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

The Commission finds:

(1) On February 8, 1996, the President signed into law the Telecommunications Act of 1996 (1996 Act). On September 20, 1996, the Federal Communications Commission (FCC) released a Report and Order (Order) in CC Docket No. 96-128 (In the Matter of Implementation of the Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996) implementing Section 276 of the 1996 Act regarding payphone services. The FCC's order requires, among other things, local exchange carriers (LECs) to provide payphone services to competitors under the same terms and conditions that they provide services to their own payphone operations. On November 8, 1996, the FCC released its Order on Reconsideration in CC Docket No. 96-128 (CC 96-128) further fine tuning its initial decision.

(2) On December 9, 1996, the Public Utilities Commission of Ohio (Commission) initiated the above-captioned proceeding to carry out, on an intrastate basis, the requirements of Section 276 of the 1996 Act and the FCC's decisions in CC 96-128 regarding the provision of payphone services. For example, the FCC has required in its CC 96-128 proceeding that each state complete, by October 7, 1997, a review of its rules applicable to payphone services and remove any regulations that impose market entry or exit barriers. State commissions are also to revise all intrastate rules and regulations necessary to ensure that they do not conflict with either Section 276 or the FCC's rules adopted in CC 96-128.

(3) Consistent with its commitment to implementing further the 1996 Act's directives, on May 22, 1997, the Commission issued an entry in this proceeding requiring, among other things, each incumbent LEC operating in Ohio to mirror

permanently, on an intrastate basis, its interstate payphone-related carrier common line (CCLC) rate reduction. Incumbent LECs were required to file attestations in this docket that the necessary mirrored reductions have been filed in the Commission's access charge proceeding (Case No. 83-464-TP-COI). In addition, all incumbent LECs were requested to file proposed amended tariffs reflecting that directory assistance charges to end users at pay telephones and local coin-sent paid message service charges to end users at pay telephones were deregulated after October 7, 1997. Each incumbent LEC was also required to phase out its public and semi-public telephone service by October 7, 1997. Finally, the Commission instructed each LEC to review its respective payphone tariff to ensure that it is consistent with the requirements of Section 276 of the 1996 Act, the FCC's CC Docket 96-128 decisions, and this investigation. Proposed tariff amendments were to be filed with the Commission by June 22, 1997.

(4) On September 25, 1997, the Commission approved the proposed tariff filings submitted by a number of incumbent LECs. The Commission also noted in the September 25, 1997 entry, that the Payphone Association of Ohio (PAO) had filed a motion in this proceeding requesting that the Commission conduct an evidentiary hearing to determine whether the incumbent LECs are in compliance with Section 276 of the 1996 Act, the FCC's decisions in CC Docket 96-128, and the Commission's decisions in this proceeding. The Commission noted that it would issue a subsequent entry in this investigation addressing these issues.

(5) By entry issued January 29, 1998, the attorney examiner, among other things, granted the outstanding motions to intervene filed by the PAO, Coin Phone Management Company (CPMC), AT&T Communications of Ohio, Inc. (AT&T), MCI Telecommunications Corporation (MCI), and the Ohio Telecommunications Industry Association (OTIA). The examiner's January 29, 1998 entry also directed that the intervenors should have available to them, upon their request to individual LECs, the same information submitted to the Commission's staff for its investigation in this matter subject, of course, to appropriate measures to maintain confidentiality of allegedly proprietary information. As a final matter, the January 29, 1998 examiner's entry afforded the intervenors

and the involved LECs an opportunity to file comments on the reclassification of payphone investments and the removal of subsidies from local exchange service rates. Pending receipt of the additional comments, the Commission postponed ruling on the motion for an evidentiary hearing in this matter.

(6) Comments and/or reply comments were filed by PAO, jointly by AT&T and MCI (AT&T/MCI), OTIA, Ameritech Ohio, GTE North Incorporated (GTE), Cincinnati Bell Telephone Company (CBT), and United Telephone Company of Ohio *dba Sprint (Sprint). Generally, PAO and AT&T/MCI assert* that certain LECs[1] have failed to establish that their rates for network services made available to payphone providers are cost-based consistent with the FCC's new services test. See 47 C.F.R. §61.49. PAO and AT&T/MCI further aver that the involved LECs have failed to provide sufficient evidence to the Commission that their payphone operations are not being subsidized with revenue from noncompetitive services. For these reasons, PAO and AT&T/MCI request an opportunity to obtain discovery of relevant and material information from these local exchange carriers and that a hearing be held to determine what steps are necessary to bring the LECs into compliance with the Commission's orders, and the orders issued by the FCC.

Ameritech Ohio, GTE, CBT, and Sprint dispute the allegations made in the comments by PAO and AT&T/MCI. More *specifically, these LECs assert that they have fully satisfied the* FCC's new services test and the FCC's parity requirements. These LECs also maintain that their respective rates for answer supervision and restricted coin access have been fully supported and that their overhead allocations are reasonable. Finally, it is argued that all subsidies have been removed from payphone line rates. Consequently, the assertions of PAO and AT&T/MCI fail to form the basis for an evidentiary hearing or further investigation of those lawful tariffed payphone service rates according to these LECs.

---

[1] The PAO specifically identifies by name Ameritech Ohio, GTE, CBT, Sprint, and Alltel.

(7) Ultimately, the arguments presented in the written comments focus on whether the involved LECs (namely, Ameritech Ohio, GTE, Sprint, CBT, and Alltel) Commission-approved rates for payphone lines comply with 47 U.S.C. §276 and the FCC rules implementing this provision of the 1996 Act. Section 276 provides, in relevant part:

> After the effective date of the [FCC's rules governing payphones], any Bell operating company that provides payphone service—
>
> (1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and
>
> (2) shall not prefer or discriminate in favor of its payphone service.
>
> 47 U.S.C. §276(a)(1)&(2)

In its Order on Reconsideration in CC Docket 96-128 (Released November 8, 1996), the FCC, among other things, adopted rules requiring incumbent LECs to file intrastate tariffs for basic payphone services that are: (1) cost based; (2) consistent with 47 U.S.C. §276 with respect to, for example, the removal of subsidies from exchange and exchange access services; and (3) nondiscriminatory. Further, the FCC directed that such tariffs must be consistent with Computer III tariffing guidelines. Under Computer III guidelines:

> Each tariff filing submitted by a [LEC] ... that introduces a new service or a restructured unbundled basic service element (BSE) ... that is or will later be included in a basket [of services] must be accompanied by cost data sufficient to establish that the new service or unbundled BSE will not recover more than a reasonable portion of the carrier's overhead costs.

47 C.F.R. §61.49(f)(2). This is also known as the FCC's new services test applicable in this proceeding.

(8) After reviewing the comments filed on these issues, the Commission finds that there is insufficient evidence, at this time, to satisfy the Commission that the payphone tariffs of Ameritech Ohio, GTE, CBT, Sprint, and Alltel fully comply with the requirements of Section 276 of the 1996 Act and the rules subsequently promulgated by the FCC. Therefore, the motion for an evidentiary hearing involving Ameritech Ohio, GTE, CBT, Sprint, and Alltel in this matter filed by the PAO is granted. A prehearing conference shall be held at the Commission's offices on February 11, 1999, at 1:30 p.m. At this prehearing conference, a schedule shall be established for the further investigation of the payphone tariffs of the identified LECs. During this further investigation, it shall be the incumbent LECs ultimate burden of justifying, through cost studies and work papers, the costs associated with their tariffed payphone services.

(9) During the pendency of this further investigation, we note that Ameritech Ohio, GTE, CBT, Sprint, and Alltel have approved payphone tariffs in effect and on file with this Commission at this time. Our decision to further investigate these payphone tariffs does not relieve any person from the terms and conditions of those tariffs pending a Commission order once the investigation is completed. We also note that the FCC has clarified its payphone compensation orders and restated the obligation of the interexchange carriers to pay the FCC-ordered payphone compensation to the LECs, even during a challenge to those rates. Memorandum Opinion and Order, CC Docket 96-128, Released March 9, 1998. Therefore, during the pendency of this further investigation, the interexchange carriers must continue to remit per-call compensation for payphone traffic consistent with the FCC's payphone orders in CC Docket 96-128.

It is, therefore,

ORDERED, That the PAO's motion for an evidentiary hearing is granted. It is, further,

ORDERED, That a prehearing conference is scheduled for February 11, 1999, at 1:30 p.m., at the offices of the Commission. It is, further,

96-1310-TP-COI

ORDERED, That during the pendency of this further investigation, the approved payphone tariffs on file at the Commission shall remain in effect. It is, further,

ORDERED, That copies of this entry be served upon the PAO, AT&T, MCI, Ameritech Ohio, GTE, CBT, Sprint, and Alltel, their respective counsel, and upon any other interested person of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer, Chairman

Ronda Hartman Fergus

Jolynn Barry Butler

Donald L. Mason

Judith A. Jones

JRJ/vrh

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

The Commission finds:

(1) On February 8, 1996, the President signed into law the Telecommunications Act of 1996 (1996 Act). On September 20, 1996, the Federal Communications Commission (FCC) released a Report and Order (Order) in CC Docket No. 96-128 (*In the Matter of Implementation of the Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996)* implementing section 276 of the 1996 Act regarding payphone services. The FCC's order requires, among other things, local exchange carriers (LECs) to provide payphone services to competitors under the same terms and conditions that they provide services to their own payphone operations. On November 8, 1996, the FCC released its Order on Reconsideration in CC Docket No. 96-128 (CC 96-128) further fine tuning its initial decision.

(2) On December 9, 1996, the Public Utilities Commission of Ohio (Commission) initiated the above-captioned proceeding to carry out, on an intrastate basis, the requirements of section 276 of the 1996 Act and the FCC's decisions in CC 96-128 regarding the provision of payphone services. For example, the FCC has required in its CC 96-128 proceeding that each state complete, by October 7, 1997, a review of its rules applicable to payphone services and remove any regulations that impose market entry or exit barriers. State commissions are also to revise all intrastate rules and regulations necessary to ensure that they do not conflict with either section 276 or the FCC's rules adopted in CC 96-128.

(3) Consistent with its commitment to implementing further the 1996 Act's directives, on May 22, 1997, the Commission issued an Entry in this proceeding requiring, among other things, each incumbent LEC operating in Ohio to mirror permanently, on an intrastate basis, its interstate payphone-

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician Anna M. Trijo Date Processed Sept 26, 1997

related carrier common line (CCLC) rate reduction. Incumbent LECs were required to file attestations in this docket that the necessary mirrored reductions have been filed in the Commission's access charge proceeding (Case No. 83-464-TP-COI). In addition, all incumbent LECs were also requested to file proposed amended tariffs reflecting that directory assistance charges to end users at pay telephones and local coin-sent paid message service charges to end users at pay telephones are deregulated after October 7, 1997. Each incumbent LEC was also required to phase out its public and semi-public telephone service by October 7, 1997. Finally, the Commission instructed each LEC to review its respective payphone tariff to ensure it is consistent with the requirements of section 276 of the 1996 Act, the FCC's CC 96-128 decisions, and this investigation. Proposed tariff amendments were to be filed with the Commission by June 22, 1997.

(4) To date, the following incumbent LECs have file revised payphone tariffs and CCLC rate reductions pursuant to the Commission's May 22, 1997, Entry in this proceeding:

Alltel Ohio, Inc.
Ameritech Ohio
Arcadia Telephone Company
Arthur Mutual Telephone Company
Ayersville Telephone Company
The Benton Ridge Telephone Company
Century Telephone of Ohio, Inc.
The Champaign Telephone Company
Cincinnati Bell Telephone Company
Columbus Grove Telephone Company
The Conneaut Telephone Company
Continental Telephone Company
Doylestown Telephone Company
Farmers Mutual Telephone Company
Fort Jennings Telephone Company
Frontier Communications of Michigan, Inc.
The Germantown Independent Telephone Company
The Glandorf Telephone Company, Inc.
GTE North Incorporated
Kalida Telephone Company, Inc.
Little Miami Telephone Corporation
McClure Telephone Company
Middle Point Home Telephone Company

Minford Telephone Company
The Nova Telephone Company
Oakwood Telephone Company
Orwell Telephone Company
The Ottoville Mutual Telephone Company
The Ridgeville Telephone Company
Sherwood Mutual Telephone Company
Sprint/United Telephone North Central
The Sycamore Telephone Company
Telephone Service Company
Vanlue Telephone Company
Vaughnsville Telephone Company
Wabash Mutual Telephone Company
The Western Reserve Telephone Company

(5) The Commission's Staff has reviewed the proposed tariff filings of the carriers identified in Finding (4); has concluded that they are consistent with the requirements of the 1996 Act, the FCC's decisions in CC Docket No. 96-128, and the Commission's May 22, 1997 Entry in this proceeding; and recommend their approval by the Commission.

(6) The Commission concurs in Staff's recommendation and, therefore, finds these applications shall be approved.

(7) On a related matter, the Commission observes that in its May 22, 1997 Entry in this proceeding, the Commission also required incumbent LECs to file information detailing 1996 payphone revenues and expenses, payphone plant, reserve, and other payphone related items of rate base to determine the degree, if any, of payphone subsidies included in regulated rates. The Commission further observes that on June 30, 1997, the Payphone Association of Ohio filed a motion in this proceeding requesting that the Commission conduct an evidentiary hearing to determine whether LECs are in compliance with section 276 of the 1996 Act, the FCC's decisions in CC Docket No. 96-128, and the Commission's decisions in this proceeding. The Commission will issue a subsequent Entry(s) in this investigation addressing these issues.

It is, therefore,

ORDERED, That the proposed tariffs and carrier common line charge rate reductions filed by the incumbent local exchange carriers identified in Finding (4) are approved. It is, further,

ORDERED, That the incumbent local exchange carriers identified in Finding (4) are authorized to file in final form three complete printed copies of its tariffs consistent with this Entry. The incumbent local exchange carriers should file their tariffs, under one cover letter, which references both this case number and its respective "TRF" case number. It is, further,

ORDERED, That the effective date of the new tariffs shall be a date not earlier than October 7, 1997, and the date upon which three complete printed copies of the tariffs are filed with the Commission. The revised tariffs shall be effective for services rendered on or after October 7, 1997. It is, further,

ORDERED, That nothing contained in this Entry shall be deemed to be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this Entry be served upon all local exchange companies subject to the jurisdiction of this Commission; all other Commission-certified telecommunications carriers operating in the state of Ohio; The Ohio Telecommunications Industry Association; The Office of the Consumer's Counsel; all customer-owned, coin-operated vendors on record; all payphone associations in the state of Ohio; and all other persons of record in this proceeding.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer, Chairman

Jolynn Barry Butler

Ronda Hartman Fergus

David W. Johnson

Judith A. Jones

DFS:ss

Entered in the Journal
SEP 25 1997
A True Copy
Gary E. Vigorito
Secretary

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

The Commission finds:

(1) On February 8, 1996, the President signed into law the Telecommunications Act of 1996 (1996 Act). On September 20, 1996, the Federal Communications Commission (FCC) released a Report and Order (Order) in CC Docket No. 96-128 (*In the Matter of Implementation of the Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996)* implementing section 276 of the 1996 Act regarding payphone services. The FCC's order requires, among other things, local exchange carriers (LECs) to provide payphone services to competitors under the same terms and conditions that they provide services to their own payphone operations. On November 8, 1996, the FCC released its Order on Reconsideration in CC Docket No. 96-128 (CC 96-128) further fine tuning its initial decision.

(2) On December 9, 1996, the Public Utilities Commission of Ohio (Commission) initiated the above-captioned proceeding to carry out, on an intrastate basis, the requirements of section 276 of the 1996 Act and the FCC's decisions in CC 96-128 regarding the provision of payphone services. On December 19, 1996, the Commission issued an Entry in this docket requiring all incumbent LECs to file with the Commission by January 15, 1997, tariffs proposing to provide two payphone access lines. One access line must accommodate payphones utilizing instrument implemented "smart" payphone technology, and the other access line must support "dumb" payphones utilizing central office technology. The payphone access lines were required to be cost based, consistent with the requirements of section 276, and nondiscriminatory. The tariffs for these services were effective on or before April 15, 1997.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician SCJ Date Processed 5-27-97

(3) The Commission observed in its December 19, 1996 Entry that it was, at that time, only taking the initial steps towards fully implementing the requirements of section 276 pursuant to the FCC's directives. The Commission additionally indicated that it would issue subsequent entries in this proceeding further implementing section 276 regarding payphone services. For example, the Commission observed that the FCC has required in its CC 96-128 proceeding each state to complete by October 7, 1997, a review of its rules applicable to payphone services and remove any regulations that impose market entry or exit barriers. State commissions are also to revise all intrastate rules and regulations necessary to ensure that they do not conflict with either section 276 or the FCC's rules adopted in CC 96-128. On April 22, 1997, AT&T Communications of Ohio, Inc. (AT&T) filed a Motion to Intervene in this proceeding maintaining, among other things, that LECs are required, pursuant to the FCC's CC 96-128 decision, to remove costs for unregulated payphone equipment and subsidies from intrastate local exchange service and exchange access rates. The Commission will not rule on AT&T's Motion until the Utilities Department's Accounts and Audit Division has had the opportunity to review the information required of the incumbent LECs identified later in this Entry.

(4) Consistent with our commitment to implementing further the 1996 Act's directives regarding payphone services, the Commission notes that there are outstanding generic issues that must be addressed regarding the provision of pay telephone service in Ohio, which include the following: (1) the asset transfer of pay telephone equipment from regulated to a nonregulated status, (2) elimination of payphone subsidies from basic exchange and exchange revenues and (3) necessary tariff amendments to ensure nondiscriminatory treatment among payphone service providers (PSPs). On a related matter, the Commission observes that it currently has open an investigation to review and update its minimum telephone standards (Case No. 96-1175-TP-UNC). In particular, Rule Eight of the Commission's proposed minimum standards offers pay telephone standards that comport with the requirements of section 276 and the FCC's 96-128 decisions to which, once adopted, all LECs in the state of Ohio providing payphone access lines to PSPs will be required to comply.

(5) In addition to minimum telephone service standards, the Commission further maintains that, pursuant to the FCC's CC 96-128 decisions, it continues to retain regulatory and enforcement authority over LEC-provided payphone access lines (and associated services) to PSPs, the Americans with Disabilities Act's (ADA's) requirements regarding access to payphone instruments, informational posting requirements, the provision of intrastate toll services at payphones, the provision of intrastate directory assistance services to PSPs, and consumer complaints concerning service quality. On a related matter concerning the regulatory oversight of pay telephones, the Commission observes that it is issuing this Entry with a degree of trepidation. Specifically, the Commission does not agree with many of the FCC's interpretations of section 276 of the 1996 Act and its corresponding decisions issued in CC 96-128 regarding the provision of pay telephone service to end users. More specifically, the Commission submits that the FCC's rules adopted in its CC 96-128 proceeding do not provide end user customers using payphones with adequate protections and customer safeguards. The Commission's concern over the FCC's payphone decisions is evidenced by the fact that the Commission in 1996 filed three times in the FCC's CC 96-128 payphone proceeding objecting, on the basis of inadequate customer safeguards, to either its proposed rules or its final rules adopted in CC 96-128.

Elimination of Payphone Subsidies

(6) In its CC 96-128 decisions, the FCC determined that all incumbent LEC pay telephone assets must be reclassified as customer premise equipment (CPE). The FCC further concluded that the asset transfer should take place on or before April 15, 1997. The FCC indicated that payphone equipment reclassified from regulated to CPE include all facilities related to payphone service, including associated accumulated depreciation and deferred income tax liabilities. Specifically, the FCC required that payphone equipment in Account 32.2351 (public telephone terminal equipment) and any other assets used in the provision of payphone service, along with the associated accumulated depreciation and deferred income tax liabilities, should be directly assigned or allocated to nonregulated activities pursuant to the FCC's cost allocation rules. The FCC indicated that incumbent LECs are permitted to establish structurally separate subsidiaries, but

are not required to do so. Moreover, the FCC indicated that states are prohibited from imposing structural separation requirements, which exceed federal requirements.

(7) The FCC's 96-128 decisions require each LEC either to transfer its payphone assets to an affiliate consistent with its Part 32 affiliate transaction rules or assign these assets to its payphone operations using its Part 64 cost allocation rules. The Commission observes that existing FCC accounting rules provide two distinct methods to value such asset transactions dependent upon whether (1) the LEC intends to reclassify its assets using part 64 or (2) to transfer to an affiliate with a separate set of books (or to an operating division of the regulated company); transfer to an affiliate are governed by Part 32 affiliate transactions rules and are to be transferred at the higher of fair market value or at net book cost. The Commission, therefore, instructs incumbent LECs operating in Ohio to provide to the Commission under this docket by June 12, 1997, detailed information which demonstrates how the LEC has reclassified or intends to reclassify any payphone investment in Account 32.2351, Public Terminal Equipment, and other assets used in the provision of payphone service, along with the associated accumulated depreciation and deferred income tax liabilities from regulated to unregulated status. LECs are reminded that asset transfers from the LEC to an affiliate must be approved by the Commission pursuant to Ohio Revised Code, Section 4905.48.

(8) Pursuant to the mandate of Section 276(b)(1)(b), incumbent LECs are to remove from their intrastate rates any charges that recover the costs of payphones. Section 276(b)(1)(a) provides for per-call compensation to be effective no sooner than the date that the payphone charges are removed from intrastate rates. In order for the Commission to satisfy itself that any subsidies related to payphone costs and investment have been removed from intrastate local exchange service rates, the Commission directs all incumbent LECs to file by June 12, 1997, with the docketing division in this case information detailing all 1996 payphone revenues and expenses, and payphone plant, reserve, and other payphone related items in rate base as of December 31, 1996. The Commission directs its staff to informally work with the small LECs to assist their compliance with providing the information requested herein.

Carrier Common Line Charge Reductions

(9) The FCC's decisions in CC 96-128 concluded that access charge payphone service elements be discontinued and that incumbent LECs' payphones should be treated as deregulated CPE. Recognizing that regulated payphone costs were included in the common carrier line charge (CCLC), the FCC required the removal from regulated intrastate and interstate rate structures of all access charges that recover the costs of payphones. Specifically, consistent with section 276(b)(1)(B) of the 1996 Act, the FCC required incumbent LECs to reduce their CCLC by an amount equal to the interstate allocation of payphone costs currently recovered through those charges. LECs were to file revised interstate tariffs with the FCC's Carrier Common Bureau by April 15, 1997.

(10) Consistent with the FCC's directives concerning removing any remaining subsidies for payphone services included in interstate and intrastate access elements, to ensure that intrastate subsidies are also removed from intrastate access elements, the Commission instructs each incumbent LEC operating in Ohio to mirror permanently, on an intrastate basis, its interstate CCLC rate reduction. For example, if a carrier's payphone-related interstate CCLC reduction is $0.005 per minute, that carrier's permanent intrastate CCLC reduction shall equal $0.005 per minute. Additionally, if any payphone-related subsidies are included in any other interstate access elements, such as the residual interconnection charge (RIC), carriers are also instructed to mirror, on an intrastate basis, their interstate per minute rate reduction for that access element(s). (Since Ameritech Ohio's intrastate CCLC is set equal to zero, no further reductions in that charge are required. The Commission notes, however, that it has not yet ruled on AT&T's and MCI's complaints that alternative charges to the CCLC are not permitted on an intrastate basis pursuant to the settlement agreement in Case No. 96-582-TP-UNC.) Demonstrations that the access charge reductions have occurred shall be filed with the Commission in this proceeding on or before June 22, 1997. If the necessary access reductions have not yet occurred on an intrastate basis, they shall take place retroactively to April 15, 1997.

Additional Requisite Tariff Amendments

(11) Section 276 of the 1996 Act significantly alters the regulatory landscape by requiring that LEC provision of payphone service be on par with independent payphone providers (IPPs) provision of service. Consequently, the FCC maintains that states may continue to set local coin rates pursuant to traditional methods, but within one year of the date of the FCC's decision in CC 96-128, states must move to allow market-based coin rates set by individual PSPs. The FCC further indicates that states are free to move to market-based rates at anytime during the initial one-year period. The FCC also indicated that, to the extent any state requirements are inconsistent with the FCC's regulations, the FCC's regulations on such matters shall preempt such state requirements.

(12) The Commission notes that, pursuant to the FCC's directives and consistent with section 276 of the 1996 Act, significant intrastate tariff revisions must occur prior to October 7, 1997 (i.e., one year after the FCC's 96-128 Report and Order was entered in the Federal Register). In particular, the Commission notes that all LECs must, consistent with the FCC's directives, deregulate all end user coin charges at pay stations. All LECs operating in Ohio, therefore, must file proposed amended tariffs by June 22, 1997, in this proceeding reflecting that directory assistance charges assessed to end users at pay telephones and local coin-sent paid message service charges assessed to end users at pay telephones are deregulated after October 7, 1997. The Commission recognizes, however, that neither section 276 nor the FCC's CC 96-128 decisions deregulate the provision of intrastate toll or intrastate operator services. Moreover, the Commission observes that incumbent LEC charges to PSPs for directory assistance have not been deregulated. Accordingly, no proposed tariff amendments for these services should be filed as a result of this Entry in this investigation.

(13) In CC 96-128, the FCC also concluded that, pursuant to Computer II, sections 201, 202, and 276 of the 1996 Act, and its previous CPE decisions, incumbent LECs must offer individual central office coin transmission services to PSPs under nondiscriminatory, public tariffed offerings if LECs provide those services to their own operations. Moreover, section 202 prohibits a carrier from unreasonably discriminating in favor of its services. The FCC also requires

that incumbent LECs be required to provide certain other services if these payphone services are available to their own operations. These services must be available to LEC affiliates and other payphone vendors on a comparable basis.

(14) To ensure that the LECs are not discriminating in favor of their own services, the Commission maintains that it is necessary for all LECs to phase out both their public and semi-public telephone services by October 7, 1997. As of October 7, 1997, each incumbent LEC will be required to provide payphone services through its payphone operations or affiliate by subscribing to any combination of the two access lines that the FCC and the Commission required each incumbent LEC to establish by April 15, 1997. As mentioned above, one access line is to provide service to instrument-implemented "smart" payphones, while the other access line will accommodate "dumb" terminals that utilize central office technology. On a final matter, as an additional safeguard to ensure that LECs will not discriminate unfairly in favor of their own payphone operations, the Commission instructs each LEC to perform a review of its respective payphone tariff to ensure it is consistent with the requirements of the section 276 of the 1996 Act, the FCC's CC 96-128 decisions, and this investigation. Proposed tariff amendments shall also be filed with the Commission by June 22, 1997.

It is, therefore,

ORDERED, That all incumbent local exchange carriers in the state of Ohio are required to provide to the Commission under this docket by June 12, 1997, detailed information, as described in Finding (7) of this Entry, which demonstrates how they have reclassified or intend to reclassify payphone related investment from regulated to nonregulated status. It is, further,

ORDERED, That all incumbent local exchange carriers in the state of Ohio, consistent with Finding (8) of this Entry, are required to file under this docket by June 12, 1997, information detailing 1996 payphone revenues and expenses, payphone plant, reserve, and other payphone related items of rate base as of December 31, 1996. It is, further,

ORDERED, That all incumbent local exchange carriers in the state of Ohio are required to file with the Commission, consistent with Finding (9) of this Entry, under this docket, by June 22, 1997, confirmations that carrier common line charge reductions have occurred on an intrastate basis equal to those required by the Federal Communications Commission for interstate services. It is, further,

ORDERED, That all incumbent local exchange carriers in the state of Ohio are required to file with the Commission, under this docket, by June 22, 1997, revised tariffs as described in Finding (12) of this Entry reflecting that all end user coin-sent paid charges and directory assistance charges assessed to end users at pay telephones will be deregulated after October 7, 1997. It is, further,

ORDERED, That all incumbent local exchange carriers in the state of Ohio are required to file with the Commission, under this docket, by June 22, 1997, revised tariffs as described in Finding (12) of this Entry reflecting that semi-public and public telephone service will no longer be provided after October 7, 1997. It is, further,

ORDERED, That all incumbent local exchange carriers in the state of Ohio are required by June 22, 1997, consistent with Finding (14), to review their respective pay telephone access line tariffs to ensure that these services are being provided on a nondiscriminatory basis to all payphone service providers. It is, further,

ORDERED, That nothing contained in this Entry shall be deemed to be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this Entry be served upon all local exchange companies subject to the jurisdiction of this Commission; all other Commission-certified telecommunications carriers operating in the state of Ohio, The Ohio Telecommunications Industry Association; and The Office of the Consumer's Counsel; all customer-owned, coin-operated vendors on record; all payphone associations in the state of Ohio; and all other persons of record in this proceeding.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer, Chairman

Jolynn Barry Butler

Ronda Hartman Fergus

David W. Johnson

Judith A. Jones

DFS:dj

Entered in the Journal
MAY 22 1997

A True Copy

Gary E. Vigorito
Secretary

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

The Commission finds:

(1) On June 17, 2002, the Payphone Association of Ohio (PAO) filed a motion to expand the scope of this proceeding and to require the incumbent local exchange carriers (ILECs) to comply with the Federal Communication Commission's (FCC's) "New Services Test."[1]

More specifically, the PAO requests an order from the Commission directing Ameritech Ohio (Ameritech) to file payphone tariffs that include rates based upon the New Services Test. The PAO further requests that Ameritech use existing and approved TELRIC (total element long-run incremental cost) studies for unbundled network elements (UNEs) as adjusted to account for federally tariffed subscriber line charges (SLC). For the incremental difference in rates applied to purchases of payphone services, the PAO demands that refund checks be issued to payphone service providers. The refund checks should account for the incremental difference in rates for services dating back to April 15, 1997, the date upon which the Commission approved Ameritech's payphone tariff.

(2) The PAO asks that other ILECs prepare forward-looking cost studies for payphone line services that comply with the New Services Test. In the alternative, the PAO requests that ILECs file benchmark rates and analyses consistent with Ameritech's TELRIC costs. If no party objects within a 30-day period, the Commission should order the ILECs to submit tariffs based upon the cost studies or benchmark rates. A 15-day period should be granted to review the tariffs to determine if a given tariff complies with the cost study or benchmark rates. If there are objections to either the cost studies or the tariffs, the Commission should establish a comment period or schedule a settlement conference. If there are no objections, the Commission should issue an entry approving the tariffs. As with Ameritech, the other ILECs should issue refund checks to

[1] See, Order on Reconsideration, CC Docket No. 96-128, 11 FCC Rcd 21233 (issued November 8, 1996).

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business
Technician NDT Date Processed 11/26/02

account for the incremental difference in rates applied to purchases of payphone services. The checks should account for the time period dating back to the approval of the ILECs' respective tariffs.

(3) The PAO proposes a procedure whereby Ameritech would be directed to file tariffs. A period of 30 days would be granted in which to file objections. In the event, that objections are filed, a brief comment period should be scheduled.

(4) In its supporting memorandum, the PAO points to the need for payphone services by low income Ohioans. According to the PAO, 300,000 payphone lines have been disconnected over the past few years. The PAO contends that a disproportionately high number of disconnects are attributable to relatively high payphone line charges. The result is an ever-decreasing number of payphones available to the poor who cannot afford residential service or cell phones.

(5) The PAO points out that with the promulgation of Section 276 of the Telecommunications Act of 1996 (the Act) Congress sought, as one of its goals, the expansion of payphone services. Furthermore, the FCC, on September 20, 1996, released a Report and Order in CC Docket No. 96-128 implementing Section 276 of the Act.[2] On November 8, 1996, the FCC released its Order on Reconsideration in CC Docket No. 96-128. Among its orders, the Order on Reconsideration required that payphone line services be priced at cost-based rates in accordance with the New Services Test.

(6) The PAO has documented the history of this proceeding. The PAO states that on December 9, 1996, the Commission opened this docket to carry out on an intrastate basis the requirements of Section 276 of the Act and the FCC's decisions in CC Docket 96-128. Pursuant to an entry issued by the Commission on December 19, 1996, ILECs filed tariffs. The Commission approved the tariffs on March 27, 1997, and required them to be filed and effective on or before April 15, 1997. The PAO moved to intervene on April 8, 1997. Coin Phone Management Company, AT&T Communications of Ohio, Inc. (AT&T), The Ohio Telecommunication Industry Association, and MCI Telecommunications Corp. also moved to intervene. By entry issued May 22, 1997, the Commission directed the ILECs to provide by June 12, 1997, additional information regarding payphone services. On June 30, 1997, the PAO moved to conduct an evidentiary hearing to determine whether the

2 *In the Matter of the Implementation of the Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996.*

ILECs were in compliance with Section 276. On January 29, 1998, the attorney examiner granted petitions to intervene and provided the parties an opportunity to submit comments and reply comments. On January 28, 1999, the Commission scheduled an evidentiary hearing and permitted discovery. On September 5, 2001, the attorney examiner issued an entry scheduling a prehearing conference for September 14, 2001. It was determined at the conference to attempt mediation to resolve the issues. The parties, however, were unable to resolve the issues through mediation.

(7) In its June 17, 2002 memorandum, the PAO relies upon a memorandum opinion and order released by the FCC on January 31, 2002, in a Wisconsin proceeding (the Wisconsin Decision).[3] According to the PAO, the Wisconsin Decision purports to clarify what state commissions must do to ensure that payphone rates are in compliance with Section 276.

(8) The PAO contends that the FCC has preempted the Commission's decisions in this docket insofar as Ameritech's payphone rates. The PAO further contends that, since 1996, Ameritech's rates have exceeded those that are required by Section 276 of the Act. Consequently, the PAO concludes that it is incumbent upon the Commission to establish reasonable rates as soon as practicable.

The PAO points out that Ameritech does not need to conduct new cost studies. Approved TELRIC studies that meet the New Services Test already exist. The PAO, therefore, seeks an order from the Commission requiring Ameritech to file new payphone line tariffs based upon existing TELRIC cost studies for UNEs. The PAO proposes a chart of specific services that should be included in the tariff.

Supporting its claim for refunds, the PAO points to an April 10, and 11, 1997, request written on behalf of the Regional Bell Operating Company (RBOC) Payphone Coalition (the Coalition) wherein the Coalition sought a waiver of the New Services Test requirement. The Coalition offered three conditions in lieu of compliance. One of the conditions was that refunds would be issued if future New Services Test compliant tariffs result in lower rates. The refunds would date back to April 15, 1997. The FCC granted the waiver.[4] By this

---

3 *In the Matter of Wisconsin Public Service Commission Order Directing Filings, Bureau/CPD No. 00-01 (Memorandum Opinion and Order,* Released January 31, 2002).

4 *In the Matter of the Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-128 (Order adopted April 15, 1997).

letter, the PAO argues that the RBOCs were aware in April 1997 of their need to comply with the New Services Test.

(9) Insofar as other ILECs, the PAO notes that the FCC acknowledged that it did not have jurisdiction over non-BOC intrastate payphone line rates. Nevertheless, the PAO states that the FCC encouraged state commissions to apply the New Services Test to all LECs. The PAO, therefore, argues in favor of applying the New Services Test to all Ohio LECs. Recognizing that most LECs do not have existing TELRIC rates, the PAO urges the Commission to order ILECs to conduct studies using a forward-looking cost approach. Furthermore, the PAO believes that the allocation of common overhead must be cost based.

(10) To avoid unfairness and discriminatory treatment, relative to Ameritech, the PAO suggests that the other ILECs be ordered to issue refunds to the extent that their rates have exceeded what payphone rates should have been under the New Services Test. Refunds should account for the period from which the other ILECs' tariffs were approved in this docket.

(11) Ameritech filed a memorandum contra on July 19, 2002. Ameritech argues that the PAO's requests should be denied in their entirety. Ameritech characterizes the PAO's motion to expand the scope of this proceeding as yet another attempt to attack collaterally the April 27, 2000, entry and the June 22, 2000, entry on rehearing issued in this docket. Insofar as the Wisconsin Decision, Ameritech emphasizes that the decision does not preempt the Commission's authority over intrastate payphone rates. According to Ameritech, Section 276 of the Act only provides that BOCs extend nondiscriminatory treatment to BOC-affiliated payphone providers and independent payphone providers. For this reason, Ameritech believes that the FCC has exceeded the authority granted by Section 276. Because the Wisconsin Decision effectively imposes FCC authority over intrastate payphone rates, Ameritech has appealed the ruling to the United States Court of Appeals for the District of Columbia. Arguing that the Wisconsin Decision marks such a radical departure from FCC and Commission precedent, Ameritech advises that its holdings should not be adopted in Ohio. In any event, because of the pending appeal, Ameritech contends that the Wisconsin Decision is not ripe for application in Ohio.

(12) Reviewing the PAO's requests for TELRIC pricing, notice, comments, and refunds, Ameritech concludes that the requests are inconsistent with the Wisconsin Decision and state law.

(13) With respect to TELRIC pricing, Ameritech highlights that the Wisconsin Decision permits the use of any forward-looking methodology to ascertain the costs of payphone services and the allocation of overhead. Thus, the PAO's request for TELRIC pricing is too restrictive. Furthermore, Ameritech states the independent payphone providers are not "telecommunications carriers" under the Act. Consequently, they are not entitled to TELRIC pricing for UNEs. Payphone lines are retail products.

Even if existing TELRIC rates were used, as suggested by the PAO, Ameritech argues that such rates would be inappropriate. Ameritech emphasizes that its TELRIC rates are based upon the costs to serve competitive local exchange carriers (CLECs). To determine appropriate rates for the costs of independent payphone providers would require an entirely different cost study. Ameritech expects that the wholesale rates for CLECs would be quite different from the retail rates for independent payphone providers.

(14) Commenting on the subscriber line charge (SLC), Ameritech states that the SLC is an appropriate charge for independent payphone providers. The intent of the charge is to allow LECs to recover regulated costs. Since the charge is applicable to both LEC and non-LEC payphone lines, there can be no subsidy or discrimination.

Ameritech criticizes the Wisconsin Decision for broadening payphone usage costs. Noting a previous FCC order that only payphone specific services are properly considered for federal tariffing requirements, Ameritech condemns the Wisconsin Decision for expanding the scope of the FCC's authority to consider other services. Ameritech also points to this Commission's previous order that stated that features that are merely incidental to payphone service are not subject to the federal tariffing requirement.

(15) As for the PAO's procedural recommendations, Ameritech rejects the recommendations on the grounds that they would violate Section 4905.26, Revised Code, and deny Ameritech its due process rights. Without an opportunity to present testimony and cross-examine witnesses, Ameritech contends that it would be denied an opportunity to be heard. Moreover, Ameritech is concerned that without a record it would be denied the opportunity for supreme court review.

(16) Ameritech criticizes the PAO's refund proposal as being equivalent to improper retroactive ratemaking. Because the Commission decided against refunds and reimbursements in

the June 22, 2000, entry on rehearing, Ameritech deems the PAO's request for refunds as an improper second request for rehearing.

(17) Ameritech accuses the PAO of misconstruing the letters written on behalf of the Coalition on April 10, and April 11, 1997. Ameritech explains that it recognized that in some states it would not have tariffs in compliance with the New Services Test by the April 15, 1997, deadline. The Coalition, by its letters, requested a 45-day waiver in those states in which tariffs were not in compliance. During the 45-day period the noncompliant states would be identified and compliant tariffs would be filed by May 19, 1997. The BOCs agreed to issue a refund only in those states subject to the waiver and where the new tariff rate was lower than the previous rate. Ameritech asserts that its Ohio payphone tariff was never identified as one of those that was not compliant with the New Services Test. Thus, refunds were issued only where noncompliant tariffs were identified, where new tariffs were filed by May 19, 1997, and where the new tariffs were for lower rates.

(18) As did Ameritech, ALLTEL Ohio, Inc. (ALLTEL), Cincinnati Bell Telephone Company (CBT), Verizon North, Inc. (Verizon), and the Ohio Telecom Association (OTA) filed memoranda contra on July 19, 2002.

(19) ALLTEL, CBT, Verizon, and the OTA emphasize that the New Services Test applies only to BOCs and that Ameritech is the only BOC in Ohio. CBT points out that even the Wisconsin Decision acknowledges that the FCC's authority does not extend to non-BOC intrastate payphone line rates. According to the OTA, the Wisconsin Decision merely encourages the application of the New Services Test to non-BOCs.

Verizon enumerates reasons why the New Services Test should not be applied to non-BOC LECs. Neither Congress nor the Commission has determined its application to be appropriate. Several dozen ILECs would be required to undertake expensive studies. Payphone competition is already working in Ohio and is evidenced by the increasing market share of independent payphone service providers in Verizon's service area. Finally, Verizon contends that the PAO has made no showing that the rates resulting from new cost studies would be any more supportive of the Commission's goals than the current rates. Without any federal law requirement and without any indication that Ohio would be better off, Verizon concludes that the PAO's request for cost studies is unsupported by any compelling reason.

The OTA adds that the burden of cost studies would outweigh any benefits. By the OTA's count, 41 studies would be required. Statewide uniformity would be the only achievement. In compiling the studies, each ILEC would be required to divert substantial resources. Because many ILECs have only a few payphones in their area, the OTA questions the utility of cost studies.

(20) CBT and Verizon assert that their costs and tariffs have been approved and are in compliance with Section 276 of the Act and the FCC's orders. Moreover, CBT states that the Commission has approved its tariff rates for payphone access lines in CBT's alternative regulation rate case (*In the Matter of the Application of Cincinnati Bell Telephone Company for Approval of a Retail Pricing Plan Which May Result in Future Rate Increases*, Case No. 96-899-TP-ALT).

(21) All the ILECs reject the PAO's request for refunds. Like Ameritech, the ILECs remind the Commission that refunds have already been considered and rejected as unlawful, retroactive ratemaking by the Commission in its April 27, 2000, entry and June 22, 2000, entry on rehearing.

(22) The PAO filed a reply memorandum on August 5, 2002, addressing memoranda contra filed by the ILECs. Contrary to Ameritech's assertions, the PAO argues that the FCC has preempted the Commission's authority over intrastate payphone rates. The PAO relies on the Wisconsin Decision, arguing that it is the most current law available and must be applied by the states. Applying the law of the case, the PAO concludes that Ameritech's payphone line rates and usage charges must comply with the New Services Test.

The PAO dismisses Ameritech's criticisms of the Wisconsin Decision. The PAO rejects Ameritech's contention that the Wisconsin Decision marks an unprecedented intrusion into state ratemaking. Citing as an example the issuance of the FCC's TELRIC pricing rules as a methodology to be used by states to develop prices for UNEs, the PAO finds a precedent for such action.

(23) Although the PAO agrees with Ameritech that the FCC did not mandate TELRIC as the only appropriate pricing measure, the PAO points out that the FCC expressly authorized the use of TELRIC. TELRIC is a specific type of cost-based, forward-looking methodology that would comply with the New Services Test. According to the PAO, it is the Commission, not Ameritech, that should determine the appropriate methodology. The PAO suggests that TELRIC be used,

inasmuch as it is an approved methodology and Ameritech's TELRIC rates are currently ready for use. The use of Ameritech's approved TELRIC rates would not impinge upon Ameritech's due process rights since the rates have been the subject of a hearing and cross examination. The PAO, therefore, urges the Commission to direct Ameritech to file tariffs using its approved TELRIC pricing methodology.

(24) Noting Ameritech's assertion that payphone service providers are not telecommunications carriers entitled to TELRIC pricing for unbundled network elements, the PAO responds that Section 276 of the Act places independent payphone service providers in a class separate from carriers or end users. The PAO points out that the FCC considered this argument in the Wisconsin Decision. The FCC made the distinction that the payphone providers were not asking for UNEs. Instead, the payphone providers were simply identifying TELRIC methodology as a means to estimate forward-looking costs pursuant to the New Services Test. The PAO agrees with Ameritech that payphone service providers are not carriers. Nor are they the functional equivalent of end-use business customers. The PAO emphasizes that independent payphone service providers are entitled to payphone line rates based upon the New Services Test.

(25) Concluding that the New Services Test is applicable to BOCs like Ameritech, the PAO argues that the test should be applicable to non-BOCs as well. The PAO reminds the Commission that in its December 19, 1996, entry in this proceeding it determined that it would carry out, on an intrastate basis, the requirements of Section 276 of the Act and the FCC's decision in CC Docket No. 96-128. This determination, according to the PAO, negates the non-BOCs' argument that the FCC did not mandate that the New Services Test be applied to non-BOCs.

Because ILECs have an incentive to charge their competitors unreasonably high prices, the PAO implores the Commission to impose cost-based pricing. By doing so, the PAO believes the Commission will promote competition and widespread availability of competitive payphone services in Ohio.

(26) The PAO disputes the contention that independent payphone service providers are becoming increasingly competitive in the market. If there is an increase in market share, the PAO deduces that it is solely attributable to ILECs withdrawing from the marketplace.

The PAO is steadfast in its belief that cost studies will reveal that rates should be lower than current rates. Using Ameritech as an example, the PAO points out that Ameritech's cost-based rates are significantly lower than Ameritech's payphone line tariffs. The PAO expects that cost studies of other ILECs will result in reductions too.

(27) The PAO believes that CBT should be subject to the New Services Test. The PAO disputes CBT's assertion that its tariff is in compliance with the requirements of Section 276 of the Act, the FCC's Payphone Orders, and the Commission's investigation. To the contrary, the PAO proclaims that there has been no showing that CBT's cost information was based upon forward-looking costs.

It is insufficient for CBT to assert its alternative regulation plan as a defense to an examination of its payphone access line rates. The PAO believes that CBT, by asserting its alternative regulation plan, is being inconsistent with the terms of the March 19, 1998, stipulation in Case No. 96-899-TP-ALT.[5] The PAO emphasizes that the Commission did not relinquish its authority to investigate payphone line services in CBT's alternative regulation proceeding. Consequently, the alternative regulation plan notwithstanding, the Commission may still apply the New Services Test.

(28) The PAO rejects Verizon's claim that its cost studies and tariff comply with the New Services Test. The PAO claims that Verizon, by resorting to "misguided analysis," arrives at faulty conclusions in determining its compliance with the New Services Test. As an example, the PAO discloses that Verizon does not rely upon TELRIC-based costs. Instead, Verizon relies upon embedded costs and statewide composite rates. This is unacceptable to the PAO because embedded costs are historical costs; they are not forward-looking. The PAO also criticizes Verizon's tariff for failing to adhere to an approved cost methodology and for failing to include usage rates. Furthermore, the PAO contends that payphone service providers must be given local exchange services to enable them to use either "smart" or "dumb" payphones. Simply provisioning a line without allowing the transport of local calls is insufficient. As with other non-BOCs, the PAO urges the Commission to order Verizon to file cost studies or benchmark rates that comport with the forward-looking requirement of the New Services Test.

---

5 *In the Matter of the Application of Cincinnati Bell Telephone Company for Approval of a Retail Pricing Plan which May Result in Future Rate Increases.* CBT filed final TELRIC rates on September 5, 2002.

(29) The PAO reiterates that it is entitled to refunds from Ameritech. If the New Services Test reveals that Ameritech's tariff rates are higher than what they should be, the PAO urges the Commission to order Ameritech to issue refunds to payphone service providers for the incremental difference. The PAO emphasizes that the FCC's regulations preempt contrary state requirements. Consequently, the FCC's regulations preempt Ameritech's payphone line rates, the Commission's approval of the rates, and Ohio law on refunds.

The PAO also argues that refunds are appropriate to prevent a double recovery. Ameritech has collected dial-around compensation for over five years. The PAO describes Ameritech's authority to collect dial-around compensation as the quid pro quo for filing tariffs in compliance with the New Services Test.

To allow Ameritech to keep the incremental difference would unjustly enrich Ameritech and allow Ameritech to renege on its promise recorded in an April 11, 1997, letter from Michael Kellogg to Marybeth Richards. The letter, according to the PAO, promises that credits would be issued where new compliant tariff rates are lower than existing rates. The PAO is unmoved by the parol evidence referenced in Ameritech's memorandum contra. The PAO finds the letter itself clear and unambiguous.

(30) The PAO refers to the Commission's December 19, 1996, entry wherein the Commission sought to carry out the requirements of Section 276 of the Act and the FCC's payphone orders. Noting that ILECs have filed payphone line tariffs, the PAO claims that none of the tariffs comply with the New Services Test. As a result, the PAO contends that for over five years payphone service providers have been paying rates in excess of Commission requirements. Citing the actions of other state utility commissions, the PAO points out that refunds have been ordered in other jurisdictions. Upon establishing lower rates, the PAO urges the Commission to order a true-up dating back to April 15, 1997.

(31) In essence, the PAO requests that ILECs file tariffs that comply with the New Services Test and issue refunds that reflect the difference in the tariff rates approved in this proceeding and the rates to be established under the New Services Test beginning from the date of initial approval. These requests should be denied. In an April 27, 2000, entry, the Commission set forth the issues to be considered in this proceeding. The issues were as follows:

(a) whether payphone rates are forward-looking, cost-based rates pursuant to the FCC's New Services Test;

(b) whether LECs discriminate, by rates or service, in favor of their own payphone operations to the detriment of other payphone service providers;

(c) whether LECs improperly subsidize their payphone operations with revenue derived from noncompetitive services;

(d) whether overhead has been calculated pursuant to the New Services Test; and

(e) whether the LECs' end-user common line charge revenue should be deducted from its rates.

(32) In light of the Wisconsin Decision, the Commission will revisit and revise the issues relevant to this proceeding. Even the PAO acknowledges that the Wisconsin Decision imposes the New Services Test only upon RBOCs. In light of the Commission's prior review of non-BOC tariffs, the Commission shall forego any further examination of the payphone tariff rates already approved in this proceeding. Consequently, the Commission will dismiss from this proceeding all non-BOCs. Only Ameritech and the PAO shall remain as parties in this proceeding. The core issue remaining in this proceeding will be to determine whether Ameritech is providing payphone services at forward-looking, cost-based rates.

(33) Until the issuance of an order that establishes a permanent payphone service rate, the Commission shall impose an interim, forward-looking rate for payphone services. The interim rate shall be subject to a true-up to offset any over- or under-collection. Ameritech shall provide payphone service providers with direct notice, by a conspicuous bill message or bill insert, that there is a reduced interim rate and that the reduced interim rate will be subject to a positive or negative true-up. The interim rate shall be effective no later than 45 days from the date of this entry and shall remain in effect until the establishment of a permanent rate in this docket. As decided previously, the Commission rejects the PAO's request for refunds. Such refunds would constitute unlawful, retroactive ratemaking.

(34) The interim rates shall track Ameritech's TELRIC rates and shall be set as follows:

Payphone Service UNE	B	C	D
2-Wire Unbundled Loop	$ 5.93	$ 7.97	$ 9.52
ULS Port Basic Line Port	$ 4.63	$ 4.63	$ 4.63
2-Wire Cross Connect	$ 0.15	$ 0.15	$ 0.15
Total	$10.71	$12.75	$14.30

The rate per minute for each local call shall be set at $.003226. As an estimate to reflect the billing and marketing expenses incurred by Ameritech and to account for originating line screening service costs, the above rates shall be multiplied by a factor of 1.60. Because Directory Assistance is not classified as a UNE and can be self-provided by payphone service providers, Ameritech shall be allowed to charge its tariffed retail rate for the service. Likewise, Ameritech shall be allowed to continue to charge tariffed retail rates for those services not unique to payphone access line service. In accordance with the Wisconsin decision, the interstate SLC shall not be assessed during the period of interim rates.

(35) Consistent with these findings, the attorney examiner is directed to schedule a prehearing conference to schedule a hearing and to address related procedural matters.

It is, therefore,

ORDERED, That the PAO's motion to expand the scope of this proceeding is denied. It is, further,

ORDERED, That, in accordance with Finding (32), all non-BOC telephone companies are dismissed as parties to this proceeding. It is, further,

ORDERED, That Ameritech and the PAO shall remain as parties. It is, further,

ORDERED, That, in accordance with Finding (33), Ameritech shall provide notice of interim rates to payphone service providers. It is, further,

ORDERED, That, in accordance with Finding (34), the Commission shall impose interim rates for payphone services until such time that permanent rates can be established. It is, further,

ORDERED, That the attorney examiner shall schedule this matter for hearing at the earliest convenience of the parties. It is, further,

ORDERED, That copies of this entry be served upon all parties and interested persons of record.

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
NOV 26 2002
A True Copy
Gary E. Vigorito
Secretary