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

Section 276 of the Telecommunications Act of 1996 (the Act) establishes requirements designed to promote competition among Payphone Service Providers (PSPs) and promote the widespread deployment of payphone service to the benefit of the general public. In the Payphone Reclassification proceeding,[1] the Federal Communications Commission (FCC) required that Local Exchange Carriers (LECs) file tariffs for basic payphone lines at the state level only. Unbundled features and functions provided by LECs to their own payphone operations or to others are required to be tariffed at both the state and federal levels. The FCC required that all LEC payphone tariffs filed at the state level be cost-based, nondiscriminatory, and consistent with both Section 276 and the FCC s Computer III tariffing guidelines.[2] The FCC determined that the rates charged by the LECs for payphone services tariffed at the state level must satisfy the requirements that the FCC applies to new interstate access

[1] CC Docket No. 96-128, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (September 20, 1996).

[2] CC Docket Nos. 96-128 and 91-35, Order on Reconsideration (November 8, 1996) at ¶ 163.

services proposed by LECs subject to price cap regulation (the new services test).[3] The new services test is a cost-based methodology that establishes the direct cost of providing the new service as a price floor; a reasonable amount of overhead is then added to derive the overall price of the new service. The FCC stated that it would initially rely on the state commissions to ensure that the rates, terms and conditions applicable to the provision of basic payphone lines comply with the requirements of Section 276. The FCC determined that state commissions that are unable to review these tariffs could require LECs operating in their states to file these tariffs with the FCC. All LECs filed their respective tariffs with the Commission and the Commission approved these tariffs on an interim basis pending further review in this proceeding.[4]

On April 15, 1997, the Commission received a complaint from Coin Phone Management Company (CPMC) about the rates paid by PSPs to BellSouth Telecommunications, Inc. (BellSouth), GTE South Incorporated (GTE), and Cincinnati Bell Telephone Company (CBT). The Kentucky Payphone Association (KPA) joined this complaint. The petitioners argued that the rates contained in the tariffs of the respective companies do not meet the new services test as required by the FCC.

BellSouth states that the difference between the current rate and the sum of the long run incremental cost (LRIC) and the overhead allocation is a subsidy provided to basic exchange service.[5] However, BellSouth denies that this is the proper way for the

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[3] Id. at ¶ 163 and footnote 492.

[4] Order dated April 11, 1997.

[5] BellSouth Brief at 9.

Commission to apply the new services test. The purpose of the new services test and the Act is to remove subsidy from rates and make these subsidies explicit.

The companies filed cost studies to support their tariffs when filed in early 1997. The Commission and the parties examined the cost studies under protective agreements and exchanged information requests about the cost studies. All the parties submitted pre-filed testimony for the hearing. The Commission held a public hearing on these matters on February 12 and 13, 1998.

The study from BellSouth was detailed sufficiently to allow the Commission and the parties to analyze the study and make adjustments if necessary. The study filed by GTE is a summary of its cost study and the assumptions and underlying data were not provided. CBT likewise submitted a summary of its cost study and the underlying data has not been provided. The Commission concludes that because the derivation of the studies is somewhat unknown and because the parties and the Commission are not able to verify all of the facts within the studies, they will not be used by the Commission.

The Commission has completed the costing portion of its Universal Service docket.[6] The Commission s Order established a cost of providing Universal Service for BellSouth, CBT, and GTE based on the HAI 5.0a Model.[7] The HAI 5.0a Model estimates the cost to provide service on a Total Service Long Run Incremental Cost (TSLRIC). The costs established by this model are not only useful for universal service cost determinations, but are applicable to the payphone area as well. Because GTE

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[6] Administrative Case No. 360, An Inquiry Into Universal Service and Funding Issues, Order dated May 22,1998.

[7] Hatfield Associates Inc.

and CBT have only supplied summary materials and not actual cost studies and underlying assumptions, the Commission will use the average cost per line for each company as established by the HAI 5.0a Model. As established by the HAI 5.0a Model, BellSouth s average statewide cost per line is $28.83, CBT s average statewide cost per line is $30.45, and GTE s average statewide cost per line is $33.49.[8] These costs include a reasonable share of all overheads and therefore meet the new services test. These costs will become the statewide rates for payphone access to dumb lines for each respective ILEC. The LECs also have tariffed rates for smart lines ; these lines provide functions and features of the switching equipment, whereas on a dumb line the payphone instrument provides the features and functions. The Commission will use a combination of the cost studies to determine the rates for smart lines, because the HAI model only provides cost estimates for general access lines without any special features. The cost studies submitted by the companies provide an incremental part for the smart lines, this will be added to the costs set out above to determine this rate. The resulting statewide rates for smart lines are $37.41, $38.04, and $38.49 for BellSouth, CBT, and GTE, respectively.

The companies also filed tariffs for certain unbundled features and functions that relate to payphone service. The FCC required that these unbundled features and functions be tariffed at the state and federal level. The Commission finds that the tariffed rates approved by the FCC should also be approved on an intrastate basis. Any

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[8] As calculated by the HAI 5.0a Model, the statewide average costs are determined by weighting the average monthly wirecenter costs per line by total lines. The GTE statewide rate was determined by weighting the combination of the aforementioned outputs for GTE and Contel.

rate for an unbundled payphone feature or function that is tariffed at a higher rate on an intrastate basis shall be reduced to the interstate level.

Public Interest Payphones

A public interest payphone can generally be defined as one that serves the public policy interests of health, safety and welfare in locations where there would not otherwise be payphones as a result of the operation of the market.[9] Generally, public interest payphones are unlikely to be economically self-supporting.

The need for public interest payphones in Kentucky generally has been satisfied by 807 KAR 5:061 which required each ILEC to supply at least one coin phone per exchange. In the wake of the 1996 Act, the FCC has given to the states the responsibility of ensuring the existence of payphones that serve the public interest and the primary responsibility for administering and funding a public interest payphone program.[10] The programs are required to be funded in a competitively neutral basis meaning that all PSPs should contribute to the maintenance of public interest payphones. LECs alone should not be responsible for bearing the cost of non-profitable payphones, to do so would put the LECs at a competitive disadvantage.

Support for a public interest payphone program, particularly in low-income areas where payphones may provide the basic means of communications for many of the areas residents, was provided by the Metro Human Needs Alliance (MHNA) representing low-income groups in Louisville and Jefferson County.[11] Although MHNA

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[9] CC Docket 96-128 and 91-35, (September 20, 1996) at ¶ 277.

[10] Id. at ¶ 280.

[11] Id. at 27-32.

was unable to quantify the exact needs relative to the number of public interest payphones required in low-income areas, MHNA stated it would welcome the opportunity to participate in a program to identify needy areas and to work on how public interest payphones would be paid for and maintained. BellSouth stated that the issues raised by MHNA are appropriately addressed in Administrative Case No. 360 and suggested that MHNA look for another forum to keep its issues alive, although it did provide a plan for dealing with the issue.

Finally, a witness for Coin Phone Management Company testified that requests for public interest payphones had been made, but the requests were not filled because there was no economic basis for placement in that specific location.[12]

The Commission is aware that payphones in low income and remote areas serve an important public interest, because in many cases they are the only means by which residents can reach emergency services, potential employers, public welfare agencies and family. Therefore, it is vitally interested in ensuring that adequate numbers of public interest payphones are available throughout Kentucky even where, under market conditions, no supplier of service is willing to place a phone. However, the Commission has received no complaint alleging that there are insufficient payphones in Kentucky. The Commission will defer any action on this issue until such time as an interested party demonstrates that payphone providers are not meeting the need for public interest payphones.

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[12] Transcript of Evidence (TE), Vol. I at 100.

Refunds

The FCC s Order in the Payphone Reclassification proceeding dated April 15, 1997 granted a waiver of the FCC s requirement that effective intrastate tariffs for payphone service be in compliance with the federal guidelines, specifically that the tariffs comply with the new services test, as set forth by the FCC.[13] A LEC who seeks to rely on this waiver must reimburse its customers or provide credit from April 15, 1997 in situations where the newly tariffed rates when effective are lower than the existing tariffed rates.[14] BellSouth agreed that if the Commission changed the payphone rates, refunds will be made back to April 15, 1997.[15] The Commission s Order dated April 11, 1997 ruled that payphone tariffs filed in conjunction with this case were approved on an interim basis. This was done in order to meet the April 15, 1997 FCC deadline for effective payphone rates, thereby allowing LECs to participate in the interstate per call compensation plan for PSPs.

CPMC and KPA argue that BellSouth, CBT and GTE have not filed rates that satisfy the FCC s new services test and, thus, request that the LECs be required to reimburse them or provide a credit for the difference between what has been charged and the cost-based rates adopted by the Commission in this proceeding. The LECs argue that their rates satisfy the FCC s requirements, therefore no refunds or credits are required. The Commission has found herein that the cost-based rates are lower than

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[13] CC Docket No. 96-128, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (April 15, 1997).

[14] Id. at ¶ 25.

[15] TE Vol. I at 52.

the existing tariffed rates and therefore BellSouth, CBT, and GTE shall provide credits or refunds back to April 15, 1997.

IT IS THEREFORE ORDERED that:

1. The rates for payphone access lines shall be set at $28.83, $30.45, and $33.49 statewide for BellSouth, CBT, and GTE, respectively.

2. The rates for smart lines shall be set at $37.41, $38.04, and $38.49 statewide for BellSouth, CBT, and GTE, respectively.

3. Within 30 days of the date of this Order, BellSouth, CBT, and GTE shall file tariffs with the effective date of this Order which also note that refunds or credits will be provided back to April 15, 1997.

4. BellSouth, CBT, and GTE shall file a plan with the Commission within 30 days of the date of this Order outlining the procedure to issue credits or refunds back to April 15, 1997.

5. All procedural motions are denied.

Done at Frankfort, Kentucky, this 5th day of January, 1999.

By the Commission

ATTEST:

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Executive Director