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Before the  
Federal Communications Commission  
Washington, D.C. 20554

JAN 15 1997

In the Matter of	)	
	)	
Implementation of the Pay Telephone	)	
Reclassification and Compensation Provisions	)	CC Docket No. 96-128
of the Telecommunications Act of 1996	)	
	)	
BellSouth Comparably Efficient Interconnection	)	
Plan for Payphone Service Providers	)	

**BELLSOUTH REPLY**

BELLSOUTH CORPORATION

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## SUMMARY

The only parties filing comments on BellSouth's CEI plan are those who have an interest in delaying BellSouth's ability to receive compensation or to negotiate with location providers under the same conditions as its competitors. Thus, opposing parties have attempted to create artificial obstacles to approval of the Plan through requests that the Commission address issues that are not appropriate for consideration in a CEI Plan compliance review.

The standard for review of BellSouth's Plan is clear: BellSouth must provide comparably efficient interconnection opportunities to other payphone service providers to ensure that basic facilities are available on an unbundled and functionally equivalent basis. This BellSouth has plainly done by offering *both* an unbundled coin line service and an unbundled standard line service. Further, these are the very same services that BellSouth's distinct payphone entity, BSPC, will buy and use.

Assertions that the availability of the coin line offering as directed by the Commission is inadequate for PSPs who choose to utilize noncompatible payphone set technologies are inappropriate and irrelevant for purposes of this CEI Plan review. The service is tariffed and available as the Commission requires. Similar claims of disparate impacts of BellSouth's two tariffed offerings as between BSPC and other PSPs are as irrelevant as they are wrong. That both services are available to BSPC and other PSPs on the same terms and conditions satisfies the CEI standard. That BSPC will actually use *both* offerings, and predominantly the same one that opponents claim leaves them disadvantaged, negates any claims of disparate impact.

Arguments for additional unbundling and federal tariffing rest on an inappropriate reading of the Commission's requirements. The Commission on reconsideration directed that the

unbundled coin line service be tariffed with the states. Any additional unbundled services are subject to state and federal tariffing, but, other than OLS, none has been identified. BellSouth is tariffing OLS in accordance with the Commission's requirements. Arguments for greater unbundling of state tariffed offerings are equally deficient and, in any event, raise issues that the Commission has expressly left to the states and that are therefore inappropriate here.

Claims that the CEI Plan does not address inmate services are simply wrong. The Plan expressly includes inmate services within its scope. Moreover, assertions of potential disparate impact resulting from collocation of BSPC inmate service equipment in BST's central offices are also irrelevant in light of BellSouth's decision not to collocate such equipment.

Other claims are similarly unrelated to a CEI Plan compliance review (*e.g.*, asset valuation, detailed business plans, PIC administration) or easily addressed (*e.g.*, Smartline service "where facilities are available," nondiscriminatory ordering, installation, and maintenance activity). None of these claims has provided any grounds for disapproval of BellSouth's Plan. Rather, BellSouth's Plan meets the Commission's requirements and must be approved.

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**BELLSOUTH REPLY**

BellSouth Corporation, on behalf of BellSouth Telecommunications, Inc., and its affiliated companies (“BellSouth”), hereby submits this Reply to comments filed on BellSouth’s CEI Plan for Payphone Service Providers.<sup>1</sup>

Introduction and Summary

In the *First Report and Order*,<sup>2</sup> as modified by the *Reconsideration Order*, the Commission adopted rules to implement Section 276 of the Communications Act.<sup>3</sup> Among other things, the Commission deregulated all payphone equipment and established a requirement that local exchange carriers (LECs) provide the same tariffed payphone services to other payphone

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<sup>1</sup> BellSouth Comparably Efficient Interconnection Plan for Payphone Service Providers, CC Docket No. 96-128 (filed Nov. 22, 1996).

<sup>2</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *First Report and Order*, FCC 96-388 (rel. September 20, 1996) and *Reconsideration Order*, FCC 96-439 (rel. November 8, 1996).

<sup>3</sup> 47 U.S.C. § 276.

service providers (PSPs) that they provide to their own payphone operations. In addition, pursuant to Section 276(b)(1)(C) of the Act, the Commission imposed nonstructural safeguard requirements on BOCs' payphone service operations. In particular, the Commission required BOCs to meet the nonstructural safeguards standard originally adopted for integrated enhanced service operations in the *Computer III*<sup>4</sup> and *ONA*<sup>5</sup> proceedings. Specifically, the Commission directed the BOCs to file CEI plans describing how they would comply with the Computer III unbundling and CEI parameters, accounting requirements, customer proprietary network information (CPNI) requirements as modified by Section 222 of the Act,<sup>6</sup> network disclosure

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<sup>4</sup> See Amendment of Section 64.702 of the Commission's Rules and Regulations (*Computer III*), CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (*Phase I Order*), recon., 2 FCC Rcd 3035 (1987) (*Phase I Reconsideration Order*), further recon., 3 FCC Rcd 1135 (1988) (*Phase I Further Reconsideration Order*), second further recon., 4 FCC Rcd 5927 (1989) (*Phase I Second Further Reconsideration Order*); (*Phase I Order* and *Phase I Reconsideration Order* vacated *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*); Phase II, 2 FCC Rcd 3072 (1987) (*Computer III Phase II Order*), recon., 3 FCC Rcd 1150 (1988) (*Phase II Reconsideration Order*, further recon., 4 FCC Rcd 5927 (1989) (*Phase II Further Reconsideration Order*); *Phase II Order* vacated *California I*, 905 F.2d 1217 (9th Cir. 1990); Computer III Remand Proceeding, 5 FCC Rcd 7719 (1990) (*ONA Remand Order*), recon., 7 FCC Rcd 909 (1992), *pets. for review denied*, *California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (*California II*); Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order*), *BOC Safeguards Order* vacated in part and remanded, *California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*), cert. denied, 115 S.Ct. 1427 (1995). See also Bell Operating Companies' Joint Petition for Waiver of *Computer II* Rules, Memorandum Opinion and Order, 10 FCC Rcd 1724 (1995); *Computer III* Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, 10 FCC Rcd 8360 (1995).

<sup>5</sup> Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 1 (1988) (*BOC ONA Order*), recon., 5 FCC Rcd 3084 (1990) (*BOC ONA Reconsideration*); 5 FCC Rcd 3103 (1990) (*BOC ONA Amendment Order*), erratum, 5 FCC Rcd 4045, *pets. for review denied*, *California v. FCC*, 4 F.3d 1505 (9th Cir. 1993), recon., 8 FCC Rcd 97 (1993) (*BOC ONA Amendment Reconsideration Order*); 6 FCC Rcd 7646, 7649-50 (1991) (*BOC ONA Further Amendment Order*); 8 FCC Rcd 2606 (1993) (*BOC ONA Second Further Amendment Order*), *pet. for review denied*, *California v. FCC*, 4 F.3d 1505 (9th Cir. 1993).

<sup>6</sup> 47 U.S.C. § 222.

requirements, and installation, maintenance and quality nondiscrimination requirements.

BellSouth filed its Plan in satisfaction of that directive on November 22, 1996.

Pursuant to the Commission's decisions, BellSouth must obtain approval of its CEI Plan before BellSouth's payphone operation is permitted to receive compensation for its services through the mechanisms established in the *First Report and Order* or to negotiate with location providers on the location provider's selecting and contracting with the carriers that carry interLATA calls from BellSouth's payphones.<sup>7</sup> BellSouth's inability to receive compensation or negotiate with location providers under the same conditions as its competitors will significantly disadvantage it in the marketplace. Not surprisingly, the only parties commenting on BellSouth's Plan were those that have an interest in delaying BellSouth's ability to participate effectively and compete fully in the payphone services marketplace.<sup>8</sup>

In its Plan, BellSouth described the tariffed services that it will make available to payphone service providers on nondiscriminatory terms. Those services are the very same tariffed services that BellSouth's payphone operations will use. Specifically, BellSouth identified its "SmartLine service," also referred to as a "coin line," to which a payphone operator may subscribe to obtain functionality comparable to that provided at those locations where BellSouth's integrated, regulated payphone service historically has used "dumb sets." Alternatively, BellSouth described its offering of its "Public Telephone Access Service" (PTAS), also referred to as a "COCOT line,"

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<sup>7</sup> See *Reconsideration Order* at ¶ 132.

<sup>8</sup> See, e.g., Comments of American Public Communications Council ("APCC"), AT&T Corporation ("AT&T"), The Competitive Telecommunications Association ("CompTel"), Inmate Calling Service Providers Coalition ("ICSPC"), Oncor Communications, Inc. ("Oncor"), Southeastern Public Communications Coalition ("SPCC").

“standard line,” or “dumb line,” for use with payphones containing their own intelligence, *i.e.*, “smartsets,” like those BellSouth uses at other locations. Indeed, both of these services were already available in all of BellSouth’s states. BellSouth also committed that its payphone operations would buy these services on the same tariffed terms and conditions as any other payphone service provider.

Additionally, BellSouth explained in its Plan that it has chosen to conduct its payphone operations through a corporate entity, BellSouth Public Communications, Inc. (“BSPC”), that is distinct from its regulated local exchange company, BellSouth Telecommunications, Inc. (“BST”). Commenting parties generally commended BellSouth for this operational decision,<sup>9</sup> yet seemed to have difficulty grasping the notion of a distinct entity. Contrary to the intimations of several parties, BellSouth’s CEI plan is not a matter of BellSouth subscribing to or using an equivalent, but different technical configuration (*e.g.*, collocation) and charging itself as if it were a nonaffiliated service payphone provider, as is often the norm for integrated enhanced service operations.<sup>10</sup> Instead, BSPC will actually subscribe to and use the very same tariffed services as PSPs and will be treated by BST exactly as a nonaffiliated PSP in the availability, provisioning, and operation of regulated services provided by BST. Indeed, as the Commission previously has recognized, the CEI requirements are easily met where, as here, an enhanced service or, in this case, payphone service, is operated through a distinct entity.<sup>11</sup>

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<sup>9</sup> APCC Comments at 2. *See also*, SPCC Comments at 2.

<sup>10</sup> *Cf. Reconsideration Order* at ¶ 220 (“We anticipate that payphone CEI plans will raise fewer issues than CEI plans for enhanced series...”).

<sup>11</sup> *Computer III Phase I Order* at n.220.

Nonetheless, parties opposing BellSouth's Plan attempt to create artificial obstacles to its approval either through claims that the information submitted is "insufficient" or "vague," or through requests that the Commission impose new, or alter existing, conditions not required by the Commission's CEI or other nonstructural requirements. Despite these objections, the standard for review of BellSouth's CEI plan is clear. Under CEI, carriers must provide comparably efficient interconnection opportunities to other payphone service providers to insure that basic facilities underlying the carrier's payphone operations are available to all other providers on a functionally equivalent basis. The Commission uses this standard to review plan compliance with CEI parameters concerning interface functionality, unbundling of basic services, resale, technical characteristics, installation, maintenance and repair, end-user access, CEI availability, minimization of transport costs, and recipients of CEI.<sup>12</sup>

None of the parties opposing the plan has shown that it fails to satisfy the Commission's CEI requirements or the objectives of Section 276 and the Commission's orders. To the contrary, the Plan will allow BellSouth and other payphone service providers to provide payphone services on equal competitive footing. The Plan should be approved.

**I. ARGUMENTS ASSERTING INADEQUACIES OF "COIN LINE" OFFERINGS TO MEET PAYPHONE SERVICE PROVIDERS' NEEDS ARE BELATED PETITIONS FOR RECONSIDERATION OF THE COMMISSION'S REQUIREMENTS AND MUST BE REJECTED.**

In the *Notice* initiating this proceeding, the Commission proposed that incumbent LECs be required to offer central office coin transmission services to PSPs under a nondiscriminatory, public, tariffed offering. To that end, the Commission sought comment on both the central office

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<sup>12</sup> See, e.g., BellSouth Plan for Comparably Efficient Interconnection for Voice Messaging Services, *Memorandum Opinion and Order*, 3 FCC Rcd 7284 (1988) ("*BellSouth VMS Order*").

coin services that must be made available to PSPs by incumbent LECs to achieve this goal and the type of services and the technological requirements necessary to allow independent payphone providers to use payphones that are equivalent to those currently used by LECs.<sup>13</sup> The Commission adopted its proposal on the basis of comments responsive to the *Notice*, concluding that “incumbent LECs must provide coin service so competitive payphone providers can offer payphone services using either instrument-implemented ‘smart payphones’ or ‘dumb’ payphones that utilize central office coin services, or some combination of the two in a manner similar to the LECs.”<sup>14</sup> Thus, the Commission’s requirements ensure that independent payphone service providers have access to the same tariffed services as do an incumbent LEC’s payphone operations.

In light of this specific determination through rulemaking that the tariffed offering of a coin line service would provide the opportunity for independent payphone providers to utilize central office coin services in a manner similar to the LECs, APCC’s contentions about the inadequacy of coin lines for independent payphone providers or a CEI standard should fall on deaf ears.<sup>15</sup> APCC’s plaintive cries that the coin line may be impractical for PSPs that have invested in “smartsets” is nothing more than an expression of dissatisfaction with the Commission’s decision

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<sup>13</sup> See *First Report and Order* at ¶ 129. Underlying the Commission’s proposal was an overly general, and therefore partially erroneous, understanding that “[while] incumbent LECs have used central office coin services in the past, [they] have not made these services available to independent payphone providers for use in their provision of payphone services.” *First Report and Order* at ¶ 130, 146. As BellSouth demonstrated in its CEI plan, BellSouth has made its coin line service, known as “SmartLine service,” available in all of its states beginning as early as 1993. CEI Plan at 6, n.10.

<sup>14</sup> *First Report and Order* at ¶ 146.

<sup>15</sup> APCC at 4.

and requirements in the *First Report and Order*. Insofar as APCC did not timely present this issue for reconsideration, it should be foreclosed from raising this issue now in the context of this CEI plan compliance proceeding.

Moreover, that some PSPs may find the coin line impractical for their particular needs is irrelevant to BellSouth's satisfaction of its CEI plan requirements. The CEI requirements, as developed in the *Computer III* and *ONA* proceedings and adopted for this proceeding, require only that BellSouth make available the same tariffed services that its payphone operations will use. BellSouth has done so. BellSouth is not obligated to provide under its CEI Plan any service that it does not use,<sup>16</sup> nor is it obligated to refrain from using one tariffed offering covered by the Plan merely because some of its competitors choose to utilize an alternative tariffed arrangement.<sup>17</sup> As the Commission determined in its *First Report and Order*, the availability of both a coin line service and a standard "COCOT line" offers competitive payphone providers the same opportunity to use either "smart" or "dumb" phones, or some combination of the two, in a manner similar to the LECs. APCC's attempts to portray such an arrangement as "effective[]" discrimination<sup>18</sup> cannot be supported and must be rejected.

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<sup>16</sup> Of course, BellSouth recognizes its obligation to receive and consider requests from payphone providers for new unbundled services pursuant to the ONA 120-day process. *See First Report and Order* at ¶ 148.

<sup>17</sup> As BellSouth describes *infra.*, BSPC will in fact subscribe to *both* the SmartLine service and the standard line service.

<sup>18</sup> APCC at 3.

## **II. BELLSOUTH HAS SATISFIED THE COMMISSION'S TARIFFING AND UNBUNDLING REQUIREMENTS.**

### **A. BellSouth Is Not Required to Include a Federal Tariff in its CEI Plan.**

APCC contends that BellSouth's CEI plan is deficient in that BellSouth has not included with its plan any "applicable federal tariffs" for unbundled features or functions.<sup>19</sup> APCC misreads the Commission's tariffing and unbundling requirements. The Commission did not require unbundling of existing services beyond the coin line service that it permitted to be filed in the state tariff. Accordingly, there are no additional features or functions to be unbundled and therefore no "applicable federal tariff." APCC's contention to the contrary should be dismissed.

In the *First Report and Order*, the Commission required incumbent LECs, including BOCs, to unbundle their newly detariffed and deregulated payphone CPE from the associated central office coin transmission service and to "offer individual central office coin transmission services to PSPs under nondiscriminatory, public, tariffed offerings if the LECs provide those services for their own operations."<sup>20</sup> As noted above, the Commission required LECs to provide this "coin service so competitive payphone providers could offer payphone services using either instrument-implemented 'smart payphones' or 'dumb' payphones that utilize central office coin services, or some combination of the two, in a manner similar to the LECs."<sup>21</sup> In the *First Report and Order*, the Commission also required that tariffs for this unbundled coin service be filed with the Commission as part of LECs' access services.<sup>22</sup>

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<sup>19</sup> APCC at 6.

<sup>20</sup> *First Report and Order* at ¶ 146.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at ¶ 147.

Concurrently, the Commission declined to require LECs in general to undertake any additional unbundling of network services or network elements for payphone providers, finding that such additional unbundling is not “necessary to provide payphone services.”<sup>23</sup> Similarly, while the Commission did require BOCs to “unbundle additional network elements *when requested* by payphone providers based on specific criteria” consistent with existing ONA obligations,<sup>24</sup> the Commission identified no services or network elements beyond the previously identified coin service to be unbundled at the present time.

On reconsideration, the Commission modified its tariffing requirement, but not its delineation of the unbundled service to be tariffed. Specifically, the Commission observed,

as required in the *Report and Order*, LECs must provide tariffed, nondiscriminatory basic payphone services that enable independent providers to offer payphone services using either instrument-implemented “smart payphones” or “dumb” payphones that utilize central office coin services, or some combination of the two in a manner similar to the LECs. LECs must file those tariffs with the states.<sup>25</sup>

The Commission also reiterated that newly unbundled services *beyond* the coin service described above would be subject to a tariffing requirement and clarified that these *additional* features

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<sup>23</sup> *Id.* at ¶ 148. The Commission did remind non-BOC LECs, however, that any additional basic services, *i.e.*, services beyond those coin services previously discussed, provided by the LEC to its own payphone operations would have to be made available under tariff to other payphone providers. *Id.*

<sup>24</sup> *Id.* (emphasis added).

<sup>25</sup> *Reconsideration Order* at ¶162. This description of the “basic payphone services” that must be tariffed in the intrastate jurisdiction is identical to the description of the “coin service” that the Commission originally required to be filed in federal tariffs. *See First Report and Order* at ¶ 146.

would be subject to state and federal jurisdiction.<sup>26</sup> The Commission did not require the federal tariffing of the coin service itself, however, or of any aspect of that service (suggesting that the coin service itself constitutes that which is “necessary” for provision of payphone services).<sup>27</sup>

In fact, the only specific suggestion of a service subject to the federal tariffing requirement is the Commission’s reference to its previous decision to require federal tariffing of originating line screening service (“OLS”),<sup>28</sup> and BellSouth is complying with that requirement.<sup>29</sup> In yet another attempt to create artificial roadblocks to BellSouth’s CEI plan, however, APCC asserts that BellSouth’s choice of a Line Information Database (“LIDB”) solution for complying with the Commission’s OLS requirements somehow discriminates unlawfully against independent payphone providers and that such alleged discrimination should foreclose the Commission’s approval of BellSouth’s plan. APCC is flatly wrong on this count.

As a preliminary matter, the Commission recognized in its OLS proceeding the need for more detailed information regarding payphone lines from which payphone calls are originated in order to prevent fraud and to assure the proper handling of such calls.<sup>30</sup> As a result, the Commission required LECs, including BellSouth, to federally tariff OLS service.<sup>31</sup> The Commission expressly determined, however, that OLS service could be provisioned by means of

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<sup>26</sup> *Reconsideration Order* at ¶162.

<sup>27</sup> *Cf. First Report and Order* at ¶ 148 (“We do not find that such [additional] unbundling is necessary to provide payphone services.”).

<sup>28</sup> *Reconsideration Order* at ¶ 162, citing *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, CC Docket No. 91-35, *Third Report and Order* (rel. April 5, 1996) (“*OLS Order*”).

<sup>29</sup> *See* note 31, *infra*.

<sup>30</sup> *OLS Order*, ¶ 23-30.

<sup>31</sup> *Id.*

either a FLEX ANI solution or by the use of LIDB technology.<sup>32</sup> If anything, APCC's complaint here is merely an untimely request for reconsideration by the Commission of the *OLS Order*, which permitted LECs this choice of technology.

APCC is also simply wrong in presupposing that BellSouth's payphone service provider will be using one type of payphone line for which the use of LIDB OLS service will not be needed and that other payphone service providers will be using another type of payphone line for which LIDB OLS service will be needed. While APCC correctly notes that BellSouth's SmartLine (coin line) service delivers the "27" automatic number identification ("ANI") code with each call and is the only service for which the "27" ANI digits are provided, and that PTAS (standard line) service delivers the "07" ANI code with each call and is not the only service for which the "07" code is delivered,<sup>33</sup> this difference between the types of lines is irrelevant.

Consistent with the Commission's CEI requirements, both types of lines are equally available to all payphone providers, including BSPC. Indeed, BellSouth's own payphone service operation is currently using both types of lines, as are some independent payphone service providers. Moreover, by the time BellSouth's own payphone service provider begins to operate as a nonregulated entity, it is expected that nearly 79% of its lines will be standard "access

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<sup>32</sup> *Id.* at ¶ 19, 31. The Commission rejected the use of a basic ANI II approach for providing OLS service. *Id.* at ¶ 34. Although the Commission has permitted LECs additional time within which to tariff and make available their LIDB-based OLS service, *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Petitions Pertaining to Originating Line Screening Services*, CC Docket No. 91-35, CCB/CPD File Nos. 96-18, 96-25, and 96-32, *Memorandum Opinion and Order*, DA 96-2169, (rel. December 20, 1996), the August 1, 1997 tariff filing deadline allows for availability of the service in time for use in connection with the payphone compensation scheme adopted by the Commission in its orders in this proceeding.

<sup>33</sup> The "07" code is also delivered for other subscribers to the "access line" for prison and certain hotel/motel applications.

lines,”<sup>34</sup> not the SmartLine service that APCC asserts is more advantageous to BellSouth. Thus, for by far the majority of BellSouth’s own payphone lines, there will be the same need to use the LIDB OLS service as any other payphone provider which has subscribed to such lines. Given the foregoing, the Commission must reject APCC’s contention that BellSouth’s choice of the LIDB solution for its OLS service unlawfully discriminates against non-BellSouth payphone providers.<sup>35</sup>

Significant, too, is that APCC has identified no additional unbundled features or functions to which it perceives the federal tariff requirement to be “applicable.” APCC’s noticeable omission of such “details” suggests APCC’s own recognition that there are no additional unbundled features of the coin service to which the obligation could attach.

APCC’s apparent attempt to suggest a difference between “the basic payphone line for smart and dumb payphones” and associated, but unidentified, “unbundled features and functions” is also ill-conceived.<sup>36</sup> As discussed above, the “basic payphone line” is the coin service itself, which includes the functionality “that enable[s] independent providers to offer payphone services using either instrument-implemented ‘smart payphones’ or ‘dumb’ payphones that utilize central

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<sup>34</sup> See, Letter from W. W. Jordan, Executive Director -- Federal Regulatory, BellSouth, to William F. Caton, Acting Secretary -- FCC, CC Docket No. 91-35, CCB/CPD 96-25 (Dec. 17, 1996).

<sup>35</sup> Parties’ somewhat related contentions and hypotheses regarding potential discrimination in the availability of validation and billing and collection services and the handling of bad debt are similarly without merit. BSPC will obtain validation services and billing and collection services from the open marketplace just as other payphone providers do. If, in the future, BST provides a validation service directly to BSPC, the same service would be made available on nondiscriminatory terms to other PSPs. Billing and collections is, as ICSPC notes, ICSPC at 15, a nonregulated service. Moreover, as a separate entity, BSPC will have its own unique uncollectables. BST will not be “carrying” BSPC’s uncollectables and thus will have no “policy of foregoing uncollectables due to fraud for its payphone service affiliate.” AT&T at 4.

<sup>36</sup> APCC at 6-7, citing *Reconsideration Order* at ¶163.

office coin services, or some combination of the two in a manner similar to the LECs.” Exclusion of such functionality from a line would by definition render the line something other than the coin service recognized by the Commission, and thereby render nonsensical the Commission’s requirement that tariffs for this “coin service” be filed with the states. The better conclusion is that it is APCC’s misdirected distinction, not the Commission’s requirement, that is nonsensical.

Further, even if APCC’s spurious distinction had merit, the inference APCC draws for tariffing purposes does not. The Commission concluded that tariffs for basic payphone service must be filed with the states, which even under APCC’s reading requires the filing of a local exchange, subscriber line service,<sup>37</sup> not an access service. Thus, there is no access service arrangement with which the (undefined) unbundled features could be associated. Moreover, any proposed solution to this incongruity that permitted the association of federally tariffed features with a state tariffed exchange line would be contrary to the Commission’s prohibition adopted in the ONA proceedings against “mixing and matching” lines and features from disparate jurisdictions.<sup>38</sup> Given the Commission’s determination to pattern the requirements for BOCs’ payphone operations after those adopted in the *Computer III* and *ONA* proceedings, the Commission should reject APCC’s ill-defined attempt to deviate from that pattern.

For all of these reasons, the Commission should consider APCC’s argument for what it is: a poorly disguised attempt to misconstrue the Commission’s requirements in a way that would

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<sup>37</sup> The Commission has observed that payphones, like all other telephones, are connected to the local switch by means of a subscriber line. *First Report and Order* at ¶180.

<sup>38</sup> *In the Matter of Amendments of Part 69 of the Commission’s Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture Policy and Rules Concerning Rates for Dominant Carriers, Report and Order and Order on Further Reconsideration and Supplemental Notice of Proposed Rulemaking*, 6 FCC Rcd 4524 (July 11, 1991).

increase the procedural hoops through which BellSouth must jump before it is permitted to compete evenly with APCC members. Such dilatory, anticompetitive tactics should not be countenanced.

**B. Criticisms of BellSouth's State Tariffs are Misdirected and Should be Rejected.**

APCC restates for intrastate tariffs the same erroneous unbundling argument it advanced for interstate tariffs, above. APCC is also joined by SPCC in claiming disparate impact from BellSouth's tariffed payphone service offerings. SPCC goes even further and asks the Commission specifically to ignore in this CEI plan compliance review the Commission's prior policy decisions regarding pricing of state tariffed payphone services. All of these arguments raise issues that the Commission has properly left to state commissions, and none provides any grounds for withholding approval of BellSouth's CEI plan. BellSouth has met its CEI plan obligations and the Plan should be approved.

As discussed above, the Commission required the unbundling of LECs' central office coin service from the newly detariffed CPE used in that service. The Commission required LECs to file this coin service in their state tariffs and declined to require any additional unbundling or tariffing, except to the extent the LEC provides additional services to its payphone operation or, if the LEC is a BOC, a request for greater unbundling has been considered through the 120-day process. Moreover, paraphrasing the "unbundling" parameter imposed on CEI Plans generally, the Commission required BellSouth to "indicate" how it will unbundle from other basic service

offerings and tariff the basic payphone services that will be used in its payphone offerings.<sup>39</sup>

BellSouth has satisfied all of these requirements.

In its Plan, BellSouth identified the two unbundled basic services that will underlie its payphone operations. Specifically, BellSouth identified and described both its standard exchange line that is generally for use with instrument implemented “smartsets” and its “coin line” service for use with “dumb” sets. Both of these services are unbundled from other basic service offerings and associated with specific rate elements in BellSouth’s state tariffs.<sup>40</sup> And, as BellSouth represented in its CEI filing, these are precisely the tariffed offerings that will underlie its payphone service offerings and to which its payphone operation will subscribe. No greater

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<sup>39</sup> Compare the standard established in the original statement of the unbundling parameter in the *Computer III* proceeding, *Computer III Phase I Order* at 1040 (“As part of its CEI offering, the basic services and basic service functions that underlie the carrier’s enhanced service offering must be *unbundled from other basic service offerings* and associated with a specific rate element in the CEI tariff.”) (emphasis added), with the paraphrasing of this requirement in the *Reconsideration Order*, at ¶ 213 (“[A] BOC must indicate how it plans to unbundle, and associate with a specific rate element in a tariff, the basic service and basic service functions that underlie its provision of payphone service.”). As the original articulation of this standard makes clear, and as the Commission has reaffirmed in approving CEI plans previously, this unbundling parameter requires that the basic services used by the BOC’s enhanced or payphone operations be *unbundled from other basic service offerings*. It does not require that the unbundled, underlying basic services themselves be disaggregated to any greater degree than to which the BOC utilizes those services, unless and until the BOC has received and evaluated a request for such greater unbundling pursuant to the 120-day process. See, e.g., *New York Telephone and New England Telephone and Telegraph Company; Comparably Efficient Interconnection Plan for the Provision of Voice Messaging Services, Memorandum Opinion and Order*, 4 FCC Rcd 554, 555 (1989) (“For CEI purposes a BOC must only make available to others the same basic services that it uses . . . . [No] further unbundling is required to satisfy CEI requirements.”)

<sup>40</sup> BellSouth included with its CEI plan representative tariffs for both of these services for the Commission’s convenience. See *Computer III Phase I Order* at 1055 (CEI Plans must include “sample” tariffs.) As SPCC observed, however, a portion of one of the submitted sample tariffs had been superseded. SPCC at 6. BellSouth regrets the error. Attached as Appendix A hereto is a copy of the current tariff for both of these services in all of BellSouth’s states.

unbundling is required for BellSouth to satisfy the CEI unbundling parameter.<sup>41</sup> Accordingly, claims regarding the degree of BellSouth's unbundling should be dismissed.

Moreover, having removed its federal tariffing requirement, the Commission has indicated that it will rely on the states to ensure that the state tariffed services satisfy the requirements of Section 276.<sup>42</sup> In addition, the Commission noted that states may impose further unbundling requirements that are not inconsistent with the requirements of Section 276 or the Commission's orders.<sup>43</sup> Accordingly, commenters' arguments urging greater unbundling of BellSouth's state tariffs present no grounds for disapproval of BellSouth's CEI plan, nor are they even presented to the appropriate forum. Again, these arguments must be dismissed.

Similarly, attempts to compare state tariffs and find some disparate impact are not properly before the Commission in this CEI Plan review proceeding. That some competing payphone providers choose not to use the same equally available tariffed services that BellSouth's payphone operations use has no bearing on whether BellSouth has satisfied its CEI tariffing obligation. The requirement is that BellSouth make those services available on the same terms and conditions, and BellSouth has met that test.

The Commission should also place little faith in APCC's purported demonstrations of disparate impacts of BellSouth's two tariff offerings.<sup>44</sup> APCC's calculation of the asserted

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<sup>41</sup> See, *BellSouth VMS Order* at ¶ 24.

<sup>42</sup> *Reconsideration Order* at ¶ 163.

<sup>43</sup> *First Report and Order* at ¶ 148.

<sup>44</sup> APCC at 9-11. Beyond the inaccuracies in APCC's numerical calculation is the fact that the conclusion APCC derives therefrom is based on an errant assumption. Even if state tariff rate structures do result in different rates at different usage levels, the more salient fact is that, contrary to APCC's assumptions, BellSouth does and will continue to use *both* coinline service and standard line service and with the *latter* service being the more predominant. Indeed, SPCC's (Continued...)

disparate impact using South Carolina rates is based on assumptions of usage levels that do not reflect reality. For example, recent data from South Carolina (November 1996) reveals that the regular COCOT service line to which APCC attributed 500 local calls averaging 3 minutes each actually averaged only 252 calls and with 1.83 minutes average duration.<sup>45</sup> Moreover, APCC assumed a \$4.00 charge for screening and blocking (plus \$1.00 for billed number screening). Actual data shows, however, that while the \$4.00 rate reflects one of the tariffed options for screening and blocking, rarely is that option chosen. Instead, the predominantly chosen option is only \$3.00,<sup>46</sup> plus the \$1.00 for billed number screening. Plugging these actual data into APCC's own calculus in lieu of its hyperinflated assumptions provides a much different, and *more realistic*, perspective:

$$\begin{aligned} & \text{line } (\$27 - \$35)^{47} + \text{screening } (\$4) + \text{usage } (252 \text{ calls} \times \$0.0566/\text{call}) \\ & = \$45.26 - \$53.26 \end{aligned}$$

This range of charges for a regular COCOT line using more accurate inputs is thus substantially lower than the \$72 - \$80 range represented by APCC using its inflated assumptions. It is also materially *lower* than the Area Plus Coin Line Service that APCC calculates at \$63, thus negating

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own confident assertion of its knowledge of “significant investments in smart phone technology,” SPCC at 13, belies APCC’s and SPCC’s fundamental premise that BellSouth’s tariffs are structured to perpetuate an advantage they claim BellSouth enjoys with the use of “dumb” sets. BellSouth has no incentive to invest in smart phone technology while concurrently structuring tariffs to make the use of such equipment less economical. APCC’s and SPCC’s perverted theories of improper motive and conduct conflict with reality and should be disregarded.

<sup>45</sup> Fractional minutes are relevant because after the first minute, usage is billed in tenth-of-minute increments.

<sup>46</sup> In some cases, a \$2.00 option is also available.

<sup>47</sup> The line charge is 80% of the individual business line rate, as APCC correctly states. APCC at 9.

APCC's "disparate impact" contention, even if it had any relevance in the first instance.<sup>48</sup> Indeed, contrary to the intimations of APCC and others, the SmartLine service rate is, in fact, generally *higher* than the standard rate at average usage levels.<sup>49</sup> APCC's "analysis" cannot withstand simple scrutiny and should be accorded no consideration.

Of course, payphone providers are capable of selecting the service option that provides them the most economic benefit based on an assortment of inputs, including the expected usage at a location, their chosen mix of payphone equipment, and many other factors. The point is that BellSouth is obligated only to provide the tariffed payphone services that will "allow,"<sup>50</sup> not "ensure," payphone service providers' use of payphones that are equivalent to those used by BellSouth. By no means is BellSouth required to price its services to negate payphone provider cost differentials based on the type of payphone equipment different providers choose to deploy or other factors beyond BellSouth's control.

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<sup>48</sup> See note 43, *supra*.

<sup>49</sup> Moreover, it is disingenuous at best for SPCC to complain that in some states the coin line rate is "the same as or lower than" the rate for a standard line. SPCC at 8. For example, the Georgia payphone association, which is represented in this proceeding through SPCC, SPCC at n.2, negotiated and stipulated to flat rates for the "coin line" and "standard line" in a proceeding before the Georgia Public Service Commission following the association's petition "to require BellSouth, as a LEC, to provide pay telephone related services to IPPs on the same terms and same conditions as it provides to its own pay telephone service." See, *Petition of the Georgia Public Communications Association, Inc. for the Implementation of LEC Pay Telephone Service to Competitors under "Same Terms, Same Conditions,"* Georgia Public Service Commission, *First Supplemental Order*, Docket No. 5876-U (Dec. 8, 1995) (attached hereto as Appendix B). Further, of those stipulated rates, only the standard rate in the highest rate category is higher than the coin line rate, and there only by \$1.00. Complaints before this Commission about the comparative level of these rates that were agreed upon before the Georgia commission should be accorded no consideration.

<sup>50</sup> *First Report and Order* at ¶ 129.

Beyond these errant claims of disparate impact, SPCC resurrects arguments that the Commission has already rejected or purposely declined to address in favor of state responsibility. For example, SPCC's claim that the *Computer III* minimization of transport parameter requires BellSouth to lower its "dumb line" rate in all of its states to the level of its Florida tariff<sup>51</sup> is as absurd as it is insupportable. The Commission has repeatedly affirmed that its minimization of transport requirement is met when a carrier charges its own operations the same tariffed rate for its access facility as it charges all other service providers.<sup>52</sup> That issue is not up for review in this proceeding. BellSouth has clearly met this standard.

Nor is BellSouth required to refile intrastate tariffs for its SmartLine or PTAS offerings under different pricing standards. The Commission expressly acknowledged that some carriers had already filed intrastate tariffs for the services required in the *First Report and Order* and purposely left it to the states to determine whether any further filings would be required.<sup>53</sup> Thus, the Commission did not require BellSouth to refile its tariffs through the rulemaking proceeding and cannot do so now in this CEI Plan review proceeding. SPCC's arguments are nothing more than an out of time petition for reconsideration and should be dismissed.

Finally, as BellSouth stated in its CEI plan, certain additional features useful to payphone service providers are also already available as options under effective state tariffs on the same terms and conditions to all payphone service providers.<sup>54</sup> Coin refund and repair referral service is available to all payphone providers in Section A.7 of BellSouth's General Subscriber Services

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<sup>51</sup> SPCC at 9.

<sup>52</sup> See, *BellSouth VMS Order* at ¶ 42].

<sup>53</sup> *Reconsideration Order* at ¶ 163.

<sup>54</sup> BellSouth CEI Plan at 6.

Tariff in all of its states; answer supervision is available in Florida from Section A.7 (referring to Section A.13); and local usage detail is available from Section A.3 in Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee. In each of these states, these previously existing, tariffed, optional offerings are available to BSPC and other providers on nondiscriminatory terms. Thus, BellSouth has fully met its obligation to unbundle and tariff the basic services underlying its payphone operations.

### **III. INMATE SERVICES ARE BY DEFINITION INCLUDED IN “PAYPHONE SERVICE” AND ARE FULLY COVERED BY BELL SOUTH’S CEI PLAN.**

ICSPC erroneously asserts that BellSouth’s CEI plan “does not say anything at all” about compliance with the CEI requirements with respect to BellSouth’s offering of inmate calling services.<sup>55</sup> On the basis of this misreading of BellSouth’s Plan, ICSPC launches into a speculative disquisition on how BellSouth might treat its inmate calling services and on the issues peculiar to such services that ICSPC associates with the different posited treatments. As BellSouth clearly stated, however, its CEI plan specifically covers inmate calling services, rendering ICSPC’s comments superfluous.

First, Section 276 itself clearly includes “the provision of inmate calling service in correctional institutions” within the definition of “payphone service.”<sup>56</sup> Second, the Commission clarified in its *Reconsideration Order* that the requirements of the *First Report and Order*, which were inclusive of the CEI plan obligations, applied with respect to inmate payphones.<sup>57</sup> In recognition of both of these determinations and in compliance with the Commission’s requirement

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<sup>55</sup> ICSPC at 2.

<sup>56</sup> 47 U.S.C. § 276(d).

<sup>57</sup> *Reconsideration Order* at ¶ 219.

that a CEI plan include a short general description of the services covered by the plan, BellSouth plainly stated that “‘payphone service’ as used in [the] Plan means . . . the provision of inmate service in correctional institutions.”<sup>58</sup> Thus, ICSPC’s contention that BellSouth “does not say anything at all” about inmate services is simply untrue. The entire Plan speaks to inmate service.

In light of this inclusive and comprehensive treatment of inmate services in BellSouth’s CEI plan, ICSPC’s prolix description of “distinctive characteristics” of inmate services, such as “the call control and call processing functions that are central to the provision of [inmate services],”<sup>59</sup> becomes immaterial. BellSouth appreciates the relationship between those functions and considers them to be part of the inmate service.<sup>60</sup> Accordingly, BSPC will obtain and locate outside of BST’s central offices the equipment used for inmate service call management. Insofar as BellSouth has already stated that equipment of its payphone operations (including inmate service operations) will not be collocated in BellSouth’s central offices<sup>61</sup> and, more generally, that BellSouth’s payphone operations (including inmate service operations) will buy the same tariffed services<sup>62</sup> that nonaffiliated payphone providers (including inmate service providers) will buy,

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<sup>58</sup> CEI Plan at 3.

<sup>59</sup> ICSPC at 8.

<sup>60</sup> While BellSouth thus concurs with ICSPC on this classification of the service functionality, BellSouth disagrees with ICSPC’s reasoning. Contrary to ICSPC’s contentions, services may be, and often are, classified differently for regulatory purposes based on the equipment location. For example, multiplexing in the central office is a permitted regulated activity; multiplexing on the customer premises generally is not. *Compare* ICSPC at n.11 (asserting “it is impermissible to classify the service differently based on the equipment location”).

<sup>61</sup> CEI Plan at 9.

<sup>62</sup> Those services are the tariffed coin line and dumb line services discussed previously that are equally available to all inmate and other payphone service providers. *See* AT&T at 2-3.