BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY ON REHEARING

The Commission, considering its opinion and order issued September 1, 2004, the application for rehearing and clarification filed October 1, 2004, by SBC Ohio, the application for rehearing filed by the Payphone Association of Ohio on October 1, 2004, and the memoranda contra filed by SBC Ohio, the Payphone Association of Ohio, the Ohio Consumers' Counsel, and the Ohio Telecom Association on October 12, 2004, issues its entry on rehearing.

I

(1) On September 1, 2004, the Commission issued an opinion and order which established permanent rates to be charged to independent payphone providers by SBC Ohio (SBC).[1] The Commission established permanent rates to comply with the New Services Test (NST) and Section 276 of the Telecommunications Act of 1996 (the Act). More specifically, the Commission established permanent rates for COCOT Line, COCOT Coin Line, Local Usage, Answer Supervision, and Restricted Coin Access. Because the Commission imposed interim rates, effective January 29, 2003, subject to true-up, the Commission ordered SBC to render, within 60 days, an accounting to the PAO and payment for the difference between the interim rates and the permanent rates established in this proceeding.

(2) In accordance with Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code (O.A.C.), SBC filed an application for rehearing on October 1, 2004. In its supporting memorandum, SBC sets forth four assignments of error. In its

1 Throughout this entry, the name SBC will be used interchangeably with Ameritech Ohio (Ameritech).

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first assignment of error, SBC contends that the Commission erred by failing to determine the proper overhead loading and rates for COCOT Lines and COCOT Coin Lines. Moreover, SBC claims that the Commission improperly relied upon cross-examination questioning relating to residential service. In light of these alleged errors, SBC urges the Commission to consider additional evidence which SBC could not have produced with due diligence at the hearing.

(3) SBC alleges that the Commission improperly relied upon residential service as being a comparable service for the purpose of rejecting SBC's proposed overhead loading factor for COCOT Lines and COCOT Coin Lines. SBC, in its analysis of residential service, argues that residential service is not comparable to payphone service. In its argument, SBC contends that transient business customers typically use payphones and that the price of payphone service has always tracked business service, not residence service. In further support of its argument, SBC claims that retail residential exchange access rates are maintained artificially low and subsidized by other services. As proof, SBC refers to its tariff for residential service with 4+ access lines. In all access areas, the current monthly price is $12.08, including $4.40 for the network access line, $2.30 for central office termination, and $5.38 for the federal EUCL rate. The total revenue for 4+, non-residence service is $23.63, $25.63, and $28.13, for Access Areas B, C, and D, respectively. These rates for non-residence service, according to SBC, are designed to reflect cost differences. When comparing the uniform rate of residence service with the varying rate of non-residence exchange access rates, SBC concludes that the uniform rate pattern for residence service must be attributable to subsidies. SBC points to subsidies in residential service as a reason for excluding residential service as a comparable service. SBC points to *Advantage Ohio*, Case No. 93-487-TP-ALT (Case No. 93-487-TP-ALT), as support for its claim that residential service contains subsidies. Subsidies, according to SBC, arise in two areas. First, the residential exchange access service price of longer loops in Access Areas C and D is the same as the shorter loops in Access Area B.

Second, the direct cost of providing residential exchange access service in Access Areas C and D is greater than the direct revenue for this service. SBC contends that the Commission has known about these subsidies since Case No. 93-487-TP-ALT.

SBC notes that the only occasion where residence service was suggested as being a service comparable to payphone service was during the cross-examination of SBC's witness Kent Currie by staff's counsel. Because there is no foundation nor prefiled testimony for the consideration of residential service, SBC concludes that the Commission erred by using it as a basis to reject SBC's analysis for the overhead loadings for COCOT Line and COCOT Coin Line under the *Physical Collocation Tariff Order* methodology.[2] SBC urges the Commission to grant rehearing to allow SBC the opportunity to present rebuttal evidence as to why residential service is not comparable to payphone service.

(4) The Ohio Consumers' Counsel (OCC) filed a memorandum contra on October 12, 2004, challenging SBC's argument that residential rates are subsidized. To begin, the OCC emphasizes that the Commission did not adopt the overhead loading factor for residential service. Instead, the Commission relied upon the only other alternative in the record: the UNE overhead loading rate. The OCC disagrees with SBC that Case No. 93-487-TP-ALT offers support to the claim that residential service is bolstered by subsidies. The OCC points out that SBC relies upon the affidavit filed in Case No. 93-487-TP-ALT by Kent Currie, SBC's witness in the proceeding. To conclude that the Commission determined that residential rates are subsidized is not supported by the Commission's findings or conclusions, according to the OCC. In fact, the OCC notes that the Commission, in its November 23, 1994, opinion and order approved a stipulation that provides for the reduction of Ameritech's residential service rates. Overall, the OCC believes

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2 *In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, FCC 97-208, Second Report and Order, CC Docket No. 93-162, 12 FCC Rcd. 18730, released June 13, 1997.

that SBC has failed to make a showing that its residential rates are subsidized.

(5) The PAO filed a memorandum contra SBC's application for rehearing on October 12, 2004. In response to SBC's first assignment of error, the PAO concludes that there is no need to consider additional evidence. The PAO emphasizes that SBC had the burden of proof. In the PAO's opinion, SBC's witness Dr. Currie did not explain adequately why residential service is not comparable or competitive to payphone service. SBC did not calculate the overhead loading factors for any other comparable competitive service. Instead, SBC elected to rely on one comparable competitive service: 4+ business access lines. Furthermore, SBC did not show that payphone service providers and SBC compete for customers of 4+ business access lines. Another flaw pointed out by the PAO is that SBC failed to consider competitive win-back programs, contract rates, or bundled packaged rates in applying the *Physical Collocation Tariff Order* methodology. Overall, the PAO concludes that SBC failed to meet its burden of proof.

Insofar as cross-examination, the PAO rejects SBC's assertion concerning the Commission's reliance on staff's cross-examination of SBC's witness. Cross-examination is as much a part of the record as direct testimony.

(6) As indicated by the OCC, the Commission did not find that residential service is a comparable competitive service. The Commission merely referred to residential service to highlight that SBC did not provide additional comparable services by which the Commission could determine the reasonableness of SBC's proposed overhead loading factor. With respect to the uniform rates for residence service, it is no proof of subsidy that the uniform rates for Access Areas B, C, and D are the same for 4+ residence service. The rates are deemed to be market based, determined by SBC in response to a competitive market. If SBC argues that residence service is subsidized, it must conclude that business rates are the source for the subsidy. If that were true, business rates would not be reflective of competitive pressure and, therefore, would not be

appropriate as a basis for an overhead loading factor. As a final point, we must point out that 4+ residential access lines are considered competitive, thus correcting SBC's statement that residential access lines are not deemed competitive under SBC's alternative regulation plan.

As stated in the opinion and order, with only the analysis of a single comparable competitive service, the Commission cannot make a finding that the resulting overhead loading factor is reasonable. The *Physical Collocation Tariff Order* methodology requires the development of several overhead loading factors. The lowest overhead loading factor is to be applied. The Commission is not stating that use of the *Physical Collocation Tariff Order* methodology is improper. Nor is it true that the methodology cannot be used if it results in higher overhead loading factors than other permissible methodologies. The Commission rejected SBC's methodology because it relied solely upon 4+ business access lines. Without a comparative analysis of reasonable alternative overhead loadings, the Commission must reject SBC's results. Consequently, SBC's first assignment of error should be denied.

(7) SBC notes that, since the hearing, the federal EUCL rate decreased by $0.01, effective July 1, 2004. Pursuant to the order issued in *In the Matter of Wisconsin Public Service Commission Order Directing Filings*, Bureau/CPD No. 00-01 (Memorandum Opinion and Order, Released January 31, 2002) (*Wisconsin Order*), the total payphone line revenue must be reduced by the federal EUCL in order to derive the state tariff rate. To comply, SBC states that its proposal for state tariff monthly line rates should be increased by $0.01.

(8) The PAO agrees with SBC that the EUCL has decreased and that the Commission should adjust the permanent payphone rates accordingly. The PAO adds that SBC should be obligated to advise the Commission of any future increases or changes that would impact payphone rates.

(9) It is clear that, with the change in the federal EUCL and with the agreement of the parties, the permanent rates should be

adjusted to reflect the decrease in the EUCL. Accordingly, the permanent rates shall be adjusted to reflect the federal EUCL decrease.

(10) Another matter of concern to SBC for which it requests rehearing relates to its billing system. Presently, SBC states that its COCOT Coin Line rates are at a fixed amount ($7.20) over the corresponding COCOT Line rates for Access Areas B, C, and D. The new permanent rates do not provide for a fixed amount over the corresponding access areas.[3] According to SBC, to institute a varying rate would require a delay and significant changes in SBC's billing structure. To avoid the delay and changes in SBC's billing structure, SBC proposes that the Commission implement a uniform difference in the access area rates. Specifically, SBC proposes that the largest access area difference, which is Access Area B, be applied to Access Areas C and D.

(11) The PAO objects to SBC's proposed restructuring. In the PAO's opinion, SBC should have anticipated this issue and should have made an alternative proposal. To the PAO, SBC's request is an inappropriate request for rehearing. Seeing insufficient cause, the PAO opposes any delay in implementing the permanent rates.

(12) Because it would not involve a significant change in the outcome and because it would accommodate SBC's billing system, SBC shall be allowed to established a fixed differential between its COCOT Line rates and its COCOT Coin Line rates. The PAO has expressed an interest in implementing the permanent rates without delay. Granting SBC's request would expedite the process of instituting the new NST-compliant rates. Moreover, granting SBC's request, in all appearances, serves the interest of both parties.

(13) For its second assignment of error, SBC accuses the Commission of failing to provide findings of fact and reasoning

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3 The differences in COCOT Line and COCOT Coin Line for permanent rates are $1.85, $1.84, and $1.86, respectively, for Access Areas B, C, and D.

to support the overhead loading factor for Local Usage and the average payphone call duration in determining the message rate for Local Usage. SBC contends that it satisfied the *Physical Collocation Tariff Order* methodology and properly determined the overhead loading for Local Usage. The Commission found the overhead loading factor to be "inordinately high." SBC finds the Commission's response insufficient to comply with its duty to issue findings of fact and reasoning and support the rejection of SBC's proposed overhead loading factor for Local Usage. Owing to the lack of an alternative comparable service, SBC claims that there is no basis for rejecting SBC's intraLATA toll service as a service comparable to Local Usage. Without evidence of another comparable competitive service, SBC believes that it has been held to an unfair standard of proof.

(14) The PAO disagrees. Pointing to language from the September 1, 2004, opinion and order, the PAO finds sufficient findings and reasoning to support the Commission's decision. Taking into consideration the overhead loading factors for all services as compared to the even greater loading factors for Restricted Coin Access and Local Usage, the PAO finds an obvious discrepancy. By applying the UNE methodology, the PAO states that the Commission not only avoided the problem of inordinately high overhead loadings but also established a rate that is in compliance with the Act. The PAO, therefore, urges the Commission to deny rehearing on this issue.

(15) In considering overhead loadings, the Commission must be ever mindful of the overarching intent of Section 276 of the Act. The intent of Section 276 is "to promote competition among payphone service providers and to promote the widespread deployment of payphone services to the benefit of the public." It is insufficient to adhere blindly to the outcome of a particular methodology. The outcome of any methodology must fall within the confines of the overarching principle of the Act. The overhead loading factors presented by SBC for Local Usage and Restricted Coin Access, as compared with the overhead loading factors for the other payphone services, are patently extreme. In fact, the overhead loading factor for Restricted Coin Access,

by SBC's own admission, cannot be justified by the *Physical Collocation Tariff Order* methodology. SBC must instead resort to a "trivial cost exception." Overhead loading factors are evaluated upon a reasonableness standard. The Commission evaluated the reasonableness of overhead loadings with reference to other competitive services. Whether evaluating the overhead loading factors for Local Usage and Restricted Coin Access with reference to other services or with respect to the intent of Section 276, SBC has not presented a sufficient basis for reversing the Commission's decision.

On October 1 and 5, 2004, SBC submitted an affidavit of its hearing witness, Dr. Kent Currie. The affidavit contains statements concerning *Physical Collocation Tariff Order* methodology and residential service. Items 2 through 6 of the affidavit contain extra-record information relating to matters directly at issue in the hearing. SBC could have addressed these matters by means of redirect or rebuttal testimony. To consider Dr. Currie's statements at this point in the proceeding would allow an inappropriate supplementation of cross-examination responses. Consequently, the Commission shall not consider items 2 through 6 of the affidavit.

(16) SBC also challenges the Commission's determination of the average duration of a payphone call. SBC criticizes the Commission's decision for failing to explain what it considered in adopting the PAO's analysis. SBC contends that it is prevented from contesting the Commission's decision. To rectify the error, SBC argues that the Commission must grant rehearing to make findings of fact, present its reasoning, and support its rejection of SBC's proposed average payphone call duration.

(17) In its October 12, 2004, memorandum contra, the PAO supports the Commission's findings of fact with respect to the average duration of a payphone call. Highlighting that SBC could not provide information relating to the average length of a payphone call, the PAO states that it provided the more persuasive data. SBC could only provide data relating to all local calls, including the small percentage of payphone calls.

The PAO, on the other hand, provided data relating to payphone calls only. Given the choice of two competing theories, the PAO argues that the Commission adopted the more persuasive.

(18) The Commission sufficiently supported its conclusion regarding the average duration of a payphone call. As stated by the PAO, the Commission chose the more persuasive of two competing theories. Although acknowledging some reservations, the Commission adopted the PAO's study as support for its conclusion. The PAO's study includes payphone calls specifically. SBC, on the other hand, studied all local calls. The PAO, therefore, provided the more relevant data.

(19) For its third assignment of error, SBC contends that the Commission erred in its interpretation of the reasonableness standard under the NST. SBC claims that the Commission misconstrued the NST. In the opinion and order, SBC highlights the Commission's conclusion that the *Physical Collocation Tariff Order* methodology "fails to rise to the reasonableness standard of the NST." SBC argues that it is improper to compare the results of the *Physical Collocation Tariff Order* methodology with the results of the UNE methodology and to choose the lower. SBC reiterates that any one of three methodologies is permissible: the *Physical Collocation Tariff Order* methodology, the ONA Tariff Order methodology, or the TELRIC overhead loading factor. According to SBC, if proposed rates, using any one of the three methodologies, fall between the price floor and ceiling, the rates comply with the NST and must be approved by the Commission.

(20) In its October 12, 2004, memorandum contra, the PAO supports the Commission's finding concerning the reasonableness standard under the NST. The PAO rejects SBC's belief that the Commission must accept SBC's methodology so long as it is one of the three permissible methodologies for calculating overhead factors. According to the PAO, the Commission ultimately decides the appropriate methodology and, in doing so, must promote the policy goals of Section 276 of the Act. In

furthering the goals of the Act, the PAO believes that the Commission rightfully chose the UNE methodology over the *Physical Collocation Tariff Order* methodology.

(21) The NST consists of two components: the direct cost of a service and the overhead loading factor. The Commission determined that the direct cost study presented by SBC is consistent with the NST. The Commission, however, questioned the reasonableness of SBC's overhead loading factors. It is inaccurate to say that the Commission evaluated the results of the *Physical Collocation Tariff Order* methodology and the UNE methodology and selected the methodology that produced the lower rates. In fact, the Commission determined that the overhead loading factors presented by SBC's *Physical Collocation Tariff Order* methodology were not reasonable. In substitution, the Commission applied an overhead loading factor based on UNE methodology to arrive at an overhead loading factor that it deemed to be reasonable.

(22) To avoid significant changes to its billing system, SBC requests that the Commission allow SBC to maintain its existing rate elements. Currently, the Commission's order provides that monthly rates of $6.46, $11.61, and $13.40 in Access Areas B, C, and D, respectively, for COCOT Lines. SBC's present billing structure separates exchange access into components of network access line and central office termination. To avoid unnecessary changes to its billing system, SBC seeks clarification from the Commission, allowing it to continue billing a central office termination rate of $2.30 and the remainder as the network access line rate.

Similarly, SBC seeks clarification of the billing structure for Local Usage. Currently, SBC bills for Local Usage in components of a 73 message call package rate and an additional message rate. Changing the billing structure, warns SBC, would delay the implementation of the Commission's order because of significant changes to SBC's billing system.

SBC also requests that it be authorized to continue billing COCOT Coin Line rates at a fixed differential relative to its

COCOT Line access areas. A varying differential would require significant changes in SBC's billing system. To eliminate this problem, SBC recommends that the Commission apply the largest rate differential of $1.86 to all COCOT Line access areas. As a result, the COCOT Coin Line rates for access areas B and C would increase to $8.32 and $13.47, respectively.

(23) In its October 12, 2004, memorandum contra, the PAO urges the Commission to reject SBC's requests for clarification. If SBC wished to bill a central office termination rate of $2.30 and the remainder as the network access line rate, the PAO states that SBC could have provided a factual basis at the hearing. Moreover, the PAO contends that SBC's cost information does not support a cost-based office termination charge of $2.30.

SBC has requested clarification that it be allowed to continue billing Local Usage in components of a 73-message call package rate and an additional message rate. Again, the PAO emphasizes that rates must be cost based. In opposition, the PAO states that SBC has not provided a cost basis for its 73-call package. For lack of a cost basis, the PAO concludes that the Commission must deny SBC's request for clarification.

(24) Because it would not involve a significant change in the outcome and because it would avoid significant delays in the implementation of new rates, SBC shall be allowed to maintain its current billing structure. Specifically, SBC shall be allowed to maintain network access line and central office termination as components of exchange access as long as the total rates equal the rates approved by the Commission. The central office termination rate shall remain at $2.30.

SBC's Local Usage service has a 73-call package rate and an additional message rate. On a going forward basis, SBC shall eliminate its 73-call package and begin per message billing at the Commission's ordered rate. However, in order to be consistent with the interim rate structure, SBC shall be allowed to use a package rate equal to 73 times the Commission's ordered message rate for the purpose of true-up.

SBC's studies confirm that the bulk of Local Usage costs are incurred on a minutes of use basis rather than on a per call basis. The Commission agrees with the PAO that the best way to recover these costs is through per minute rates. The Commission in its opinion and order calculated both a per minute rate and a per message rate and allowed SBC the discretion to use either for its Local Usage rate. Had SBC not raised the issue of cost going from per message to per minute billing for Local Usage, the Commission would have ordered that SBC discontinue per message billing and implement per minute billing. The Commission also considered that the per minute rate using the PAO's call duration is actually higher than the per minute rate using SBC's proposed call duration. If SBC believes that the PAO's call duration understates actual call duration, SBC shall be allowed to switch to per minute billing.

SBC shall be allowed to maintain a fixed differential between its rates for COCOT Line and COCOT Coin Line for Access Areas B, C, and D. The Commission shall adopt SBC's proposal, with the adjustment that it will compromise by adopting the middle differential of $1.85, not $1.86 as proposed by SBC. The increase in rate for Access Area C and the decrease in rate for Access Area D is not significant and, according to SBC, a fixed differential will allow SBC to implement new rates which would otherwise be delayed because of billing restructuring.

II

(25) The PAO filed an application for rehearing on October 1, 2004. At the outset, the PAO states that it has no objections to the permanent rates established by the Commission. In its application for rehearing, the PAO lists four assignments of error.

In its first assignment of error, the PAO declares that the Commission erred in stating that its September 25, 1997, entry

approving Ameritech Ohio's (Ameritech)[4] tariff was a follow-up to the Commission's December 19, 1996, entry. Reviewing the filing history in this docket, the PAO concludes that Ameritech never filed a tariff in compliance with the NST and the Commission's December 19, 1996, entry.

The PAO acknowledges that SBC claims that Ameritech filed a compliant tariff before the Commission issued its December 19, 1996, entry. The PAO is also aware of SBC's claim that Ameritech supported its tariff with cost support on May 16, 1997. In response, the PAO states that Ameritech submitted, but did not file, confidential cost information to the Commission's staff relating to Ameritech's COCOT Coin Line and COCOT Line tariffs. The PAO claims that the purpose of the filings was to seek eligibility to receive dial-around compensation from interexchange carriers. The PAO offers new information in the form of a May 16, 1997, letter, which purports to show that Ameritech committed to refund rates. Overall, the PAO does not find in the record that Ameritech is in compliance with the Commission's December 16, 1996, entry requiring the submission of tariffs in compliance with the NST.

(26) In its second assignment of error, the PAO states that the Commission erred by failing to find that SBC's payphone rates, from April 15, 1997, through January 29, 2003, did not comply with the Commission's December 19, 1996, entry, the NST, or the Federal Communications Commission's (FCC's) decision in *In the Matter of Implementation of the Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128. By finding, in its September 1, 2004, order, that SBC did not meet NST requirements, the PAO believes that the Commission must find that SBC's payphone rates were non-compliant dating back to April 15, 1997, through January 29, 2003, the date when interim rates took effect.

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4 Ameritech Ohio is the predecessor in interest of SBC.

(27) For its third assignment of error, the PAO accuses the Commission of failing to enforce SBC's agreement to issue refunds dating back to April 15, 1997, upon a finding that tariffed rates should be adjusted downward. Historically, the PAO recounts that the FCC, in its 1996 payphone orders, instructed local exchange carriers (LECs) to adjust their rates to payphone service providers to comply with the NST. By complying with the NST, LECs would be eligible to collect dial-around compensation for their own payphones. The FCC established an April 15, 1997, NST compliance deadline. According to the PAO, Ameritech requested a temporary waiver of the NST pricing standard to enable it to collect dial-around compensation prior to filing tariffs in compliance with the NST. The FCC granted the waiver upon the condition that Ameritech would reimburse or provide credit to its customers for payphone services rendered from April 15, 1997, if the NST rates proved to be lower than the existing rates. Taking the Commission's finding that SBC's rates do not comply with the NST and that SBC's rates should be adjusted downward, the PAO concludes that SBC should be compelled to reimburse payphone service providers for overcharges.

For three reasons, the PAO does not believe that refunds would constitute retroactive ratemaking. First, without the approval of a tariff, the PAO argues that there can be no retroactive ratemaking. In this instance, the PAO contends that Ameritech did not file a tariff pursuant to the Commission's December 19, 1996, entry. Second, Ameritech volunteered to provide credits or to reimburse payphone service providers for overcharges. Third, the PAO believes that a finding of retroactive ratemaking is inconsistent with federal law. Any approval of Ameritech's rates prior to September 1, 2004, claims the PAO, would violate state and federal law for not complying with the NST.

(28) SBC filed a memorandum contra on October 12, 2004. In its memorandum contra, SBC points out that the PAO has raised the issue of refunds eight times over the course of this proceeding. Furthermore, SBC points out that the Commission

has clearly stated on several occasions that it would not consider the issue of refunds, deeming them to be the equivalent of retroactive ratemaking. Overall, SBC finds no new issues of fact or question of law raised by the PAO that the Commission has not previously considered.

As an additional ground to reject the PAO's effort to acquire refunds, SBC states that the PAO relies on evidence excluded from the record. The PAO, in part, relies on letters that were filed with its witness' testimony. The letters, upon SBC's motion, were stricken from the record. Attached to its application for rehearing is a letter identified as Attachment C. According to SBC, the letter is similar in substance to the letters attached to the PAO's witness' testimony. SBC finds no explanation as to why the letter was not proffered at hearing. To allow admission of the letters at this juncture would deny SBC its due process right to probe the content and substance of the letters.

Substantively, SBC argues that the PAO's argument for refunds is factually flawed. The PAO alleges that SBC never filed a tariff after the Commission issued its December 19, 1996, entry in this docket. As a result, SBC's rates from April 15, 1997, through January 29, 2003, were unlawful and subject to refund. SBC disagrees. According to SBC, the December 19, 1996, entry instructed LECs to file tariffs for the provision of COCOT Lines and COCOT Coin Lines. SBC claims that it had previously done so. SBC states that it filed a COCOT Line tariff provision on April 9, 1985, in Case No. 84-834-TP-ATA and a COCOT Coin Line tariff provision on September 19, 1996, in Case No. 96-844-TP-ATA. Moreover, SBC states that the Commission acknowledged its approval of SBC's payphone access line filings in the December 19, 1996, entry. On May 16, 1997, SBC provided cost data to show that the tariff rates were in compliance with the NST. The Commission's September 25, 1997, entry confirmed approval of SBC's tariffs. Thus, SBC was already in compliance when the Commission issued its December 19, 1996, entry.

SBC points out that Local Usage was not a part of this case until the January 2002 *Wisconsin Order*. Pursuant to the *Wisconsin Order*, the Commission included Local Usage as an issue in this proceeding. SBC argues that refunds, with respect to Local Usage, are not at issue because the true-up mechanism covers the period over which Local Usage became an issue.

In support of its claim for refunds, the PAO relies on letters written on behalf of the Bell operating companies (BOC) Coalition. SBC claims that the PAO has misconstrued the significance of the letters. Acccording to SBC, the intent of the letters was to alert the FCC that payphone tariffs in some states would not be in compliance with the NST by the FCC's April 15, 1997, deadline. SBC requested a waiver for a period of 45 days, until May 19, 1997. The BOCs agreed to file, by May 19, 1997, new tariffs in those states where tariffs were not in compliance with the NST. The Ohio tariff was in compliance with the NST. SBC charges the PAO with taking the language in the letters out of context.

SBC labels as wrong the PAO's arguments concerning retroactive ratemaking. SBC, having shown that it filed a NST compliant tariff and did not commit to the payment of refunds, believes that it eliminates the PAO first two arguments for refunds. Also wrong, according to SBC, is the PAO's argument regarding preemption of federal law over state law with respect to retroactive ratemaking. From its reading of the FCC's orders, SBC concludes that state tariffs would continue to govern basic payphone line rates. Consequently, state procedures and remedies govern the enforcement of federal rights. In short, there is no preemption.

(29) The PAO has again resurrected its demand for refunds. The Commission has addressed the issue of refunds several times in this proceeding.[5] Finding no new issues, facts, or questions of law that the Commission has not previously considered, the

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5 Entry issued April 27, 2000; Entry on Rehearing issued June 22, 2000; Entry issued November 26, 2002; Entry on Rehearing issued January 16, 2003; Entry issued September 23, 2003; Entry on Rehearing issued November 13, 2003.

PAO's assignments of error one through three shall be denied. The Commission also agrees with SBC that the PAO relies on documents previously stricken and the new document not previously proffered and subjected to review, despite its date of May 16, 1997. The Commission is not relying upon the previously stricken documents, nor would it be proper to rely on the May 16, 1997, letter attached to the PAO application for rehearing. That correspondence could have been provided during the proceeding and is not properly a part of this record.

(30) For the fourth assignment of error, the PAO states that the Commission failed to apply the NST to non-Bell Operating Companies (non-BOCs). In an entry issued November 26, 2002, the Commission dismissed all parties but SBC and the PAO as active participants in this proceeding. Citing the *Wisconsin Order*, the PAO acknowledges that the FCC recognized that the NST does not apply to non-BOCs. The PAO highlights, however, that the FCC encouraged state commissions to apply the NST to all LECs. Based on the FCC's suggestion, the PAO encourages the Commission to apply the NST to all LECs in Ohio. If the NST is not applied to all LECs, the PAO fears that a dual system will arise, resulting in benefit to end users in particular areas of the state. The PAO recommends that the Commission grant rehearing or open a docket for the purpose of applying the NST to other LECs.

(31) On October 12, 2004, the Ohio Telecom Association (OTA) filed a memorandum opposing the PAO's application for rehearing. The OTA challenges the PAO's fourth assignment of error for being untimely. The OTA points out that the Commission dismissed all non-BOC carriers from this proceeding by entry issued November 26, 2002. On December 20, 2002, the PAO filed an application for rehearing. The Commission affirmed its decision by entry on rehearing issued January 16, 2003. Thus, the OTA argues that the PAO's application is procedurally barred.

Substantively, the OTA argues that the Commission properly dismissed non-BOCs from this proceeding. The FCC, in the *Wisconsin Order*, acknowledged that it lacked the Congressional

intent that would allow it to extend the NST to non-BOCs. Citing the November 26, 2002, ruling, the OTA states that the Commission already reviewed non-BOC tariffs and found further examination unnecessary. The dual system, according to the OTA, is nothing more than a logical outcome of the FCC's decisions regarding the NST.

Because the Commission, by entry issued November 26, 2002, dismissed the OTA as a party to this proceeding the OTA requests leave to submit its memorandum contra. Even though dismissed as a party for nearly two years, the OTA feels obligated to oppose the PAO's effort to reverse the dismissal.

The OTA shall be granted leave to submit a memorandum contra. The OTA is correct. The PAO is barred from arguing that the NST should be made applicable to non-BOCs. As recited by the OTA, the Commission in an entry issued November 26, 2002, dismissed non-BOC ILECs from this proceeding. The PAO filed an application for rehearing on December 20, 2002. The Commission denied the application for rehearing by entry issued January 16, 2003. Having fully addressed this issue in its entry on rehearing issued January 16, 2003, the Commission cannot consider the PAO's assignment of error without violating Section 4903.10, Revised Code, and Rule 4901-1-35, O.A.C.

(32) In summary, SBC's application for rehearing with respect to the Commission's rulings on the overhead loadings for COCOT Lines and COCOT Coin Lines, Local Usage, and the Commission's interpretation of reasonableness is denied. The Commission does, however, find merit in SBC's request for clarifications. Consistent with Finding (24) of this entry, SBC shall be allowed to maintain its billing structure so as to avoid significant delays in implementing the rates. The new revised rates are attached to this entry as Appendix A. The application for rehearing filed by the PAO, which seeks rehearing on the issue of refunds and the dismissal of non-BOCs from this proceeding, is denied.

III

(33) On September 24, 2004, pursuant to Rule 4901-1-12, O.A.C., SBC filed a motion requesting that the Commission modify the effective date of the permanent rate tariff filing, accounting, and refunds ordered in the Commission's September 1, 2004, opinion and order. Pursuant to Rule 4901-1-12 (C), O.A.C., and over the objection of counsel for the PAO, SBC requested an expedited ruling.

(34) In its memorandum in support, SBC points out that the Commission ordered SBC, within a 60-day period, to make a tariff filing to implement permanent payphone rates, to provide an accounting of the difference between the permanent rates and previously ordered interim rates, and to issue refunds in accordance with the accounting. Noting that it would be filing an application for rehearing, SBC requested that the Commission modify the date for compliance. In its memorandum, SBC lists the reasons why it cannot comply with the compliance date scheduled by the Commission.

First, SBC states that it cannot make the billing changes necessary to implement the permanent rates. SBC notes that it has improperly billed the interim rates established by the Commission. As a result, SBC has underbilled payphone service providers. SBC does not expect to complete the necessary billing revisions until December 2004. Before instituting permanent rates, SBC states that it must correct its current billing error.

Second, SBC urges the Commission to take into consideration its rehearing arguments. SBC believes that it is unreasonable for the Commission to require complicated billing adjustments when the rates are subject to rehearing.

Third, because the interim rates are subject to true up, SBC concludes that payphone service providers will not be harmed by a short delay in implementing permanent rates. A true up will apply to the difference between the interim rates and the permanent rates.

For the above reasons, SBC requests that the compliance date be 60 days following the later of the Commission's entry deciding SBC's application for rehearing or the completion of SBC's billing changes.

(35) The PAO filed a memorandum contra on October 1, 2004. The PAO expresses doubt over SBC's claim that it lacks the ability to correct billing errors until December 2004. Moreover, it is surprising to the PAO that SBC discovered only recently that its billing has been in error for nearly 20 months. Overall, the PAO argues that SBC has provided insufficient detail to justify a delay in implementing rates.

Challenging SBC's claim that the Commission presumes that SBC has no meritorious claim, the PAO responds that 60 days is sufficient time in which to rule upon applications for rehearing. A party has 30 days in which to file an application for rehearing and the Commission has 30 days in which to issue a ruling. The PAO urges the Commission to stand by its 60-day deadline unless it grants rehearing.

The PAO disagrees with SBC's claim that a delay will not cause any adverse impact upon PAO members. SBC fails to consider the time value of money. A delay, challenges the PAO, burdens members who have struggled to stay in business.

(36) It is disappointing to be informed at this late date that SBC has improperly billed payphone service providers for the duration of the interim rates. It is understood, however, that SBC's billing error would contribute to delays in restructuring its billing of permanent rates. Moreover, in light of the billing modifications the Commission has made on rehearing concerning the permanent rates to be charged to payphone service providers, SBC's motion to modify the effective date of its permanent rates shall be modified. SBC shall be granted until December 31, 2004, to complete its billing changes.

It is, therefore,

ORDERED, That, in accordance with Finding (8), the permanent rates established in the September 1, 2004, opinion and order shall be adjusted to reflect a decrease of $0.01 in the EUCL. It is, further,

ORDERED, That SBC's application for rehearing is denied. It is, further,

ORDERED, That, in accordance with Findings (12), (24), and (32) SBC's requests for clarification are granted. It is, further,

ORDERED, That the OTA, pursuant to its motion, is granted leave to file its memorandum contra. It is, further,

ORDERED, That the PAO's application for rehearing is denied in its entirety. It is, further,

ORDERED, That SBC's motion to modify the effective dates of its tariff filing, rates, accounting and refunds is granted. It is, further,

ORDERED, That the rates shown in Appendix A be implemented by no later than December 31, 2004, and that in all other respects SBC comply with the mandates of the September 1, 2004, opinion and order and the modifications and clarifications of this entry on rehearing.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Ronda Hartman Fergus

Judith A. Jones

Donald L. Mason

Clarence D. Rogers, Jr.

LDJ/vrm

Entered in the Journal
OCT 27 2004

Reneé J. Jenkins
Secretary

APPENDIX A

Case No. 96-1310-TP-COI

Permanent Rates for Payphone Services

	Access Area B	Access Area C	Access Area D	State-wide
COCOT Line				
COCOT Network Access Line	$ 4.17	$ 9.32	$11.11	
Central Office Termination	$ 2.30	$ 2.30	$ 2.30	
EUCL	$ 5.38	$ 5.38	$ 5.38	
Total COCOT Line Cost Recovered	$11.85	$17.00	$18.79	
COCOT Coin Line				
COCOT Coin Network Access Line	$ 6.02	$11.17	$12.96	
Central Office Termination	$ 2.30	$ 2.30	$ 2.30	
EUCL	$ 5.38	$ 5.38	$ 5.38	
Total COCOT Coin Line Cost Recovered	$13.70	$18.85	$20.64	
Answer Supervision				
Monthly Rate				$ 1.67
Restricted Coin Access				
Monthly Rate				$ 0.82
Local Usage				
Per Message Rate				$0.008755
Per Minute Rate				$0.004467