(consistent with state regulations) to provide a credit or other compensation to purchasers back to April 15, 1997.

The requested waiver is appropriate both because special circumstances warrant a deviation from the general rule and because the waiver will serve the public interest. Because the federal "new services" test has not previously been applied to existing state services -- and because the LECs did not understand the Commission to be requiring such an application of the test until the Commission issued its clarification order just a few days ago -- special circumstances exist to grant a limited waiver of brief duration to address this responsibility. In addition, granting the waiver in this limited circumstance will not undermine, and is consistent with, the Commission's overall policies in CC Docket No. 96-128 to reclassify LEC payphone assets and ensure fair PSP compensation for all calls originated from payphones. And competing PSPs will suffer no disadvantage. Indeed, the voluntary reimbursement mechanism discussed above -- which ensures that PSPs are compensated if rates go down, but does not require them to pay retroactive additional compensation if rates go up -- will ensure that no purchaser of payphone services is placed at a disadvantage due to the limited waiver.

Accordingly, we request a limited waiver, as outlined above, of the Commission's intrastate tariffing requirements for basic payphone lines and unbundled features and functions.

We appreciate your urgent consideration of this matter. Copies of this letter have been served by hand on the APCC, AT&T, MCI and Sprint.

Yours sincerely,

Michael Kellogg

Michael K. Kellogg

cc: Dan Abeyta
Thomas Boasberg
Craig Brown
Michelle Carey
Michael Carowitz
James Casserly
James Coltharp
Rose M. Crellin
Dan Gonzalez
Christopher Heimann
Radhika Karmarkar
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April 11, 1997

Ex Parte Filing

Mary Beth Richards
Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Comm'n
1919 M Street, N.W., Room 500
Washington, D.C. 20554

In re Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128

Dear Mary Beth:

This letter will clarify the request I made yesterday on behalf of the RBOCs for a limited waiver of the Commission's intrastate tariffing requirements for basic payphone lines and unbundled features and functions.

To the best of my knowledge, all the RBOCs have (or will by April 15, 1997, have) effective state tariffs for all the basic payphone lines and unbundled features and functions required by the Commission's order. We are not seeking a waiver of that requirement. We seek a waiver only of the requirement that those intrastate tariffs satisfy the Commission's "new services" test. The waiver will allow LECs 45 days (from the April 4 Order) to gather the relevant cost information and either be prepared to certify that the existing tariffs satisfy the costing standards of the "new services" test or to file new or revised tariffs that do satisfy those standards. Furthermore, as noted, where new or revised tariffs are required and the new tariff rates are lower than the existing ones, we will undertake (consistent with state requirements) to reimburse or provide a credit back to April 15, 1997, to those purchasing the services under the existing tariffs.

I hope this clarification is helpful. Copies of this letter have been served by hand on the APCC, AT&T, MCI and Sprint.

Yours sincerely,

Michael K. Kellogg

Michael K. Kellogg

cc: Dan Abeyta
Thomas Boasberg
Craig Brown
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EXHIBIT B

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1922-1979

September 30, 1997

HAND DELIVERED

Daniel M. Martin
Chief
Tariff and Rates Section
Communications Division
New York State Public
Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: New York Telephone Company Tariff Provisions to De-Tariff Payphone Terminal Equipment, and Offer Unbundled, Bottleneck Coin Elements and Features

Dear Mr. Martin:

These comments are submitted on behalf of the Independent Payphone Association of New York, Inc. (IPANY), in accordance with the Commission's Notice Requesting Comments issued July 30, 1997. They address the tariff filing made by New York Telephone on or about December 31, 1996, which went into effect on April 1, 1997, on a temporary basis, as well as subsequent revisions filed on or about May 19, 1997 and thereafter.

The overwhelming majority of IPANY members order what used to be known as "dumb" COCOT lines, now referred to as "Enhanced BPAL with OCS" and "LIDPAL".

For the most part, IPPs order the two-way, as opposed to the originating only, version of these products.[1] The rates for the two-way "Enhanced BPAL with OCS" and the two-way LIDPAL in the April 1, 1997, filing were $17.72 and $19.80 respectively. Following the May 19 filing, and later amendments, the version now proposed retains the $17.72 rate but increases the $19.80 to $19.90. This proposed increase in the LIDPAL rate violates Section IV(C)(1) of the New York Tel Incentive Plan, which precludes any increase in "basic services". Appendix 4 of the Incentive Plan identifies PAL lines as basic services.

New York Tel argues its filings are consistent with, and necessary to meet, the FCC's "New Services" test. We disagree. The guidelines for the "new services test" are set forth in Section 61.49 of the FCC Rules. They indicate that in the case of a new service, and each unbundled element thereof, the rate must generate a net revenue increase within twenty-four months. The rates are also limited in that they may "not recover more than a reasonable portion of the carrier's overhead costs".

In the FCC's Initial LEC Price Cap Order (5 FCC Rcd. 6825, para. 319-321) the primary constraint placed on the price of a new

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[1] In many cases, COCOTs are restricted to outgoing calls only. However, because the installations are routinely polled for maintenance purposes, and have their rating tables updated through remote access, two-way service must nonetheless be ordered.

service was that it satisfy this net revenue test. That test, which was adopted in the AT&T Price Cap Decision, "was designed to establish a lower bound on new service prices and thereby ensure that AT&T did not set predatory prices." In the LEC Price Cap Reconsideration Order (6 FCC Rcd. at 2693-2695) the FCC established an upper bound at fully distributed cost.

The FCC itself has declared that the basic purpose of the "new services test" was to "provide an adequate check on both unreasonably high and predatorial low prices and encourage vigorous development of new and innovative services." See Memorandum, Opinion and Order on Second Further Reconsideration, Dockets 89-79 and 87-313, 7 FCC Rcd. 5235 at 5239, August 6, 1992. Lowering input rates on services such as PALs would not run counter to that policy.

Accordingly, New York Tel's claim that, based on the new services test, it is forced to raise PAL rates, or is prevented from lowering them to a more economically rational level, should be rejected.

In light of this Commission's goals of increasing competition, the rates set forth by New York Tel should be rejected in favor of rates based on forward looking economic costs. As will be shown below, the rates for Public Access Lines should not remain the same as existed prior to April 1, 1997, and most certainly should not be increased above that level. To the contrary, they should be reduced to reflect the equivalence of a Public Access Line to an Unbundled Network Element utilized by competing telecommunications carriers. As such, lowering the price of an element would be the opposite of predatory, and instead would actually increase competition and "encourage vigorous development of new and innovative services".

As New York Telephone's tariff notes, "Public Access Lines are voice grade individual business exchange lines which provide exchange access from the subscriber's premises to the company's central office facilities..." (PSC No. 900 - Telephone, Section 3, para. E(1), p. 9). Options can be added to the basic service - which is essentially an unbundled link - to restrict the type of calls that may be placed from payphones, and which, such as Outward Call Screening, give notice to operators of the fact the calling station is a payphone.

Absent the optical features, the cost of providing a PAL line is the same as any other basic business line. This Commission has found that the TELRIC cost of the business link in metropolitan areas to be $12.49. This TELRIC cost actually exceeds the "equivalent link rate" of $10.46 contained in the Public Access Line Tariff. The TELRIC cost of the port was found to be $2.50. See, Opinion 97-2, Case 97-C-0657, April 1, 1997, Attachment D, p. 1 of 2. Those TELRIC costs include a reasonable assignment of overheads.

Critically, the TELRIC rate covers total interstate and intrastate costs, so that a federal EUCL is not applied to unbundled links. But under NYT's plan, it would charge IPPs the tariff rate for a PAL line of $15.47 plus a $5.50 EUCL, thus vastly increasing the differences between its total revenue per line and the actual cost.

At the very most, the total monthly rate for the basic PAL line should be the TELRIC link and port costs of $14.99, without a EUCL. If NYT charges a EUCL, the intrastate BPAL rate should be reduced by the same $5.50.[2]

The various types of PAL lines build upon the Basic Public Access Line (BPAL).

There is a difference of $.41 between a BPAL ($15.47) and an Enhanced BPAL ($15.88), which presumably is due to the availability of blocking for calls to central office codes 540, 550, 910, 920, 970, 976, 700 and 900 included in the Enhanced BPAL. However, there is no on-going cost to NYT's provisioning of this blocking service, as evidenced by the fact a regular

[2] This Commission cannot require New York Tel to waive the EUCL, because that is federally tariffed. However, to prevent double recovery of costs, it can establish the intrastate tariff rate at TELRIC cost less any amount recovered through an EUCL.

business customer pays no recurring charge. There should also be no non-recurring cost, again as evidenced by the fact a business customer pays no non-recurring charge if the blocking option is ordered when service is initially established. Thus, absolutely no reason exists why an Enhanced BPAL line should carry with it an additional monthly recurring cost of $.41.[3]

Next, the difference between an Enhanced BPAL ($15.88) and a BPAL with OCS ($17.72) is, by definition, the provision of Outward Call Screening. However, that service cannot possibly cost $1.84 a month to provide.

Outward Call Screening is simply the addition of a particular identification code to the outpulsed ANI stream of digits. The purpose of the additional digits, which are frequently "07", is to alert an operator that the calling phone is restricted in some manner, in that billing must be limited to protect against fraud. It is inconceivable that addition of two digits to the ANI stream costs a $1.84 per month. If anything, the monthly costs would be equivalent to those for Billed Number Screening, which the company has acknowledged are zero. See, letter to Hon. John C. Crary from Robert P. Slevin, counsel to NYNEX Corporation, July

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[3] Furthermore, the difference between the BPAL with OCS ($17.72) and the Enhanced BPAL with OCS ($17.72) is the provision of local call blocking in the Enhanced BPAL. Yet there is no difference in the recurring charge, indicating no cost difference due to the provision of local blocking.

22, 1997.

New York Telephone has also tariffed a Limited Inter-LATA Dialing Public Access Line (LIDPAL), which includes Outward Call Screening and a blocking option, at a proposed rate of $19.90. The only difference between this LIDPAL and the Enhanced BPAL with OCS is the ability to block certain types of directly dialed toll calls. However, the costs of providing the toll blocking service cannot possibly be equal to the $2.18 differential between the rate for the LIDPAL and the rate for the Enhanced BPAL with OCS.

Once again, introduction of the toll blocking capabilities of LIDPAL involves simply a software change, and like blocking options for other types of calls, does not incur recurring costs.[4]

IPANY urges that PAL lines be treated as forms of unbundled network elements. Technically, Section 251(c)(3) of the Telecommunications Act of 1996 requires an Incumbent Local Exchange Carrier to provide unbundled network elements at TELRIC prices (without EUCLs) only to a "requesting telecommunications carrier". Payphone Service Providers are not included within the

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[4] The company also offers an enhanced LIDPAL at the same rate as the LIDPAL. The only difference is that the Enhanced LIDPAL offers a different local call blocking option.

definition of "telecommunications carrier" under the federal statute. See, 47 USC Section 153(49). That does not, however, mean that this Commission could not, acting pursuant to state law, achieve the same result.

Public Access Lines are essential wholesale inputs to the provision of retail pay telephone service. As such, PAL lines are functionally equivalent to the unbundled links, ports, or other unbundled network elements which are utilized by "telecommunications carriers" to provide retail services to the public.

The purposes of making available unbundled network elements at TELRIC prices is to open telecommunications markets to competition. The pay telephone market should be no exception.

Payphone Service Providers have experienced a number of significant increases in the costs of doing business in recent years, including, but not limited to increased municipal franchise fees and commissions. To the extent that wholesale input costs paid by these PSPs - particularly the PAL lines - exceed their forward looking economic costs, added burdens are placed upon PSPs which artificially restrict their ability to offer new and advanced services to the public.

Providing wholesale input services, such as PALs, at forward looking economic costs will benefit the public interest by making available more payphone locations in areas where they might not otherwise be installed. As shown in the comments recently submitted in connection with the Commission's "Public Interest Payphone" inquiry, the primary factor in determining whether a payphone will be installed at a particular location is the cost of that facility. To the extent that input costs are reduced to forward-looking economic costs, more payphone locations will be economically viable, and more public payphones will be available to provide emergency services, as well as to provide access to the switched network for telephone in areas of low telephone penetration.

In light of the above, it is respectfully requested that New York Telephone's multiple filings for Public Access Lines be rejected, and that the company be instructed to reprice its input services at rates no higher than appropriate forward-looking economic costs.

Sincerely,

Keith J. Roland

KJR:tlm
cc: Robert Slevin, Esq.

EXHIBIT C

FILE COPY

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Case 99-C-____-

Petition of the Independent Payphone Association of New York, Inc. to Modify New York Telephone Wholesale Payphone Service Rates and Award Refunds

TO THE COMMISSION:

The Independent Payphone Association of New York, Inc. (IPANY), through its attorney, respectfully requests that the Commission modify the rates being charged by New York Telephone to Independent Payphone Providers, some of which are now in effect on a temporary basis, and award refunds of overcharges. In support thereof, it is respectfully shown as follows:

I. PRELIMINARY STATEMENT

1. IPANY is the trade association representing owners and operators of independently owned public pay telephones in New York State. IPANY members compete not only amongst themselves, but also with public pay telephones operated by New York Telephone and other incumbent local exchange carriers.

2. IPANY members purchase underlying services from ILECs which are resold in the provision of public pay telephone services to the public. These underlying services include Public Access Lines (PALs) which connect pay telephones to the public switched network; features and functions, including various types of call blocking and fraud protection measures; and usage

services, in the form of local, inter-regional and intra-LATA toll calls. Rates for these underlying services are set forth in New York Telephone tariffs, and must comply with the provisions of the Public Service Law as well as orders and regulations issued by the Federal Communications Commission.

3. This Petition asks the Commission to resolve issues which have been pending since April 1, 1997, when New York Telephone rates for certain Public Access Lines, purportedly filed by New York Tel in response to FCC Orders, were permitted to go into effect by this Commission on a temporary basis. While the Commission sought and received comments from interested parties on the validity of the tariff, no final action was ever taken.

4. In addition, IPANY urges this Commission to determine that the underlying usage services purchased by pay telephone providers are, to the same extent as the Public Access Line and feature charges, subject to the FCC's "New Services Test".

II. BACKGROUND

5. Section 276 of the Communications Act of 1934, adopted as part of the Telecommunications Act of 1996, establishes a Federal regulatory regime designed to promote competition among payphone service providers and to promote the widespread deployment of payphone services for the benefit of the

general public.[1]

6. To implement the policies established in the Telecom Act, the FCC established its Payphone Reclassification Proceeding, in which it required, inter alia, that incumbent LECs file tariffs for basic payphone lines at the state level, and that payphone specific unbundled features and functions provided by LECs to their own payphone operations, or to others, be tariffed at both state and federal levels.[2] In its "Payphone Clarification Order" issued April 4, 1997, the Common Carrier Bureau of the FCC held that tariffs for payphone services, including unbundled features and functions filed as a result of the Payphone Reclassification Proceeding, must be cost-based, non-discriminatory, and consistent with both Section 276 of the Telecom Act and the FCC's Computer III tariff and guidelines.[3]

7. The requirement that rates for underlying pay telephone services be consistent with the Computer III tariff guidelines requires that the rates for those services meet the

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[1] See 47 USC §276(b)(1).

[2] Implementation of the Payphone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, Report and Order, 11 FCC Rcd. 20541, September 20,1996, ("Payphone Order"); Order on Reconsideration, 11 FCC Rcd. 21233 , November 8, 1996, ("Payphone Reconsideration Order"), aff'd in part and remanded in part, sub nom, Illinois Public Telecommunications Assn. v. FCC and U.S. (D.C. Circ. July 1, 1997).

[3] Implementation of the Payphone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, Order issued April 4, 1997, DA 96-678 (Payphone Clarification Order) at para. 2, citing Payphone Reconsideration Order, 11 FCC Rcd. 21233 at 21308.

FCC's "New Services" Test. See, Payphone Order, 11 FCC Rcd. 20541 at 20614. In essence, the New Services Test applies a Direct Cost Standard which, as described in greater detail in the accompanying Affidavit of Louis A. Ceddia, is met by the use of TELRIC cost methodology.

8. The New Services Test is set forth at 47 CFR §61.49(g)(2), and further explained by the FCC in its Comments in amending Part 69 of its rules related to the Creation of Access Subelements for Open Network Architecture, CC Docket 89-79, 6 FCC Rcd 4524, at para. 38-44. The starting point for the cost calculation is direct cost, to which reasonable overheads may be added.

9. The purpose underlying the New Services Test was to preclude monopoly carriers, and those having near-monopoly market power, from disadvantaging new competitors. The FCC itself has declared that the basic purpose of the New Services Test is to "provide an adequate check on both unreasonably high and predatorial low prices and encourage vigorous development of new and innovative services." See Memorandum, Opinion and Order on Second Further Reconsideration, Dockets 89-79 and 87-313, 7 FCC Rcd. 5235 at 5239, August 6, 1992.

10. In response to the FCC's Payphone Order and the Order on Reconsideration, this Commission issued its own "Order Instituting Proceeding" on December 31, 1996, in Cases 96-C-1174 and 93-C-0142. Among other things, that order directed local exchange carriers to file tariff revisions, to take effect by

April 15, 1997, which unbundled payphone bottleneck network access lines and essential features from payphone terminal equipment; to make those bottleneck elements available to all providers of pay telephone service on a non-discriminatory basis; and to remove all subsidies of non-bottleneck payphone equipment and operations from intra-state rates.[4]

11. Pursuant to that order, New York Telephone filed tariffs on December 31, 1996, to be effective April 1, 1997, which, among other things, established rates for unbundled bottleneck network access lines and essential features. That filing proposed new rates for both "dumb" Public Access Lines (PALs), which could be utilized by the great majority of independent payphone providers, and for "smart" access lines, labelled "Public Access Smart-pay Line", which are utilized by New York Telephone's "dumb" payphones.[5] This latter service would be used primarily, if not exclusively, by NYNEX Public Communications (PubCom), New York Tel's deregulated - but not structurally separate - payphone operation. However, rates for existing Public Access Lines, which have been used for years by

[4] The Order also required the LECs to file certain accounting information with the Commission, and to transfer all non-bottleneck payphone equipment and operations to non-regulated status, either within the existing company or to structurally separate affiliates.

[5] Independent payphone operators generally use "smart" payphone instruments, which contain computer boards and electronic processors, along with "dumb" payphone lines which do not need central office rating functionality. In contrast, New York Tel's payphones are generally "dumb" and utilize "smart" payphone lines through which most functions, including rating, are performed as central office functions.

independent payphone providers, were not changed.

12. Before the Commission approved the December 31, 1996 tariff filing, IPANY submitted informal comments to the Commission Staff in which IPANY voiced considerable concern over NYT's proposed rates. However, because IPANY had not been granted access to the NYT cost studies underlying the proposed rates, it was not at that time able to provide an in-depth analysis to the Commission.

13. In response to the concerns expressed by IPANY and others, the Commission issued an Order seeking comments from interested parties.[6] In response thereto, IPANY submitted comments on September 30, 1997, which showed that NYT's rates were excessive, and that applying the appropriate cost standards should produce rates no greater than the rate the Commission had approved for an unbundled link in the loop resale proceeding.[7] IPANY also showed that NYT had failed to recognize its receipt of the Federal End User Common Line Charge (EUCL) from payphone owners, and thus was enjoying a double recovery of costs.[8]

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[6] Notice Requesting Comments Addressing Aspects Of The Federal Payphone Regulations, The Need For Changes To the Commission's COCOT Regulations And Certain LEC Payphone Tariffs, Issued July 30, 1997. The due date for comments was subsequently extended to September 30, 1997.

[7] Opinion 97-2, Cases 95-C-0657, 94-C-0095, and 91-C-1144, "Opinion and Order Setting Rates for First Group of Network Elements", April 1, 1997. That Order, which utilized the TELRIC cost standard, had not been issued when the Commission approved the April 1 tariff changes.

[8] A copy of IPANY's September 30, 1997, Comments is attached to this Petition.

14. On May 19, 1997, New York Telephone filed a revision to its payphone tariffs, in which it attempted to increase its payphone rates and to establish a monthly charge for Line Side Answer Supervision (LSAS), a feature which permits accurate measurement of when calls terminate, and serves as a fraud protection mechanism. In so doing, NYT sought to escape the commitment it had made in its Performance Regulation Plan (PRP) that it would offer Line Side Answer Supervision at no charge.[9] By Order issued on October 15, 1997, the Commission suspended NYT's tariff revision, on the ground NYT had not shown persuasively that it could not comply with its obligations under the Performance Regulation Plan by offering LSAS at no charge.

15. The appropriateness of the rates contained in NYT's December 31, 1996 tariff filing - which are in effect on a temporary basis subject to refunds - remains undecided.

16. Accordingly, this Petition seeks the following relief:

(a) That the just, reasonable and lawful rate for a Public Access Line, as of April 1, 1997, be established at a price of $12.49 <u>less</u> the Federal EUCL charge - and subsequently both the EUCL and the FCC PICC charge - which have also been collected by New York Telephone since that date;

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[9] Opinion 95-13, Case 92-C-0665 "Opinion and Order Concerning Performance Regulatory Plan", August 16, 1995 (Plan para. V(C)(5)).

(b) That Independent Payphone Providers receive refunds, going back to April 1, 1997, of the difference between the temporary rate for the Public Access Line and the lawful rate which should have been in effect (recognizing double recovery through the EUCL and PICC) since April 1, 1997;

(c) That on a prospective basis, the rates for Public Access Lines be established at the TELRIC cost for unbundled links, as de-averaged by the Commission, less (i) any FCC EUCL charge imposed and (ii) any Primary Interexchange Carrier Charge (PICC) imposed with respect to the PAL line; and

(d) That, on a prospective basis, usage services be provided to payphone providers at rates equivalent to TELRIC costs.

III. ARGUMENT

17. The policy underlying the Telecommunications Act of 1996 was to encourage the growth and development of pay telephone services, and to remove discriminatory and unfair pricing to which Independent Payphone Providers had been subjected. Appropriate steps to accomplish those goals included:

(a) deregulating all LEC pay telephone operations;

(b) removing subsidies for non-bottleneck payphone operations from LEC intra-state rates; and

(c) establishing efficient pricing for underlying payphone services, whether utilized by the LECs' own payphone operations or independent payphone providers.

18. Independent payphone providers are not "telecommunications carriers" within the definitions of the Telecom Act. Accordingly, the provisions of the Act which require that services, facilities and Network Elements be priced at TELRIC rates do not, by themselves, strictly govern the rates for underlying payphone services provided to IPANY members.

19. However, simply because TELRIC rates are not automatically mandated by §251 and §252 for payphone operators, does not mean that TELRIC and TELRIC-like rates, which encompass the same cost efficient and non-discriminatory purposes, should not be used under authority of §276. That, in fact, is exactly the result that follows from the FCC's requirement that the "New Services Test" be applied to the facilities and services purchased by pay telephone providers.

20. In addition to adjusting rates for PALs and other access lines to TELRIC costs, this Petition requests that the Commission require that usage services purchased by payphone providers be priced according to TELRIC costs. While there appears to be no dispute that Public Access Lines and features obtained by IPANY members must be provided according to the New

Services Test, LECs and payphone providers disagree on whether the policy behind the FCC's Orders requires that usage services be priced on the same basis as access lines.

21. At the present time, IPANY members purchase underlying local messages and inter-regional calls at NYT's standard tariff rates for business customers. This results in a price of approximately 8.0 cents for the first three minutes of a local call, and a price of approximately 1.1 cent for each additional local minute. Inter-regional calls are purchased at rates of up to $.36 for the first three minutes and up to $.115 for each additional minute.

22. In contrast, TELRIC costs for local switching are approximately .5 cents per minute at the originating and terminating switches. Thus, using TELRIC costs, an independent payphone operator would pay New York Telephone approximately $.03 for a three minute local call, instead of the $.08 now being paid.

23. The differential is even more dramatic with respect to inter-regional rates.

24. In the past several months, state regulatory authorities have received preliminary recommendations that usage services be subject to the New Services Test in the same manner as Public Access Lines. For example, the Administrative Law Judge presiding over the Pennsylvania PUC's review of pay telephone rates specifically declared that "local usage as provided to IPPs is subject to the new services test." See

Pennsylvania Public Utility Commission, Docket R-00973867C001, "Order Denying Motion to Dismiss and Motion to Consolidate", March 4, 1998. Therein, the ALJ dismissed Bell Atlantic's contrary claim in a well reasoned decision (at pp. 6-13) which analyzed all of the relevant FCC Orders and actions. A copy of that Order is attached to this Petition, and the reasoning set forth by the ALJ is respectfully included herein.[10]

25. On December 8, 1998, a Hearing Examiner for the Maryland PSC reached the same result, and in so doing cited and adopted the analysis set forth in the Decision of the ALJ in the Pennsylvania proceeding. See State of Maryland Public Service Commission, "Proposed Order of Hearing Examiner", Case 8763, December 8, 1998, at pp. 33-36, the relevant pages of which are attached to this Petition.[11]

26. Indeed, the FCC itself has recently clarified that the New Services Test applies to all services obtained by an Independent Payphone Provider. As stated by the Deputy Chief of the Common Carrier Bureau:

> "In implementing this legislative objective, the Commission required all LECs to provide tariffed, non-discriminatory payphone services (identical to the services they provide to their own payphone operations) to enable independent payphone providers to compete with the LECs on a level playing field. The tariffs for these LEC payphone services (including any additional unbundled

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[10] The Pennsylvania case was ultimately resolved through a negotiated settlement.

[11] As of this date, a final determination has not been issued by the Maryland PUC.