

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

O R D E R

Three petitions for rehearing or clarification of the January 5, 1999 Order have been filed. On January 25, 1999, Cincinnati Bell Telephone Company ( CBT ) petitioned for rehearing of the decision on the rates to be charged by CBT for payphone lines and the methodology used by the Commission in arriving at these rates. In addition, CBT seeks rehearing on whether refunds or credits should be permitted.

Also on January 25, 1999, the Kentucky Payphone Association ("KPA") petitioned for rehearing of the decision to maintain local exchange carriers' ("LEC") assessments of certain charges in addition to the basic payphone rate. KPA requests that the total charges assessed to it by LECs should not exceed the rate established by the Commission. Thus, they claim that if CBT, GTE South Incorporated ("GTE") and BellSouth Telecommunications, Inc. ("BellSouth") wish to impose charges for such elements as touch-tone and usage, then the basic payphone rate should be reduced by an amount equal to those individual feature charges. KPA's premise is that the total cost of providing payphone service, including these features, is captured by the HAI 5.0a Model prices adopted by the Commission.

Coin Phone Management Company ( CPMC ) also filed a motion for clarification which is similar to KPA's petition. CPMC asks that the Commission clarify that the statewide rates include the end-user common line ( EUCL ) charges, the pre-subscribed interexchange carrier charge ( PICC ) and touch-tone charges. CPMC also asks that refunds, not credits, should be issued immediately with interest paid at the rate of 12 percent per annum from April 15, 1997.

On February 4, 1999, BellSouth filed a response to the motion filed by CPMC and a response to the motion filed by the KPA.

#### THE CBT PETITION

CBT argues that this administrative case is not a rate-making proceeding and that neither Section 276 of the Telecommunications Act of 1996 ("the Act") nor the Commission's regulations give the Commission authority to set rates in this proceeding. However, the Commission does have such authority granted by Section 276 and the orders of the Federal Communications Commission ( FCC ). The states are to ensure that the basic payphone line is tariffed by the LEC in accordance with Section 276.<sup>1</sup> Rate setting is a necessary corollary to this task.

Moreover, CBT had adequate notice of possible rate changes to be made in this proceeding. On April 17, 1997, the Commission incorporated into this administrative case the review of basic payphone service tariffs of CBT, GTE and BellSouth as requested by CPMC. On October 1, 1997, the Commission again stated that the tariffs of CBT, GTE and BellSouth would be addressed in a separate Order pending resolution

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<sup>1</sup> CC Docket 96-128 and 91-35, Order on Reconsideration, Released November 8, 1996, ¶ 163.

of the complaint of CPMC, which was consolidated into this administrative proceeding. Finally, on October 20, 1997, the Commission noted that the interim approval of the intrastate payphone service tariffs of CBT, GTE and BellSouth "affords the opportunity to review these tariffs and establish rates that conform with the FCC orders."<sup>2</sup> (Emphasis added.) Accordingly, CBT had adequate notice of possible rate changes and an opportunity to present its views to the Commission in this proceeding.

CBT also argues that the Order constitutes retroactive rate-making and a confiscation of property. However, the FCC's order allowed for refunds or credits to be given for rates that are not found to be in compliance with the FCC's order and the Act.<sup>3</sup> In addition, the Commission has already recognized the revenue reduction resulting from the January 5<sup>th</sup> Order in CBT's rate case, Case No. 98-292.<sup>4</sup> Therefore, no possible argument exists that confiscation of payphone-related property has taken place. BellSouth and GTE, neither of which argues that confiscation has occurred, may request recovery of any lost revenue resulting from decisions in this proceeding through an appropriate application.

CBT also objects to the Commission's use of the HAI 5.0a Model. The HAI 5.0a Model has been used to calculate costs for USF purposes, and it is appropriate to

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<sup>2</sup> Order dated October 20, 1997, at 1.

<sup>3</sup> CC Docket No. 96-128, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (April 15, 1997), ¶ 25.

<sup>4</sup> Case No. 98-292, Application of Cincinnati Bell Telephone Company for Authority to Adjust its Rates and Charges and to Change Regulations and Practices Affecting Same.

calculate payphone costs. CBT is a party to Administrative Case No. 360<sup>5</sup> and is fully aware of the record in that proceeding. The cost study used by the Commission (HAI 5.0a) is a reasonable determination of cost as evidenced by CBT's own studies, which produce similar results. CBT did not provide an adequate substitute for the Commission's consideration.

CBT contends that it is not required to comply with the new services test because at the time the cost information was filed, it was under Optional Incentive Regulation rather than price cap regulation at the FCC. Although the new services test is a price cap company rule, the FCC applied it to all LECs. Therefore, CBT errs in contending that it should not have its tariffs for payphones subject to the new services test. Its motion for rehearing is denied.

#### THE KPA PETITION

The KPA seeks clarification on the rates to be charged to the Payphone Service Providers ("PSPs"). It argues that the Order states the rates prescribed herein recover 100 percent of the costs of the payphone access; therefore, no additional charges such as touch-tone, usage, or EUCL charge, also known as the Subscriber Line Charge (SLC), should be incurred. The KPA further argues that if such charges are assessed, the payphone access line charges should be reduced by the same amount.

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<sup>5</sup> Administrative Case No. 360, Inquiry Into Universal Service and Funding Issues.

However, the FCC concluded that in order to avoid discrimination among payphone providers, the multi-line business SLC must apply to subscriber lines that terminate at both LEC and competitive payphones.<sup>6</sup> The FCC does not state that the use of revenue received from the SLC should be used to offset payphone costs. The Commission also declines to reach that conclusion.

The touch-tone charges levied by LECs are for an optional service ordered by PSPs or other customers. The touch-tone charge is not a payphone-specific feature and is not inherently required for payphone service. The touch-tone charge is therefore not required to meet the new services test or to be considered a cost recovery mechanism for payphone access lines.

None of the LECs have usage-based PSP rates. All rates are for flat-rated service; therefore, there are no usage charges to consider.

BellSouth in its response to the KPA petition argues that the marketplace should set the rates for touch-tone service and other features. BellSouth further contends that it is impossible to demonstrate that the cost for any specific feature is in fact included in the costs determined by the HAI 5.0a Model. BellSouth also argues that the EUCL charge is a federally-imposed charge over which this Commission has no control and, therefore, that it would be improper for the Commission to require reductions in the payphone access line rates by offsetting them by the EUCL. The Commission agrees and will not require that the payphone access line rates be offset by the EUCL charge or the touch-tone rate.

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<sup>6</sup> CC Docket 96-128 and 91-35, Report and Order, Released September 20, 1996, ¶ 187.

## THE CPMC PETITION

In addition to supporting the KPA petition, CPMC argues the PICC is a loop-supporting charge and should be included in the cost determined by the Commission. BellSouth contends that the PICC is a separate charge set forth in FCC Tariff No. 1 and assessed against all lines. For the same reasons it sets forth regarding the EUCL charge, it argues that the PICC should not be considered in setting rates for payphone access lines. The Commission has no authority to order that a federally-tariffed charge not be placed on certain lines or be used to recover costs for payphone access lines. Additionally, the PICC is levied by LECs on interexchange carriers ("IXCs"), not PSPs. Some IXCs choose to pass this charge on to their customers. The payphone access line rate should not be reduced by the PICC charges.

Moreover, touch-tone, EUCL, and PICC charges include non-cost-based subsidies which are paid by all end-users, not just PSPs. At this time, it would be inappropriate not to require PSPs to make the contributions to universal service which are supported by these charges. Though the Commission is in the process of removing subsidies from rates and establishing a Universal Service Fund ("USF"), this process is not complete. PSPs should not be relieved from contributing to universal service while others must still contribute. When the USF is implemented, the Commission will revisit the issue of eliminating these charges to PSPs.

CPMC also argues that the LECs should issue refunds and not credits, and that the LECs should pay interest at the rate of 12 percent per annum. CPMC alleges that 12 percent is the legal rate of interest; however, it provides no justification for this rate. CPMC also suggests that payment of interest would be consistent with the

Commission's policy of payment of interest on deposits. BellSouth also argues that the FCC gives each LEC the choice of reimbursing its customers or providing credit, and there is no provision for interest to be paid on this amount. The Commission agrees that the LECs may provide reimbursement or credit to their customers, and that there is no provision for interest to be paid on these amounts.

IT IS THEREFORE ORDERED that the petitions of CBT, CPMC, and the KPA are denied.

Done at Frankfort, Kentucky, this 15<sup>th</sup> day of February, 1999.

By the Commission

ATTEST:

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Executive Director