

FCC MAIL SECTION

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Federal Communications Commission

DA 97-1396

DISPATCHED BY

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

In the Matter of)

Local Exchange Carriers')

Payphone Functions and Features)

NYNEX Telephone Companies)

Revisions to Tariff F.C.C. No. 1)

CC Docket No. 97-140

Transmittal No. 452

ORDER ON RECONSIDERATION

Adopted: July 2, 1997

Released: July 2, 1997

By the Chief, Competitive Pricing Division, Common Carrier Bureau:

I. INTRODUCTION

1. On June 2, 1997, the Competitive Pricing Division (Division) of the Common Carrier Bureau (Bureau) released the *LEC Payphone Functions and Features Suspension Order*,¹ finding that the tariffs filed by several local exchange carriers (LEC), including the NYNEX Telephone Companies (NYNEX) Transmittal No. 452, raised questions of lawfulness that warranted an investigation.² On our own motion, we now reconsider that Order insofar as it suspended and initiated an investigation of NYNEX Transmittal No. 452. We find, based on the record before us, that NYNEX Transmittal No. 452 does not warrant investigation and that the investigation of this transmittal should be terminated.

¹ In the Matter of Local Exchange Carriers' Payphone Functions and Features, CC Docket No. 97-140, Suspension Order, DA 97-1149 (Com. Car. Bur., Comp. Pric. Div., rel. June 2, 1997) (*LEC Payphones Functions and Features Suspension Order*).

² The Division ordered the carriers to advance by one day the effective date of each of the transmittals, to June 2, 1997, suspended each transmittal for one day to June 3, 1997, initiated an investigation, and imposed an accounting order. See In the Matter of Local Exchange Carriers' Payphone Functions and Features, CC Docket No. 97-140, Erratum, 74559 (Com. Car. Bur., Comp. Pric. Div., rel. June 5, 1997)

II. BACKGROUND

2. The *Payphone Reclassification Orders*³ have advanced the twin goals of Section 276 of the Communications Act (Act): "promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public."⁴ In the *Payphone Order*, the Commission required, among other things, that LECs tariff payphone services at the federal level.⁵ The *Payphone Order* also required that network services provided by a LEC to its own payphone operations be federally tarified as well.⁶ In the *Order on Reconsideration*, the Commission required LECs to file tariffs for basic payphone lines at the state level only, but required that unbundled features and functions provided by the LEC to its own payphone operations or to others be tarified at both the state and federal levels.⁷

3. In the *Payphone Clarification Order*,⁸ the Bureau clarified the interstate tariffing requirements for unbundled features and functions. In addition, the Bureau restated that tariffs for payphone services, including unbundled features and functions filed pursuant to the *Payphone Reclassification Proceeding*, must be cost-based, consistent with Section 276, nondiscriminatory, and consistent with *Computer III* tariffing guidelines.⁹ Finally, the *Payphone Clarification Order* granted a limited waiver of the deadline for filing the federal tariffs for unbundled features and functions to enable LECs to file the required tariffs within 45 days after the release of the Order, with a scheduled effective date no later than 15 days after the date of filing.¹⁰

³ Implementation of the Pay Telephone Reclassification And Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, FCC 96-388 (rel. Sept. 20 1996) (*Payphone Order*); Order on Reconsideration, FCC 96-439 (rel. Nov. 8, 1996) (*Order on Reconsideration*), *aff'd in part and remanded in part, sub nom.* Illinois Public Telecommunications Assn. v. FCC and United States, Case No. 96-1394 (D.C. Cir. July 1, 1997).

⁴ 47 U.S.C. § 276(b)(1).

⁵ *Payphone Order* at para. 147.

⁶ *Id.* at para. 148.

⁷ *Order on Reconsideration* at paras. 162-65.

⁸ Implementation of the Payphone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, Order, DA 96-128 (Com. Car. Bur., rel. April 4, 1997) (*Payphone Clarification Order*).

⁹ *Payphone Clarification Order* at para. 2, *citing Order on Reconsideration* at para. 163.

¹⁰ *Id.* at 1.

III. NYNEX TRANSMITTAL NO. 452 AND PLEADING SUMMARY

4. In Transmittal No. 452, NYNEX proposes to revise their access tariff to add four unbundled, payphone-specific features.¹¹ These features, denominated by NYNEX as Public Access Line (PAL) Optional Features, can be of assistance to independent payphone service providers in making payphone services available to the public.

5. The American Public Communications Council (APCC) petitions for suspension and investigation of the NYNEX transmittal because, in its view, the proposed charges for some of the payphone features introduced by NYNEX exceed NYNEX's disclosed costs and, thus, fail to meet the requirements of Section 276 of the Act and the Commission's *Payphone Orders*.¹² More specifically, APCC contends these differences between rates and costs prevent NYNEX's proposed service charges from meeting the requirements of the new services test applicable to such rates.¹³ APCC claims that the proposed charges for NYNEX's terminating (billed) number screening (BNS) are not consistent with the charges submitted by other LECs for similar services.¹⁴ In addition, APCC claims that overhead loading of 100 percent of direct costs on line side answer supervision (LSAS) is unreasonable. APCC also contends that NYNEX should be required to provide further justification for the claimed direct recurring cost of \$0.84 per line per month for LSAS.¹⁵

6. In its reply to the APCC petition, NYNEX contends that the "isolated comparisons" cited by APCC do not establish sufficient grounds for suspension or investigation of this NYNEX transmittal.¹⁶ With specific reference to APCC's challenge to NYNEX's proposed charges for BNS service, NYNEX concedes that its proposed terminating BNS service should be offered at no charge.¹⁷ The Division has granted a request for special permission allowing NYNEX to reduce this charge to zero.¹⁸

¹¹ NYNEX Description and Justification (D&J) at 2. These features are lineside answer supervision, direct dialed screening, operator number screening, and terminating number screening. *Id.* at 3.

¹² APCC (NYNEX) Petition at 4.

¹³ *Id.* at 4.

¹⁴ *Id.* at 1.

¹⁵ *Id.* at 5.

¹⁶ NYNEX Opposition and Reply at 4. NYNEX also claims that for certain other payphone features not cited by APCC, NYNEX's direct costs are lower than those of other LECs.

¹⁷ NYNEX Application for Special Permission No. 205, filed June 12, 1997.

¹⁸ NYNEX Transmittal No. 458, filed June 17, 1997.

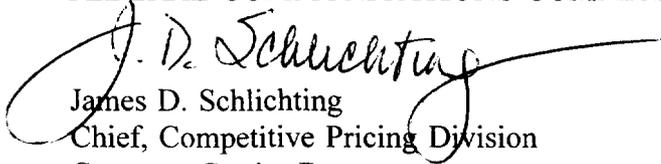
IV. DISCUSSION

7. Upon further review and consideration of NYNEX's reply, we conclude that APCC's allegations regarding NYNEX's costs and rates for some of its payphone features do not raise questions of lawfulness under the new services test or other applicable requirements. With respect to APCC's argument that NYNEX should be required to provide additional justification for applying a 100 percent loading factor to its direct costs for LSAS, NYNEX replies that 100 percent loading is within the range of overhead loading factors that the Commission has considered reasonable in the past.¹⁹ As to APCC's concern that NYNEX's direct costs of LSAS are not in line with the direct cost of other carriers for similar services, NYNEX responds that almost all differences between its costs for LSAS and other carriers' costs for this feature relate to right of use fees that NYNEX must pay the switch manufacturer for software that makes this feature available on the 5ESS switch. As NYNEX points out, "[t]he other LECs may not use the same type of switches as NYNEX, they may use them in different proportions to serve payphone lines, or they may have other reasons why they can provide these features without paying right of use fees or without incurring any incremental investment."²⁰ Finally, we have reviewed the adjustment made by NYNEX to reduce the proposed charge for BNS service to zero. Based on the record before us, we find that the objections of APCC have been sufficiently addressed by NYNEX so as not to require investigation. On our own motion, and pursuant to Section 1.113 of our rules, 47 C.F.R. § 1.113, we hereby reconsider the *LEC Payphone Functions and Features Suspension Order* and find that an investigation of NYNEX Transmittal No. 452 is not warranted.

V. ORDERING CLAUSE

8. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.113 of our rules, 47 C.F.R. § 1.113, the investigation of NYNEX Transmittal No. 452 in CC Docket No. 140 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION


James D. Schlichting
Chief, Competitive Pricing Division
Common Carrier Bureau

¹⁹ NYNEX Reply at 5.

²⁰ *Id.* at 4.