COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DEREGULATION OF LOCAL EXCHANGE COMPANIES' PAYPHONE SERVICE	))	ADMINISTRATIVE CASE NO. 361

O R D E R

On May 23, 2003, the Kentucky Payphone Association ("KPA") filed an application for rehearing requesting that the Commission reconsider its determination with respect to ordering refunds for allegedly unlawful and excessive overcharges imposed against payphone providers since April 15, 1997 in its decision in its May 1, 2003 Order.

In our May 1, 2003 Order, we held that BellSouth Telecommunications Inc. ("BellSouth"), Cincinnati Bell Telephone ("CBT"), and Kentucky ALLTEL, Inc. ("ALLTEL") formerly known as GTE South Incorporated and Verizon South, Inc. should adjust the payphone rates set by the Commission in its earlier orders to comply with the 2002 decisions of the Federal Communications Commission ("FCC") concerning implementation of the New Services Test.[1] At issue in the Wisconsin Order is the treatment of the End User Common Line Charge ("EUCL"), also known as the Subscriber Line Charge ("SLC"). In the Wisconsin Order, the FCC directed state commissions to consider the revenue received from the SLC when determining cost-based rates that comply with the New Services Test.

[1] In the matter of Wisconsin Public Service Commission Order Directing Filings, CPD No. 00-01, FCC No. 0-25, Rel. January 31, 2002 ("Wisconsin Order").

The KPA requests, as it did prior to our May 1, 2003 Order, that the Local Exchange Carriers ("LECs") refund amounts paid for the SLC back to April 15, 1997, because the payphone access rates that have been in place since that time have been in violation of the New Services Test and the findings of the January 31, 2002 Wisconsin Order.

Our Order of January 5, 1999 in this case did in fact require refunds for overpayments from April 15, 1997 on. However, at that time the FCC had not directed state commissions to consider revenue from the SCL, and we did not do so. The KPA argues nonetheless that refunds based on the SCL should be retroactive to April 15, 1997, essentially because the Wisconsin Order determinations with respect to the SLC are merely a restatement of "what the law according to the agency is and has always been...."[2] The KPA argues that, as the New Services Test has always required, the LECs take into account the SLC when setting payphone access rates, and as the Wisconsin Order changed nothing, it is appropriate to order refunds back to April 15, 1997. At a minimum, KPA contends, the refunds should be ordered back to the date of the issuance of the Wisconsin Order, January 31, 2002.

For reasons fully explained in our May 1 Order, we disagree that it is appropriate to change the rates retroactive to April 15, 1997. As we stated in our May 1, 2003 Order, at 3, the FCC had provided no guidance at the time the rates were set in 1999, and rates set in the 1999 Order were not appealed. However, we find persuasive a portion of KPA's argument, and conclude that the LECs themselves should have taken

[2] Kentucky Payphone Association Application for Reconsideration of the Commission's May 1, 2003 Order, page 8.

action to adjust their rates – at least on a going-forward basis – when the FCC issued its January 31, 2002 Order explaining that the SCL must be considered when setting payphone access rates. On January 31, 2002, the rules implementing the New Services Test were at last fully in place. We therefore modify our May 1, 2003 determination to require the LECs to refund amounts paid by payphone providers since January 31, 2002, the date of the FCC's Wisconsin Order, that are in excess of the appropriate payphone access rate.

The Commission, being sufficiently advised, HEREBY ORDERS that KPA's petition is granted in part and denied in part as stated herein.

Done at Frankfort, Kentucky, this 5th day of June, 2003.

By the Commission

ATTEST:

Executive Director

Administrative Case No. 361