

were more favorable than those found in the carrier's lawful tariff. In those cases, the courts generally found that the customer could not take advantage of the more favorable contract rates, terms or conditions, but was instead bound by the less favorable, but lawfully tariffed rates, even if the customer had no actual knowledge of those rates.

50. No such facts apply to the rates charged by SBC for payphone services. It is undisputed, and beyond dispute that, at all times after April 15, 1997, and without exception, the rates charged by SBC to the members of the PAO for payphone services exceeded those allowed by the FCC under the New Services Test. *See PUCO Opinion and Order*, at 30. As explained above, it is also undisputed, and beyond dispute, that the PUCO's September 1, 2004 Report and Order was the first Order issued by the PUCO addressing the lawfulness of SBC's rates. The higher rates charged by SBC from April 15, 1997 forward were never established as the lawful rate(s) under Section 276, and thus never obtained the status of lawful rates that could be the basis of a claim under the filed rate doctrine.

51. Moreover, unlike other jurisdictions where the RBOC may have filed tariffs setting forth interim rates it alleged to be compliant with the New Services Test and Section 276, SBC never made such a filing. To the contrary, SBC simply ignored the PUCO's December 19, 1996 Entry in Case No. 96-1310-TP-COI ordering SBC to submit tariffs, by January 15, 1997, containing cost-based rates consistent with the requirements of the New Services Test. No such tariffs were filed by the required date and neither SBC, nor the PUCO has ever produced such a tariff filing. Nonetheless, the PUCO's September 1, 2004 Opinion and Order, merely assumes, without factual basis, that the tariffs filed by SBC responding to further orders of the PUCO on May 22, 1997 and approved on September 27, 1997 are controlling and preclude the imposition of the refund requirement back to April 15, 1997. Those tariffs did contain COCOT rates.

PUCO Opinion and Order, at 30. The PUCO's assumption is clearly wrong as a matter of fact and, for the reasons described does not create a legally sustainable basis for refusing to implement the refund requirement.

52. It is well-established that while a carrier may have the right to impose the rates included in its tariffs on its customers, those rates do not become the lawful rate if they are unreasonable or otherwise in violation of law. Indeed, Section 201 of the Communications Act imposes an affirmative duty on the FCC to ensure that "[A]ll charges, practices, classifications, and regulations for and in connection with [jurisdictional] communication service, shall be just and reasonable." Significantly, Section 201 further declares any "charge, practice, classification, or regulation that is unjust or unreasonable" to be "unlawful." In its Payphone Orders, the FCC specifically concluded that only rates consistent with the New Services Test would meet the requirements of Section 276, and thus that any rate in excess of such rates would not be just and reasonable.

53. Not only is it clear from the language of the Communications Act that rates be just and reasonable, the Courts have also repeatedly made clear that "[the Commission] [has] the power . . . of determining the reasonableness of the published rate." *Arizona Grocery Co. v. Atchinson, Topeka & Santa Fe Railway Co.*, 284 U.S. 370, 390 (1932). More significantly, as recognized by the Supreme Court, courts have consistently held, that where a rate is determined to be unreasonable after it has been applied, and overcharges assessed, "a reparation was to be awarded." *Id.* As explained by the Court, this requirement is particularly clear where, as here, the carrier makes its own rates, which are then determined by the FCC to be unjust and unreasonable:

As respects a rate made by the carrier, [the Commission's] adjudication finds the facts, and may involve a liability to pay reparation. [T]he great mass of rates will be carrier-made rates, as to which the Commission need take no action except of its own volition

or upon complaint, and may in such case award reparation by reason of the charges made to shippers under the theretofore existing rate.

Id. at 186. Where the rates are found to be excessive, not surprisingly, the Supreme Court has held -- consistent with the FCC's mandate in this matter -- that the "award of reparation should be measured by the excess paid" *Id.* at 184.

54. Not only have the Courts made clear that the filed rate doctrine does not apply to an unlawful rate or an unapproved tariff in other, comparable, circumstances, but they have done so in a case that is on all fours with the instant matter. In *Davel Communications v. Qwest*, the Ninth Circuit specifically held--in response to a claim by Qwest that it had no obligation to issue refunds to the Davel payphone service providers--that the filed rate doctrine is inapplicable with respect to the Second Waiver Order. In rejecting Qwest's arguments, the Court relied upon Supreme Court precedence which held "claim[s] that a carrier's rates were not "reasonable" as required by [the] Interstate Commerce Act, was not barred by the filed rate doctrine." *Reiter v. Cooper*, 507 U.S. 258 (1993). The Ninth Circuit reasoned Davel's complaint, which arose under §§ 201 and 276 of the 1996 Act, was "nearly identical to the provision of the Interstate Commerce Act at issue in *Reiter*, requiring telecommunications rates to be just and reasonable." *Id.* at 9732. The Court added, "[s]ection 276 adds the further command that a carrier may not set its payphone rates so as to discriminate in favor of or subsidize its own payphone services, and instructs the agency to implement regulations requiring rates to meet the new services test," and then concluded, "[a]s in *Reiter*, these requirements, as well as the provision conferring on Davel a right of action for their enforcement, are accorded by the regulating statute which imposed the tariff filing requirement and are therefore not precluded by the filed rate doctrine. *Id.*

55. The Ninth Circuit's *Davel* opinion also acknowledges the Supreme Court's holding in *Transcon Lines*, which established that "a regulating agency may require a "departure

from a filed rate when necessary to enforce other specific and valid regulations adopted under the Act, regulations that are consistent with the filed rate system and compatible with its effective operation.” *I.C.C. v. Transcon Lines*, 513 U.S. 138, 147 (1995). Accordingly, the Ninth Circuit concluded “[h]ere, the FCC, in adopting the Waiver Order, expressly required a “departure from a filed rate” as to some non-compliant intrastate public access line tariffs.” *Davel Communications v. Qwest*, --- F.3d ----, 2006 WL 2371972 (C.A.9 (Wash.)). “Consequently, the filed-rate doctrine does not stand as a bar to the reach of and then enforcing of the Waiver Order’s reimbursement requirements in a case such as this one.” Slip Op., at 7049. Thus, the filed rate doctrine cannot stand as a barrier to the rightful enforcement by the FCC of the refund obligation as set forth in the Second Waiver Order.

56. Moreover, in the instant circumstance, the PUCO did not substantively address the reasonableness of SBC’s rates until its September 2004 Opinion and Order when it determined the rates did not comply with the NST. See PUCO Opinion and Order, at 30. Thus, until that date, SBC’s payphone rates had not been found to be lawful, or to meet the applicable New Services Test standard. Moreover, as noted, SBC never even filed a tariff, as ordered by the PUCO, setting forth the rates it claimed to be compliant with Section 276. Thus, there is absolutely no basis in fact or in law for a claim that the filed rate doctrine, or principles of retroactive ratemaking, allow SBC to avoid its obligations, as set forth by the FCC and by virtue of their specific agreement, to refund amounts charged in excess of the rates found lawful by the PUCO in its Opinion and Order.⁹

⁹ The following state commissions have entered orders requiring refunds when payphone rates have been found to be excessive under the new services test: Kentucky Public Service Commission Administrative Case No. 361; Louisiana Public Service Commission (“LPSC”) Order No. U-2263; Michigan Public Service Commission (“MPSC”) Docket No. U-11756 (March 16, 2004); Pennsylvania Public Utility Commission, Docket No. R-0097386700001; Tennessee Regulatory Authority Docket No. 97-00409 Interim Order dated February 1, 2001, at 26; South Carolina Public Services Commission, Docket No. 97-124-C and Order No. 1999-284.

57. Further, even if the Commission were to find the filed rate doctrine to apply, the RBOCs – including SBC – have separately and specifically agreed to provide refunds. Specifically, in their letter to the Commission of April 10, 1997, the RBOCs pointedly represented through their counsel that such refunds would voluntarily be made:

I should note that the Filed-Rate Doctrine precludes either the state or federal government from ordering such retroactive rate adjustment. However, we can and do voluntarily undertake to provide one, consistent with state regulatory requirements, in this unique circumstance.

58. As with the underlying representation and commitment to make refunds, this additional representation and commitment was offered, and accepted, as direct consideration for the Commission's grant of waiver. As set forth below, to the extent that SBC has benefited materially from the grant of waiver, it must also be held to its specific refund commitment.

59. Finally, even absent such a waiver, neither the filed rate doctrine nor the any doctrine based on retroactive ratemaking provides a legally cognizable basis for refusing to require refunds back to April 15, 1997. This conclusion is required by the fact that the Commission's Refund Order specifically established the refund obligation back to that date, thus rendering any excessive rates conditional *ab initio*. As such, any downward adjustment in the lawful rate is nothing more than a proper implementation of rates which were conditioned on and subject to change through refund from the date they were implemented.

V. **Monetary Penalties Should Be Imposed On SBC
For Its Continuing Violations of the Commission's Orders**

60. The Commission has repeatedly held that the RBOCs were required to bring their rates in line with cost no later than April 15, 1997. The orders implementing this requirement have been clear and unambiguous.

61. At the same time, the Commission also has repeatedly made clear, in numerous orders, that the RBOCs are not eligible to collect dial-around compensation until their rates meet this cost standard. The RBOCs were granted a waiver of this eligibility requirement on the express and agreed-to condition that they would make full refunds of any amounts collected in payphone charges in excess of the cost-based rate as subsequently determined by the state regulatory authority. Each of these holdings and waivers are clear and unambiguous, and each has been memorialized in numerous Commission orders.

62. Notwithstanding these orders, for more than nine years, SBC has continued to employ payphone rates and to collect payphone charges that were well in excess of prescribed levels. These actions were *per se* unlawful and in direct violation of Commission orders. One would search long and hard for FCC precedent for two more stark examples of a carrier's ongoing violation of a statutory requirement as implemented through multiple clear and unambiguous Commission Orders.

63. Not only has SBC gained competitively by charging the members of the PAO rates that are well in excess of cost-based levels since 1997, SBC has also benefited through its collection of millions of dollars in dial-around compensation that was supposedly tied to this same cost standard. SBC has achieved each of these material economic benefits as a result of its ongoing failure to meet its specific commitment, as implemented through Commission order, to refund amounts collected in excess of the lawful rate.

64. Section 503 of the Communications Act sets forth the circumstances in which the Commission has the authority to impose monetary forfeiture penalties. Not surprisingly, one such circumstance is where a party has "willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation or order issued by the Commission . . ." 47 U.S.C. § 503. In such

circumstance, the violating party is subject to a penalty of up to \$100,000 per day per violation, not to exceed \$1,000,000 per violation. *Id.*

VI. **Until Full Refunds Are Paid, SBC Must Be Required to Return All Dial-Around Charges It Has Collected**

65. By any standard of conduct, SBC's refusal to pay refunds to the members of the PAO for overcharges collected since April 15, 1997 is very troubling. Indeed, even the most cursory examination of the facts demonstrates beyond legitimate dispute that SBC understood very well that, in return for the immediate right to collect dial-around compensation, it had bound itself, specifically and repeatedly, to make refunds of any overcharges found by the states to have occurred and to do so going back to April 15, 1997. SBC's subsequent refusal to do so raises serious issues regarding whether it ever intended to make the promised refunds, and, thus, whether its commitment was made in good faith.¹⁰

66. The FCC also has the right to apply remedies other than monetary forfeitures. For example, where, as here, the party's violation includes the breach of an agreement with the FCC, the FCC has the right to, and in this case most certainly must require that party to disgorge all monetary gains obtained through violation of that agreement. As discussed below, this clearly means that SBC must be required, in addition to the penalties imposed for its violation of Commission Orders, immediately to deposit with the Commission all dial-around charges that it has collected since April 15, 1997. A failure to impose this remedy would have the perverse effect of continuing to reward SBC both for its failure to charge cost-based rates, as well as for its willful and blatant breach of its refund agreement.

¹⁰ The Commission's Rules specifically require parties to make truthful and accurate statements and to refrain from providing material factual information that is incorrect or omitting material information that is necessary to prevent a material factual statement from being incorrect or misleading. 47 C.F.R. § 1.17(a)(1). SBC's refusal to honor its specific commitment to make refunds—including its assertion of the very filed rate doctrine argument that it agreed to waive—casts material doubt as to whether the statements and commitments made to the FCC with respect to its refund obligation meet the standard of conduct required by this rule. PAO asks that the FCC specifically consider and address this issue in its Order.

VII. **The FCC Must Consider the Anticompetitive Effects of SBC's Failure to Make Required Refunds**

67. Section 276(a) prohibits any Bell Operating Company providing payphone service from acts which would “subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and shall not prefer or discriminate in favor of its payphone service. 47 U.S.C.A. 276(a) (emphasis added). The clear intent of this provision was to level the competitive playing field between RBOC-provided payphones and private payphones by requiring, *inter alia*, that the rates charged by the RBOCs be cost-based.

68. As described above, the PUCO has concluded that SBC's rates are not cost-based. At the very minimum, this conclusion raises an issue as to whether the competitive goals, and public interest benefits, intended by Congress in enacting Section 276 have been achieved. Indeed, it has been the overwhelming conclusion of state commissions nationwide that RBOC payphone rates are well in excess of the applicable cost standard, even in those instances where the RBOCs specifically and expressly certified that they were.

69. In addition to the clear mandate of Section 276, it is also well settled that the FCC is required to consider issues of anti-competitive conduct and effect as a part of its obligation to serve the public interest. “The Commission retains a duty of continual supervision...and this includes being on the lookout for possible anticompetitive effects.” See *National Association of Regulatory Utility Commissioners v. F.C.C.*, 525 F.2d 638 (1976); *United States v. R.C.A.*, 358 U.S. 334, 351 (1959); *F.C.C. v. R.C.A. Comm., Inc.*, 346 U.S. 86, 94 (1953); *N.B.C. v. United States*, 319 U.S. 190, 223 (1943); *Radio Relay Corp. v. F.C.C.*, 409 F.2d 322, 326 (id Cir. 1969).

70. As set forth above, SBC's refusal to make refunds is not only in direct violation of its express agreement and the FCC's express mandate that it do so, it is plainly anticompetitive.

Indeed, not only has SBC materially overcharged the private payphone providers with which it competes—causing them the very competitive harm that Congress sought to prevent—it has retained those revenues for nearly a decade while simultaneously collecting millions in dial-around revenues. The FCC is clearly required to consider and to make findings of fact regarding these anticompetitive effects in evaluating the lawfulness of SBC’s conduct and the relief requested by the PAO herein.

CONCLUSION

The mandate of Section 276 is clear: the payphone industry was to be made immediately competitive through the implementation of cost-based rates and the payment of appropriate compensation to payphone service providers. The regulatory scheme implemented by the FCC was equally clear: the RBOCs were required to implement cost-based rates no later than April 15, 1997. In addition, if those carriers certified that their payphone rates were cost-based, and if—and only if—they also committed to refund any charges collected in excess of those rates, they would be allowed immediately to collect the dial-around compensation mandated by Section 276.

Not surprisingly, SBC has sought to have it both ways. They have continued to collect payphone charges that far exceed the required cost-based rates and have collected millions in dial-around compensation, but they have steadfastly refused to make refunds when those rates have been found to exceed their relevant costs. These combined actions are not only in extreme bad faith, they are plainly unlawful.

By any measure, SBC is required as a matter of law to make immediate refund of all amounts collected from the members of the PAO since April 1997 and to make an award of reparations, consistent with federal law and in favor of PAO. In addition, SBC must be required to make an immediate deposit of all amounts collected in dial-around compensation unless and until such refunds are made.

Respectfully submitted,
TECHNOLOGY LAW GROUP, LLC



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EXHIBIT ONE

FILE

7

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Timothy A. Ruckl

August 11, 2003

VIA HAND DELIVERY

Ms. Renee Jenkins
Secretary
Public Utilities Commission of Ohio
13th Floor
180 East Broad Street
Columbus, OH 43215-3793

RECEIVED-DOCKETING DIV
2003 AUG 11 PM 4:43
PUCO

Re: *In the Matter of the Commission's Investigation into the Implementation of Section 276 of the Telecommunications Act of 1996 Regarding Pay Telephone Services; Case No. 96-1310-TP-COI*

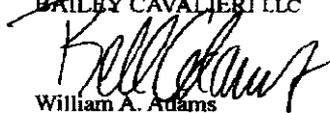
Dear Ms. Jenkins:

Enclosed please find the original and fifteen (15) copies of SBC Ohio's Motion to Strike Portions of the Payphone Association of Ohio's Testimony and Request for Expedited Ruling. Please file stamp and return the additional five (5) copies.

Thank you for your assistance.

Very truly yours,

BAILEY CAVALIERI LLC



William A. Adams

WAA/sg

Enclosure

cc(w/enclosure): Parties of Record

COL 334765.1
74608/01255

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the digital format of business Technician AMC Date Processed 8/11/03

MEMORANDUM IN SUPPORT

Ever since the Public Utilities Commission of Ohio ("Commission") ruled on the scope of this proceeding in its April 27, 2000 Entry, as affirmed by its June 22, 2000 Entry on Rehearing, the Payphone Association of Ohio ("PAO") has improperly attempted to attack the order collaterally or by subsequent motions filed in this proceeding. In each instance, the Commission recognized the attacks for what they were and rejected them.¹ The portion of PAO's pro-filed direct testimony sponsored by Michael Starkey that asks the Commission to reconsider the issue of potential refunds is but another such attack and, as with PAO's previous attempts, should be rejected.

The Commission previously held that it would not consider the refund issue based upon established Ohio precedent that such refunds would violate the rule against retroactive ratemaking. See April 27, 2000 Entry (¶ 22), June 22, 2000 Entry on Rehearing (¶ 14), November 26, 2002 Entry (¶ 31) and January 16, 2003 Entry on Rehearing (¶ 26). In its June 22, 2000 Entry on Rehearing (¶ 14), the Commission stated:

The PAO's arguments concerning refunds and reimbursements are insufficient to overcome the effect of Ohio law. Issuance of refunds or reimbursements would be tantamount to retroactive ratemaking. The Commission agrees with the LECs that *Keco Industries, Inc. v. Cincinnati & Suburban Telephone Co.*, 166 Ohio St. 254 (1957), and *Pub. Util. Comm. v. United Fuel Gas Co.*, 317 U.S. 456 (1943), are controlling on this issue.

¹ PAO attempted to attack the defined scope of this proceeding through its June 8, 2000 Motion to Compel Discovery, and its January 11, 2001 Supplemental Authority in Support of its Motion to Compel Discovery. These attempts were rejected by the Attorney Examiner's entry of June 1, 2001 and the August 20, 2001 entry denying certification of PAO's request to certify the interlocutory appeal therefrom. Collateral attacks also were rejected in *In the Matter of the Application of Ameritech Ohio (Formerly Known as The Ohio Bell Telephone Company) for Approval of an Alternative Form of Regulation*, Case No. 93-487-TP-ALT (Entry of April 27, 2000; aff'd Entry on Rehearing of June 22, 2000); and *In the Matter of the Commission Ordered Investigation of the Existing Local Exchange Guidelines*, Case No. 99-998-TP-COI; *In the Matter of the Commission's Review of the Regulatory Framework for Competitive Telecommunications Services Under Chapter 4927, Revised Code*, Case No. 99-563-TP-COI (Opinion and Order, December 6, 2001).

Indeed, in its fourth and final word on this issue the Commission emphatically directed:

The request for refunds, having been denied at least three times,
shall not be considered again.

January 16, 2003 Entry on Rehearing, at ¶ 26 (emphasis added). Flouting the Commission's authority, PAO seeks to resurrect the refund issue -- this time through its consultant's testimony no less -- based upon the ruse that it has discovered "new information."

The "new information" that PAO relies on is nothing more than a recitation of the existing record in this proceeding, of which the Commission certainly was aware when rejecting the refund argument on four previous occasions. Thus, no basis exists to reconsider this issue. PAO's testimony is nothing more than an untimely and improper (fourth) request for rehearing. See Section 4903.10, Ohio Revised Code (requests for rehearing must be made by written application and filed with 30 days of the date the Commission's entry is entered in its journal). If PAO believes that it has been aggrieved by the Commission's determination, its proper recourse is to test Ohio's long-standing precedent, which is binding on this Commission, in an appeal to the Ohio Supreme Court.

Notwithstanding that PAO is barred, as a matter of law, from re-asserting the refund argument, SBC Ohio is compelled to state that the PAO has completely misconstrued the docketed information on which it relies. In essence, PAO asserts that because SBC Ohio did not file a new payphone tariff after the Commission issued its entry of December 19, 1996 in this docket, its rates in effect from April 15, 1997 through January 30, 2003 (the date interim rates became effective) were unlawful and subject to partial refund. SBC Ohio did not file such new

tariffs as contemplated in the Commission's entry,² because it already had done so for the COCOT Line on April 9, 1985 under Case No. 84-834-TP-ATA and for the COCOT Coin Line on September 19, 1996 under Case No. 96-844-TP-ATA. Instead, SBC Ohio submitted data to this Commission on May 16, 1997 that supported that its existing tariffs were in compliance with the new services test.³ The tariffs, as subsequently revised on numerous occasions, have been in force ever since their filing and the rates charged thereunder were lawful until ordered changed by the Commission through the establishment of interim rates effective January 30, 2003. To order a refund based upon the incremental difference between the rate PAO members were charged during the period from April 15, 1997 through January 29, 2003 would constitute unlawful retroactive ratemaking, as the Commission has recognized on four separate occasions.

Because of PAO's disregard of the Commission's order, SBC Ohio now must ask the Attorney Examiner to find, for a fifth time, the Commission's exclusion of the refund issue from this proceeding and to strike the following testimony of PAO witness Starkey and his related attachment:

1. **Page 3, Lines 62 through 65:** Improperly identifies refunds as an issue in this proceeding.
2. **Page 4, Lines 79 through 82.** Improperly asks the Commission to revisit the refund issue.
3. **Page 8, Line 191 through Page 10 Line 267:** Improperly attempts to lay a foundation that SBC Ohio improperly applied the new services test as it existed in 1997, setting up a straw man in an attempt to support PAO's improper refund testimony.

² The December 19, 1996 entry instructed LECs to file tariffs to provide two payphone access lines. One access line was to accommodate payphones utilizing instrument implemented "smart" payphone technology ("COCOT Line"), and the other access line was to support "dumb" payphones utilizing central office technology ("COCOT Coin Line").

³ This data is the same study upon which PAO witness Starkey relies in his prefiled direct testimony and which is included in Starkey Attachment 2.

4. **Page 43, Line 1049 through Page 48, Line 1148:** Improperly provides testimony to support the refund issue.
5. **Starkey Attachment 4:** Improper attachment that the Commission already considered in rejecting the refund issue in its November 26, 2002 Entry and January 16, 2003 Entry on Rehearing.

SBC also requests that an expedited ruling be made on this motion. Hearing is scheduled to commence in this matter on August 26, 2003 and an expedited ruling is requested in order that resources that should be devoted to legitimate issues in this proceeding will not be diverted to an issue that the Commission already has rejected four times.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of SBC Ohio's Motion to Strike Portions of the Payphone Association of Ohio's Testimony and Request for Expedited Ruling was served upon the following interested persons by Hand Delivery this 11th day of August 2003.

By: 
Dane Stinson

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EXHIBIT TWO

FROM NORTHCOAST PAYPHONES

(TUE) DEC 26 2006 13:05/ST. 13:03/No. 6822782641 P 3

FROM NORTHCOAST PAYPHONES

(TUE) DEC 26 2006 13:05/ST. 13:03/No. 6822782641 P 2

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

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JEFFREY A. LAMKEN
AUSTIN C. SCHLICK

12021 326-7000

FACSIMILE
12021 326-7999

April 10, 1997

Ex Parte Filing

Mary Beth Richards
Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
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:

I am writing on behalf of the RBOC Payphone Coalition to request a limited waiver of the Commission's intrastate tariffing requirements for basic payphone lines and unbundled features and functions, as set forth in the Commission's Orders in the above-captioned docket. I am also authorized to state that Ameritech joins in this request.

As we discussed yesterday, and as I explained in my Letter of April 3, 1997, none of us understood the payphone orders to require existing, previously-tariffed intrastate payphone services, such as the COCOT line, to meet the Commission's "new services" test. It was our good faith belief that the "new services" test applied only to new services tariffed at the federal level. It was not until the Bureau issued its "Clarification of State Tariffing Requirements" as part of its Order of April 4, 1997, that we learned otherwise.

In most States, ensuring that previously tariffed payphone services meet the "new services" test, although an onerous process, should not be too problematic. We are gathering the relevant cost information and will be prepared to certify that those tariffs satisfy the costing standards of the "new services" test. In some States, however, there may be a discrepancy between the existing state tariff rate and the "new services" test; as a result, new tariff rates may have to be filed. For example, it appears that, in a few States, the existing state tariff rate for the COCOT line used by independent PSPs may be

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

Mary Beth Richards
April 10, 1997
Page 3

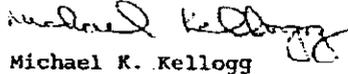
(consistent with state regulations) to provide a credit or other
~~compensation to purchasers back to April 15, 1997.~~

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 K. Kellogg

cc: Dan Abeyta	Christopher Heimann	Brent Olson
Thomas Boasberg	Radhika Karmarkar	Michael Pryor
Craig Brown	Regina Keeney	James Schlichting
Michelle Carey	Hinda Kinney	Blaise Scinto
Michael Carowitz	Carol Matthey	Anne Stevens
James Casserly	Richard Metzger	Richard Welch
James Coltharp	John B. Muleta	Christopher Wright
Rose M. Crellin	Judy Nitsche	
Dan Gonzalez		

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

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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.

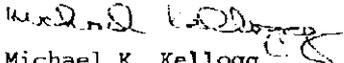
To the best of my knowledge, all the RBOCs have (or will by April 15, 1997, have) effective state tariffs for all the basic payphone lines and unbundled features and functions required by the Commission's order. We are not seeking a waiver of that requirement. We seek a waiver only of the requirement 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.

KELLO GG. HUBER, HANSEN, TODD & EVANS, P.L.L.C.

Mary Beth Richards
April 11, 1997
Page 2

~~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

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

Linda Kinney
Carol Matthey
A. Richard Metzger
John B. Muleta
Judy Nitsche
Brent Olson
Michael Pryor
James Schlichting
Blaise Scinto
Anne Stevens
Richard Welch
Christopher Wright

EXHIBIT THREE

FROM NORTHCOAST PAYPHONES

(TUE) DEC 26 2006 13:07/ST. 13:03/No. 6822782641 P. 7

97-0545-PP-002
Under Seal

190 East Gay Street
Room 15-01
Columbus, OH 43215-3117

Ameritech

May 16, 1997

NOTE: CONFIDENTIAL ENCLOSURES

Roger Montgomery
Telecommunications Division
Public Utilities Commission of Ohio
180 East Broad Street, 3rd Floor
Columbus, Ohio 43215-3793

TELECOMMUNICATIONS
F.C.C.
MAY 16 1997
RECEIVED

Re: Pay Telephone Tariffs

Dear Mr. Montgomery:

Transmitted with this letter are cost support materials relating to the COCOF Coin Line and COCOF Line tariffs of Ameritech Ohio.

These materials, along with other materials being filed concurrently (copies of which are also being provided to you), are submitted under the pay telephone provisions of Section 276 of the Telecommunications Act of 1996 and the orders of the Federal Communications Commission ("FCC") implementing that law in its CC Docket No. 96-128. There, the FCC has required Local Exchange Carriers (among other things) to file certain tariffs with state regulatory commissions in order that the LECs' affiliated payphone operations may become eligible to receive payphone compensation from interexchange carriers. To the extent that such tariffs did not already exist, the above-named tariffs were originally filed with this commission under such FCC orders and pursuant to the applicable provisions of Advantage Ohio.

In the more recent Order of the Chief, Common Carrier Bureau, released April 15, 1997, the FCC has clarified the intent of its earlier orders to require that the LECs' state tariffs meet the "new services test" set out in the FCC's rules at 47 C.F.R. 81.49(g)(2), without regard to whether any of the services were actually "new" services. The enclosed materials are intended to cure any technical defects in that regard.

As reflected in the FCC's April 15 Order, Ameritech Ohio has agreed that if state commissions, upon reviewing these new materials concerning the "new services test," require any

Roger Montgomery
May 16, 1997
Page 2

tariff rates to be revised downward, Ameritech Ohio will make refunds of those rates back through April 15, 1997. However, Ameritech Ohio believes that the above-listed tariffs met the FCC's new services test at the time of such tariffs' filing and that the documentation accompanying this letter, had it been submitted at that time, would have fully demonstrated their compliance. Therefore, the further documentation does not result in any change in the existing rates in those tariffs. Consequently, it will not be necessary for this Commission to take any further action. Indeed, the FCC's April 15 Order, in Paragraph 8, specifically contemplates that state commissions may conclude that existing tariffs are consistent with the requirements of Section 376 and the FCC's several orders and that "in such case no further filings are required."

These cost studies are submitted to you on a proprietary basis, as is customary in the case of such cost studies.

Thank you for your attention to this matter. Please contact at 614/223-5930 if you have any questions.

Very truly yours,

Vitas R. Cyvas

Vitas R. Cyvas

Enclosures

CERTIFICATE OF SERVICE

I, Silsa Cabezas, hereby state, under penalty of perjury, that on this 26th day of December, 2006, a true and correct copy of the foregoing was mailed, emailed hand-delivered, or filed with the Federal Communications Commission to:

Federal Communications Commission
Attn: Thomas Navin, Bureau Chief
Wireline Competition Bureau
445 12th Street, S.W.
Room 8-B201
Washington, D.C. 20554

Federal Communications Commission
Attn: Marcus Maher, Legal Counsel to the Bureau Chief
Wireline Competition Bureau
445 12th Street, S.W.
Room 8-B201
Washington, D.C. 20554

Federal Communications Commission
Attn: Thomas Buckley, Legal Counsel to the Bureau Chief
Wireline Competition Bureau
445 12th Street, S.W.
Room 8-B201
Washington, D.C. 20554

Federal Communications Commission
Kevin J. Martin, Chairman
445 12th Street, S.W.
Room 8-B201
Washington, D.C. 20554

Federal Communications Commission
Michael J. Copps, Commissioner
445 12th Street, S.W.
Room 8-B115
Washington, D.C. 20554

Federal Communications Commission
Jonathan S. Adelstein, Commissioner
445 12th Street, S.W.
Room 8-A302
Washington, D.C. 20554

Federal Communications Commission
Deborah Taylor Tate, Commissioner
445 12th Street, S.W.
Room 8-A204
Washington, D.C. 20554

Federal Communications Commission
Robert M. McDowell, Commissioner
445 12th Street, S.W.
Room 8-C302
Washington, D.C. 20554

SBC Ohio
Attn: The Ohio Bell Telephone Company
45 Erieview Plaza
Columbus, OH 43215

The Public Utilities Commission of Ohio
Attn: Alan R. Schriber, Chairman
180 E. Broad Street
Columbus, OH 43215

A handwritten signature in black ink, appearing to read 'Silsa Cabezas', is written over a horizontal line. The signature is stylized and cursive.

Silsa Cabezas