an Order preempting the *FPSC Payphone Order* as inconsistent with the Commission's regulations; and,
- D. Order such other relief as the Commission deems necessary and appropriate in the circumstances.

Respectfully submitted,

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January 31, 2006

Certificate of Service

The undersigned, as Counsel for Florida Public Telecommunications Association, Inc., hereby certifies that on January 31, 2006, a true and correct copy of the foregoing Petition was served in the manner indicated on the following:

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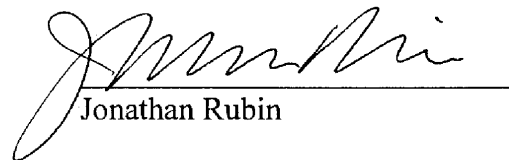
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Jonathan Rubin

**Appendix**

**Exhibit "A"**

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BELLSOUTH TELECOMMUNICATIONS, INC.  
DIRECT TESTIMONY OF KATHY K. BLAKE  
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET NO. 030300-TP  
NOVEMBER 17, 2003

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is Kathy K. Blake. I am employed by BellSouth as Director – Policy Implementation. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Florida State University in 1981, with a Bachelor of Science degree in Business Management. After graduation, I began employment with Southern Bell as a Supervisor in the Customer Services Organization in Miami, Florida. In 1982, I moved to Atlanta where I have held various positions involving Staff Support, Product Management, Negotiations, and Market Management within the BellSouth Customer Services and Interconnection Services Organizations. In 1997, I moved into the State Regulatory Organization where my responsibilities included issues management and policy witness

1           3. Treatment of SLC/EUCL. The FCC decided, "in establishing its cost-based,  
2           state-tariffed charge for payphone line service, a BOC must reduce the  
3           monthly per line charge determined under the new services test by the amount  
4           of the applicable federal tariffed SLC."<sup>14</sup>

5

6           4. Usage. The FCC determined that "any rate for local usage billed to a  
7           payphone line, as well as the monthly payphone line rate, must be cost-based  
8           and priced in accordance with the new services test."<sup>15</sup>

9

10 Q.       HOW DOES THE *WISCONSIN ORDER* IMPACT THIS PROCEEDING?

11

12 A.       As I will explain more fully in addressing the specific issues, the *Wisconsin Order*  
13       apparently was the basis for the FPTA's petition in this docket, which petition was  
14       filed March 26, 2003 (approximately fourteen months after the *Wisconsin Order*  
15       was issued).

16

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

20

21 Q.       WHAT IS BELL SOUTH'S RESPONSE?

22

23 A.       Yes. BellSouth filed a revision to its General Subscriber Service Tariff, Section  
24       A7.4 to reduce the Florida payphone rates by the EUCL amount. The tariff was

25

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<sup>14</sup> Id. at ¶61.

<sup>15</sup> Id. at ¶64.

1 filed October 27, 2003, and became effective on November 10, 2003. A copy of  
2 the revised tariff is attached to my testimony as Exhibit KKB-1.

3

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

6

7 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

8

9 A. BellSouth was not required to reduce its intrastate payphone line rates by the  
10 amount of the EUCL on a specified date. At all times, BellSouth's rates have  
11 been charged pursuant to binding FPSC Orders and FCC tariffs that have not been  
12 challenged, appealed or modified.

13

14 Q. WAS IT BELLSOUTH'S RESPONSIBILITY TO VOLUNTARILY REDUCE  
15 ITS PTAS RATES PURSUANT TO THE *WISCONSIN ORDER*?

16

17 A. No. In any proceeding that establishes rates, a Commission's order remains in  
18 effect on a going forward basis, until modified.

19

20 Q. CAN YOU ELABORATE ON THE FPTA'S SUGGESTIONS THAT  
21 BELLSOUTH SHOULD HAVE REDUCED ITS RATES?

22

23 A. Yes. First, the fact that costs may go down (or up) over time does not require  
24 BellSouth to automatically reduce (or increase) its rates. Any party can petition  
25 the Commission to re-examine certain rates if it believes that requirements have