

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 97-124-C - ORDER NO. 1999-285

APRIL 19, 1999

IN RE: Request of BellSouth Telecommunications, Inc. for Approval of Revisions to its General Subscriber Service Tariff and Access Service Tariff to Comply with the FCC's Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996.)	ORDER SETTING RATES FOR PAYPHONE LINES AND ASSOCIATED FEATURES
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I. INTRODUCTION

On March 14, 1997, BellSouth Telecommunications, Inc. ("BellSouth") filed revisions to its General Subscriber Services Tariff ("GSST") and its Access Services Tariff with the Public Service Commission of South Carolina ("Commission"). On March 27, 1997, the Commission assigned Docket No. 97-124-C to BellSouth's tariff filing. On April 4, 1997, the South Carolina Public Communications Association ("SCPCA") filed a petition by which the SCPCA requested (1) that it be allowed to intervene in the proceedings, (2) that the Commission institute an investigation of the tariff filing, and (3) that the Commission stay the effectiveness of BellSouth's tariff filing pending completion of the Commission's investigation. Additionally, the SCPCA alleged by its petition that BellSouth's tariff filing did not meet the requirements of the Payphone

Orders¹ issued by the Federal Communications Commission (“FCC”) implementing Section 276 of the Telecommunications Act of 1996 (“1996 Act”).

This matter was originally set for hearing on June 11, 1997. On April 21, 1997, the SCPCA moved to continue the hearing and requested an accounting order. By Order No. 97-367, dated May 2, 1997, the Commission granted SCPCA’s motion for continuance. The Commission also granted SCPCA’s request for an accounting order requiring BellSouth to reimburse or provide credit to its payphone customers, from April 15, 1997, if any newly approved rates are lower than existing tariff rates.

On May 19, 1997, BellSouth filed a petition requesting a declaratory order from the Commission certifying that BellSouth’s existing tariff rates for its payphone services comply with the FCC’s new services test. BellSouth’s petition was filed to comply with the FCC regulations promulgated under Section 276 of the 1996 Act. Section 276 of the 1996 Act establishes certain requirements designed to promote competition among payphone service providers (“PSPs”) and to promote the widespread deployment of payphone services for the benefit of the general public. By Order No. 97-519, dated June 16, 1997, the Commission declined to certify that BellSouth’s payphone rates comply with the FCC’s new services test. The Commission also reaffirmed that should the Commission determine that the actual rates [for pay telephone] are lower than those filed that BellSouth will be required to refund and provide credit to its payphone customers back to April 15, 1997.

¹ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *Report and Order*, FCC 96-388 (rel. Sept. 20, 1996) (“*Report and Order*”), *Order on Reconsideration*, FCC 96-439 (rel. Nov. 8, 1996) (“*Order on Reconsideration*”), *Order*, DA 97-678 (Com. Car. Bur., rel. Apr. 4, 1997) (“*Bureau Waiver Order*”), *Order*,

The docket was reset for hearing on October 22, 1997. On September 30, 1997, the SCPCA filed a second motion for continuance requesting that the Commission continue the hearing until after the completion of the BellSouth unbundled network element cost docket (“UNE docket”), Docket No. 97-374-C, and the Commission’s Universal Service Fund docket (“USF docket”), Docket No. 97-239-C. In Order No. 97-860, dated October 13, 1997, the Commission granted the SCPCA’s motion for continuance. In granting the motion for continuance, the Commission agreed with the SCPCA that both the UNE docket and the USF docket, and the resulting orders, would have a direct bearing on the instant case. A final order was issued in the UNE docket in June 1998, Order No. 98-214, but no final order has yet been issued in the USF docket.

A public hearing in the instant docket was held in the Commission’s hearing room on December 10, 1998, with the Honorable Philip T. Bradley, Chairman, presiding. BellSouth was represented by Caroline N. Watson, Esquire, Robert A. Culpepper, Esquire, William F. Austin, Esquire, and Mary K. Keyer, Esquire. BellSouth presented the testimony of Sandy E. Sanders, D. Daonne Caldwell, and Dr. William E. Taylor. The SCPCA was represented by John F. Beach, Esquire and John J. Pringle, Jr., Esquire. The SCPCA presented the testimony of Walter Rice, Michael Carowitz, Don Wood, and Vince Townsend. The Commission Staff (“Staff”) was represented by Florence P. Belser, Staff Attorney. The Staff presented no witnesses. AT&T Communications of the Southern States, Inc. (“AT&T”) intervened in the docket but did not participate in the hearing.

II. REGULATORY BACKGROUND

1. In February 1996, President Clinton signed the 1996 Act into law.

Congress' express purpose for passing Section 276 of the 1996 Act was:

... to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public ...

Congress' intent was to place the payphone operations of LECs and independent PSPs on an equal footing. The FCC implemented the payphone provisions of the 1996 Act through its Payphone Orders.

2. In the *Report and Order*, the FCC expressed concern that “incumbent LECs may have an incentive to charge their competitors unreasonably high prices for [payphone] services.” ¶ 146. The FCC required certain steps to ensure that this LEC incentive does not hamper the development of competition for payphone services. *Order on Reconsideration*, ¶¶ 162, 163. LECs are required to tariff, in the state jurisdiction only, a basic payphone line” that enable PSPs to use either “instrument-implemented ‘smart’ payphones or ‘dumb’ payphones” *Id.*

3. In addition to tariffing a “basic payphone line” in the state jurisdiction, LECs must tariff, in both the federal and state jurisdictions, “any basic network services or unbundled features used by a LEC’s operations to provide payphone services” *Id.* The unbundled features offered by BellSouth include central office blocking and screening and billed number screening.

4. The FCC requires further that LECs must tariff their payphone lines and unbundled features at rates that are:

- a. Cost based;

- b. Consistent with the requirements of Section 276 with regard, for example, to the removal of subsidies from exchange and exchange access services;
- c. Nondiscriminatory; and
- d. In compliance with the FCC's *Computer III* tariffing requirements (the new services test).

Order on Reconsideration, ¶ 163.

5. The FCC ruled that “states must apply these requirements and the *Computer III* guidelines for tariffing such intrastate services.” *Id.* The FCC initially required LECs to file these tariffs with each state “no later than January 15, 1997 and ... effective no later than April 15, 1997.” *Order on Reconsideration*, ¶ 163. The FCC extended this time, so that LECs were required to file their cost based payphone tariffs, and supporting cost data by May 19, 1997. *Second Bureau Waiver Order*, ¶ 2.

6. By May 19, 1997, BellSouth filed tariffs with the Commission that it contended were in compliance with the 1996 Act requirements, as implemented by the FCC. We started the instant docket to review BellSouth's filing in light of the requirements of the 1996 Act, as implemented by the FCC. Consistent with our obligations under the 1996 Act, we ruled that BellSouth must either reimburse or provide credit to its payphone customers from April 15, 1997, if the rates approved in this proceeding are lower than BellSouth's existing tariffed rates. Docket No. 97-124-C, Order No. 97-367, dated May 2, 1997, and Order No. 97-519, dated June 16, 1997.

7. This Commission must review BellSouth's tariffs for PTAS and associated features in light of the FCC's pricing requirements, and revise the tariffs as necessary to meet those requirements.

8. In reviewing the BellSouth tariffs for PTAS and associated features, this Commission must apply the *Computer III* guidelines. *Order on Reconsideration*, ¶ 163. The FCC refers to these tariffing requirements as the new services test and has codified them at 47 C.F.R. Section 61.49(g)(2). *Id.*, note 492. The FCC provides a more complete discussion of the *Computer III* pricing requirements in the *Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture*, CC Docket No. 89-79, 6 FCC Rcd 4524, 4531 (1991) at ¶¶ 38-44 (“*ONA Order*”). *Id.*

9. BellSouth's tariffed rates for payphone services must all be “cost based.” The rates must be set to recover the LECs “direct costs” plus “an appropriate level of overhead costs,” in compliance with the *Computer III* pricing guidelines. *Id.*, ¶ 44.

10. Further, with regard to BellSouth's overhead costs, the FCC has mandated that the LEC must justify the level of overhead costs it proposes to add to the direct cost of a service or feature. *ONA Order*, ¶ 44.

11. In addition to its currently tariffed rate, BellSouth charges each of its PSP customers a monthly Subscriber Line Charge (“SLC”) and Primary Interexchange Carrier Charge (“PICC”). Payphone lines provided by BellSouth are considered multiline business lines for the purposes of the SLC and the PICC. Accordingly, BellSouth currently recovers an \$8.14 monthly SLC for each payphone line purchased by a PSP, and a \$2.75 monthly PICC for each payphone line purchased by a PSP.²

² At the time of this hearing, all PSPs paid BellSouth a monthly SLC of \$8.14. Only those PSPs who “no-PIC” their PTAS lines must also pay a monthly PICC of \$2.75. When a PSP PIC's its payphone lines to a long distance carrier, the long distance carrier pays the \$2.75 to the LEC. *In the Matter of Access Charge Reform, et al.*, CC Docket No. 96-62, *et al.*, First Report and Order, FCC 97-158 (Released May 16, 1997) (“*Access Reform Order*”) at ¶ 55, Note 52.

III. SUMMARY OF TESTIMONY

Sandy E. Sanders:

BellSouth presented the testimony of Sandy E. Sanders, Manager – Federal Regulatory for BellSouth. In short, Mr. Sanders testified that BellSouth’s existing intrastate tariff rates for its Public Telephone Access Service (“PTAS”) and SmartLine® Service meet the new services test because the cost/price ratios for the PTAS and SmartLine® Service fall within cost/price ratios accepted by the FCC in interstate filings.³ (Tr. at 44) Mr. Sanders testified that the new services test is a cost-based test that has historically been applied to FCC new service filings. (Tr. at 38)

Mr. Sanders explained that PTAS is an exchange line service furnished from a central office switch to a PSP location where it is attached to a PSP payphone for use by the general public. A PTAS line is attached to a “smart payphone set” which is a payphone set that can rate calls, collect coins, and diagnose maintenance problems. The majority of PSPs in South Carolina subscribe to PTAS lines. (Tr. at 39-40) BellSouth’s PTAS rates, which were first tariffed in 1985, are set forth in Section A7.4.5 of BellSouth’s GSST. Sanders testified that the PTAS rate is 80% of the single line business rate (“1FB”) plus a usage component. The average monthly PTAS rate, including the fixed amount and usage is \$45.75 (Tr. at 53-54)

Mr. Sanders also described BellSouth’s SmartLine® Service as being similar to PTAS, except that SmartLine® Service is generally attached to a PSP’s “dumb payphone set” which is a payphone set that does not have the capability to rate calls, collect coins or

³ According to Mr. Sanders, cost and revenue information included in the new services test filings with the FCC are expressed as cost/price ratios. (Tr. at 44)

diagnose problems. (Tr. at 40) SmartLine® Service uses software in the commercial office switch to accomplish functions that “dumbsets” are unable to handle. (Tr. at 40) BellSouth’s SmartLine® Service rates, first tariffed in 1994, are set forth in Section A7.8.2 of BellSouth’s GSST. Mr. Sanders testified that SmartLine® Service is available at a statewide rate of \$44 per month where BellSouth cannot measure usage, or \$38 per month plus usage where BellSouth has the capability to measure usage. (Tr. at 54)

Mr. Sanders testified that PTAS and SmartLine® Service are business services. Mr. Sanders testified that business rates traditionally have been priced in the context of Universal Service. That is, business services have generally been priced at a level to recover direct and overhead costs, to provide a return on investment and to provide Universal Service support for basic residential services which are often priced below cost. (Tr. at 40) Mr. Sanders testified that the cost/price ratios for PTAS and SmartLine® Service are similar to the cost/price ratio for 1FB service. (Tr. at 45)

Regarding the new services test, Sanders testified that the cost/price ratios for PTAS and SmartLine® Service in South Carolina fall within a range of cost/price ratios that have been accepted by the FCC interstate filings. (Tr. at 44)

Mr. Sanders further testified that BellSouth’s payphone rates are nondiscriminatory and consistent with the requirements of Section 276 of the 1996 Act. Specifically, Sanders testified that because BellSouth offers the same tariffed services at the same rates and conditions to its own payphone affiliate that it offers to other PSPs, BellSouth is providing non-preferential and non-discriminatory payphone service offerings to all PSPs. (Tr. at 46-47)

Finally, Mr. Sanders testified that the BellSouth payphone rates at issue in this docket are the rates BellSouth charges to a PSP. The PSP in turn sets specific payphone coin rates that are charged to the end user. (Tr. at 54)

D. Daonne Caldwell:

D. Daonne Caldwell, Director – Finance for BellSouth, testified about the cost methodology used to develop the cost studies for BellSouth’s payphone offerings in South Carolina.⁴ Ms. Caldwell testified that the PTAS and SmartLine® Service cost studies developed for this docket were based on the Total Service Long Run Incremental Cost (“TSLRIC”) methodology. TSLRIC methodology is a long-run incremental cost methodology that includes volume sensitive (variable) and volume insensitive (fixed) costs. Ms. Caldwell testified that the model used to determine costs in this docket, the TELRIC Calculator®,⁵ is the same model previously approved by this Commission in BellSouth’s UNE docket, Docket No. 97-374-C. (Tr. at 71)

Ms. Caldwell testified that the TSLRIC methodology recognizes only the direct, forward-looking, long-run incremental cost of providing PTAS and SmartLine® Service. As a result, the cost studies in this docket do not include shared or common costs. (Tr. at 72-73) Ms. Caldwell testified in detail about the fundamental components utilized in providing PTAS and SmartLine® Service. (Tr. at 7375, 85-91)

According to Ms. Caldwell, although the UNE docket cost studies provided the

⁴ On October 6, 1998, BellSouth filed with the Commission cost studies indicating a monthly direct cost of \$21.54 for PTAS and \$30.42 for SmartLine® Service. The cost studies were also provided to the SCPCA and are responsive to item 1-6 of the SCPCA’s Data Requests dated October 5, 1998. At the hearing, the SCPCA introduced into the record, without objection, all responses to the SCPCA’s discovery requests. (Tr. at 118)

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foundation for the cost studies in the instant docket, these studies had to be modified to reflect the cost of a service, such as PTAS, instead of an element, for example a loop. (Tr. at 76-77) Because the TSLRIC methodology does not include shared and common costs, Ms. Caldwell testified that the payphone rates should not be set equal to the TSLRIC for the PTAS and SmartLine® Service. (Tr. at 77-78) In addition to excluding shared and common costs, Ms. Caldwell testified that the TELRIC methodology used in the UNE docket excludes all of BellSouth's retail costs associated with providing a service, such as all its marketing, product management, project management, advertising, and sales costs. (Tr. at 95-96) Ms. Caldwell testified that the retail costs associated with providing PTAS and SmartLine® Service would add additional costs to providing these services. (TR. at 112-113, 135-137)

Dr. William E. Taylor:

BellSouth also presented in rebuttal the testimony of William E. Taylor, Ph.D, an economist and a Senior Vice President of National Economic Research Associations, Inc. (“NERA”). Dr. Taylor is head of NERA's communications practice and has participated in numerous telecommunications regulatory proceedings before this Commission, as well as other regulatory bodies throughout the United States. In sum, Dr. Taylor testified that BellSouth's tariffed rates for PTAS and SmartLine® Service in South Carolina meet all statutory requirements, are fair and reasonable, conform to efficient pricing principles, and do not jeopardize the growth of the payphone market in South Carolina. (Tr. at 150; 180-182)

Dr. Taylor explained the “retail-wholesale structure” of the payphone market. (Tr. at 152) Dr. Taylor described the retail part of the payphone market as the service

provided by PSPs to payphone users, i.e. the output. In contrast, Dr. Taylor described the wholesale part as the inputs needed by a PSP to provide payphone service, such as the PTAs and SmartLine® Service access line that connects a PSP's payphone set to BellSouth's central office. (Id.)

Regarding rates, Dr. Taylor testified that PTAS and SmartLine® Service are business services that have been traditionally priced at or near levels for business local exchange service. Dr. Taylor testified that the business rates, including payphone rates, have traditionally included contribution toward (i.e. subsidized) the Universal Service program under which residential local exchange service rates are set at low levels, frequently below cost. (Tr. at 152)

Regarding the implicit subsidies included in the rates for BellSouth's payphone rates, Dr. Taylor testified that although Section 254 of the 1996 Act envisions replacing implicit subsidies with an explicit support fund, the FCC has not yet provided guidelines on how and when such a transition will be carried out. Accordingly, Dr. Taylor testified that until the transition is effectively completed, that it would be premature and unwise to unilaterally eliminate the implicit subsidies included in BellSouth's PTAS and SmartLine® Service rates. (Tr. at 169)

Dr. Taylor also testified about the new services test. Dr. Taylor testified that while the FCC has addressed the new services test on various occasions, it has not settled on definitive interpretation of the new services test. (Tr. at 159) Dr. Taylor testified that there are two important aspects to the new services test. The first concerns the choice of the cost standard that best measures the direct cost element of the new service. The second concerns a determination whether the markup or overhead loading by which the

tariff rate exceeds the direct cost is reasonable. (Tr. at 160) Regarding the first concern, Dr. Taylor testified that BellSouth's choice of the TSLRIC cost standard is appropriate because TSLRIC measures the direct cost of providing PTAS and SmartLine® Service. (Tr. at 162)

As for the second concern or the appropriate markup, Dr. Taylor testified that although it is economically efficient for service prices to be set as close to underlying incremental costs as possible, in certain capital intensive industries like telecommunications, that form of pricing is simply not feasible. Dr. Taylor testified that in the telecommunications industry, firms such as BellSouth typically experience relatively high fixed and shared and common costs and relatively low service specific incremental costs. Accordingly, Dr. Taylor testified that setting prices to recover only those incremental costs would prevent firms from recovering their substantial shared and common costs and from breaking even. (Tr. at 153) In short, Dr. Taylor testified that if all service prices were set exactly equal to their respective incremental costs, that a company such as BellSouth would fail to recover all of its costs. (Tr. at 157)

Dr. Taylor testified that this Commission has the latitude to apply its own best judgment in determining the proper loading factor for all of BellSouth's services including its payphone services. Dr. Taylor testified that the FCC has stated that uniform loading factors are not required by the new services test, (Tr. at 163), and that the FCC has approved overhead loadings ranging from 4.8 times direct cost to almost 75 times direct cost. (Tr. at 167) In summary, Dr. Taylor testified that in light of BellSouth's cost structure and the FCC's interpretation of what constitutes reasonable loadings (and

particularly, the absence of any FCC requirement that loadings be uniform), Dr. Taylor concluded that the markup on BellSouth's payphone rates are reasonable. (Tr. at 165)

Walter Rice:

The SCPCA presented the testimony of Walter Rice, Vice President of R&Y Communications and President of the SCPCA. Mr. Rice asserted that payphones are the only means to send and receive calls for many economically disadvantaged people, and that this segment of the population is often the most difficult for PSPs to serve. (Tr. at 208, 219) Mr. Rice asserted that lower rates for the payphone line and associated features will allow more locations to operate at a profit, making more payphones available for use by the general public. (Tr. at 209) Mr. Rice contended that if rates for payphone service charged by BellSouth remain at their current level, PSPs will be forced to remove many currently marginal payphones, and increase their rates for local calls from certain other payphones in order to stay in business. (Tr. at 212, 221-223) Mr. Rice asserted that lower rates will cause a more widespread deployment of payphones which, in turn, result in healthy competition in the payphone market. Mr. Rice testified that BellSouth's concurrent role as the monopoly provider to PSPs of the payphone line and the largest single provider to the public of payphone service creates an incentive for BellSouth to charge PSP competitors unreasonably high prices for PTAS. (Tr. at 213) Mr. Rice also contended that forcing BellSouth to lower the rates in question will minimize BellSouth's ability to use excessive prices for the purposes of suppressing competition. (Id.) Mr. Rice took issue with BellSouth's PTAS rate and its rates for associated features, and asserted that the cost documentation filed in this Docket by

BellSouth in response to the Commission Staff's Data Request demonstrates that a cost based PTAS rate must include both the SLC and PICC. (Tr. at 215-216)

Michael Carowitz:

The SCPCA presented the testimony of Michael Carowitz, an attorney with Dickstein, Shapiro, Morin, and Oshinsky. Mr. Carowitz explained the FCC's requirement in the Payphone Orders that rates for the payphone line and associated features be "cost based," and in compliance with the FCC's new services test. He asserted that these requirements ensure that local coin rates and other rates to end-users will remain as low as possible. Mr. Carowitz maintained that a "forward looking" cost study was appropriate in this proceeding, and asserted that the rates resulting therefrom must include only BellSouth's direct cost of providing these services, plus an appropriate level of overhead costs. (Tr. at 248) Mr. Carowitz asserted that revenues received by BellSouth from the Subscriber Line Charge ("SLC"), the Primary Interexchange Carrier Charge ("PICC"), and the intrastate and interstate Carrier Common Line Charges ("CCLCs") reimburse BellSouth for a portion of its total loop and other non-traffic sensitive costs, and that appropriate rates can be no higher than BellSouth's total direct and overhead costs for the service, minus the dollar value of each of those revenue elements. (Tr. at 248) Mr. Carowitz explained the concept of overhead cost, overhead loadings, and overhead loading factors, as those terms relate to the FCC's new services test. Mr. Carowitz explained that the FCC has required LECs to determine appropriate overhead cost through a "bottom-up" approach. Mr. Carowitz went on to state that, based upon the FCC's rate requirements that apply in this proceeding, any rate, including the SLC and PICC, that exceeded BellSouth's demonstrated total cost for PTAS of \$25.48 would

violate the FCC's requirement that rates be cost based, and in compliance with the new services test. (Tr. at 252-253) Finally, Mr. Carowitz asserted that the FCC's Payphone Orders eliminated PTAS rate components designed to recover "contributions" of otherwise subsidize basic local telephone service. (Tr. at 253)

Don J. Wood:

The SCPCA presented the testimony of Don J. Wood, an economic consultant with the firm of Wood & Wood. Mr. Wood reviewed and evaluated rates for payphone access lines and related rate elements proposed by BellSouth in order to determine whether those rates conform to the requirements of the 1996 Act and the Payphone Orders. Mr. Wood concluded that based upon BellSouth's own cost study that BellSouth's proposed rates for PTAS and related features are not cost based. (Tr. at 316-317) He explained that BellSouth has not provided evidence supporting its contention that the direct, shared and common costs of these services support BellSouth's current rates. Mr. Wood also concluded that BellSouth's proposed rates for payphone access service are discriminatory, because independent PSPs pay the same rate for PTAS as BellSouth Public Communications, Inc. ("BellSouth Public") pays for SmartLine® Service, even though PTAS contains fewer features and costs BellSouth less to provide. (Tr. at 317) Mr. Wood also concluded that BellSouth's proposed rates do not comply with the FCC's new services test, because BellSouth has not demonstrated that both its direct and overhead costs are reasonable. (Tr. at 317) Mr. Wood also proposed rates for PTAS and associated features consistent with his interpretation and application of the new services test.

Mr. Wood testified that the SLC and PICC specifically assist Local Exchange Carriers (“LECs”) to recover a portion of their loop costs – those allocated to the interstate jurisdiction. Mr. Wood testified that a rate based upon BellSouth’s jurisdictionally unseparated direct and overhead costs will provide BellSouth with 100% recovery of its loop costs. Mr. Wood stressed that an appropriate cost based rate must be tariffed to include the SLC and PICC. He concluded that BellSouth would receive a double recovery if it were allowed to collect SLC and PICC on top of a rate that already compensates BellSouth for 100% of its cost.

Mr. Wood testified that a monthly flat rate of \$20.45, inclusive of the SLC and PICC and local usage, would fully compensate BellSouth for all direct and overhead costs associated with PTAS. (Tr. at 313) Mr. Wood also testified that in the event the Commission chooses instead to implement a usage sensitive rate, a fixed monthly component of \$17.70, inclusive of the PICC and SLC, would fully compensate BellSouth for all direct and overhead costs associated with the non-traffic sensitive part of the service. (Tr. at 312) To this, Mr. Wood testified that an additional local usage rate of \$.0043 per minute of use would fully compensate BellSouth for both the direct and overhead costs associated with the traffic sensitive part of this service. (Tr. at 312-313) Mr. Wood further concluded that even if the Commission accepts BellSouth’s cost data without adjustment, the highest flat monthly PTAS rate should be \$25.48. (Tr. at 313)

Vince Townsend:

The SCPCA presented the testimony of Vince Townsend, President of Pay Tel Communications, Inc. Mr. Townsend asserts that the FCC's Payphone Orders mandated reductions in the rates for the payphone access lines and features. (Tr. at 362) Mr. Townsend also asserted that the excessive rates currently in place will greatly reduce the general availability of payphone service, while causing PSPs to increase prices to end users for local and long distance calls. (Tr. at 370-373) Mr. Townsend cited Section 276 of the 1996 Act to require that any rate relief ordered by the Commission be applied to the inmate telephone industry. (Tr. at 365) Mr. Townsend challenged the cost data submitted by BellSouth, in particular the reported usage revenue for its PTAS customers, and proposed a flat rate for all PSPs, including inmate service providers, that is inclusive of the SLC and the PICC. (Tr. at 365-367) Mr. Townsend contended that the payphone industry has been in a pronounced decline over the past several years, and that such an industry trend was a major impetus for the FCC's decision to require LECs to reduce rates. (Tr. at 368) Mr. Townsend presented data purporting to demonstrate his contention that the current BellSouth rates cause PSPs to lose money on local calls priced at \$.35 per call, as well as on inmate calls. (Tr. at 369) Mr. Townsend concluded that lower rates for PTAS will enable PSPs to continue to charge the current coin rate of \$.35, and that lower rates are imperative for PSPs to fully serve economically disadvantaged customers in South Carolina. (Tr. at 370-371) Mr. Townsend also asserted that the number of local calls being made from payphones has decreased, due to growth in the use of cellular telephone service. (Tr. at 374)

IV. FINDINGS OF FACT

1. The Commission finds, based on the record before us, that BellSouth has failed to justify its current rates for PTAS and associated features. We find that BellSouth's average monthly rate for PTAS service, including the \$8.14 SLC and \$2.75 PICC is between \$56.64 and \$67.43. BellSouth witness Sanders estimated that BellSouth's average rate for PTAS service is \$45.75. (TR. at 54) SCPCA's witness Rice testified that BellSouth's asserted average rate for PTAS is \$58.28 and further testified that the average rate PSPs actually pay BellSouth is \$67.43. (Tr. at 215)

2. The Commission finds that the cost studies submitted by BellSouth in response to the Data Request of the Commission Staff should be used to determine direct costs and shared and common costs in establishing rates for PTAS and associated features.

3. The costing methodology asserted by BellSouth in this proceeding is based almost entirely on a similar study asserted by BellSouth and adopted by this Commission in Docket No. 97-374-C, the BellSouth UNE proceeding. SCPCA witness Wood and BellSouth witness Caldwell both acknowledged that FCC mandates in the BellSouth UNE proceeding and the present docket are substantially the same, that is to set rates that are cost based, just and reasonable, and non-discriminatory. (Tr. at 105-107, 289) In Order No. 98-214, this Commission set UNE rates for BellSouth that we specifically found to meet these three standards. Consequently, the direct and overhead costs that BellSouth has provided in its responses to Staff Data Requests and as found in Hearing Exhibit No. 4 (Rice Exhibit 3) in the instant proceeding are appropriately applied in this Docket.

4. Because BellSouth's TELRIC costs of providing PTAS and associated features already include a reasonable return on investment, it is not appropriate to add any additional return beyond the costs identified in the study in the price of PTAS or its associated features. As stated by BellSouth witness Caldwell, the direct cost BellSouth reported to the Commission for PTAS already includes a Commission-approved return on investment of 10.86%. (Tr. at 115) (See, Docket No. 97-374-C, Order No. 98-214, p. 22.)

5. Our decision that BellSouth's forward-looking TELRIC costs for providing the payphone line include a reasonable return on investment is consistent with our decision in order No. 98-214 in the BellSouth UNE Docket. In the UNE Docket, we held that because BellSouth's TELRIC cost studies already include a reasonable return on investment, it is not appropriate to include any additional profit in the price of the service." Order No. 98-214 at 22.

6. The Commission finds that BellSouth's asserted loop cost as contained in its response to Staff Data Request and as found in Hearing Exhibit No. 4 (Rice Exhibit 3) and reflecting a 47% residence/53% business mix is the appropriate loop cost to apply in determining the PTAS rate.

BellSouth used the UNE studies recently completed in the UNE Docket as the foundation for the costs used in this docket, with certain modifications outlined by the Commission in the UNE Docket and further modifications to correspond to the services under study in the instant docket. (Tr. at 76, 91, 93) One modification specifically challenged by the SCPCA was the residence/business weighting adjustment to reflect payphone loop lengths. (TR. at 77, 92, 99-100, 291-292) BellSouth utilized the sampling technique approved by this Commission in the UNE Docket and extracted information

from the payphone sample (not relevant and not included in the UNE study) to determine the average payphone loop length of approximately 18,000 feet. (TR. at 81) BellSouth then determined what percentage of residence loops and what percentage of business loops would yield a weighted length close to 18,000 feet. (Id.) Hence, BellSouth utilized a 47%/53% split for residence/business loop costs in its studies. (TR. at 128)

Although PTAS and SmartLine® Service are business services, one of the major costs associated with providing PTAS and SmartLine® Service depends on the length of the loops. (Tr. at 129, 288, 290) Density may also be a cost driver, but BellSouth did not consider the density factor in its cost studies because it did not think density would be a cost driver for the services in question. (Tr. at 129)

The SCPCA asserted that the loop costs should be calculated as 100% business because all of its members payphones are “exclusively at business locations.” (Tr. at 291) While witness Wood for the SCPCA testified that costs should be based on loop length for a business line, other SCPCA testimony asserted that reductions in rates are necessary to prevent removal of payphones in rural and less populated areas. (Tr. at 373) Another witness recounted an encounter with a payphone user in a neighborhood. (Tr. at 220) Thus the testimony from the SCPCA’s witnesses are somewhat contradictory in that the testimony reveals that the SCPCA’s witnesses acknowledge that PSPs are located in areas that certainly have residential characteristics.

Based on the record which reveals that PSPs are found in areas that are not exclusively business areas but are found in areas that have residential characteristics, the Commission finds that the cost figures submitted by BellSouth indicating a 47%/53% split for residence/business loop characteristics is appropriate for this proceeding.

Therefore, based on the cost figures submitted by BellSouth, the Commission adopts a cost figure for the loop, including shared and common costs, of \$18.69.

7. To the cost figure for the payphone loop, the Commission adopts without modification BellSouth's proposed TELRIC costs for the port and PTAS blocking and originating line screening. These cost figures also include shared and common costs and total \$4.06.

8. Accordingly, the Commission finds that the appropriate rate element to attribute to the payphone line, excluding usage, is \$22.75. Based upon the cost information as contained in BellSouth's response to its response Staff Data Requests and as found in Hearing Exhibit No. 4 (Rice Exhibit 3) this figure allows BellSouth to recover its direct costs of providing PTAS, a reasonable return on investment, and an appropriate amount of shared and common costs.

9. The Commission's approved \$22.75 rate element compensates BellSouth for all costs associated with the provision of PTAS Blocking and Screening. BellSouth presented its cost for this service as a component of BellSouth's total cost for PTAS service. BellSouth included its direct and overhead costs associated with these services. Consequently, BellSouth's provision of PTAS service at the approved monthly rate shall include the provision of PTAS Blocking and Screening services.

10. SCPCA witness Wood proposed a rate of \$0.015 per month for Billed Number Screening. We recognize that this rate is consistent with BellSouth's cost study, and allows BellSouth a full recovery of all its direct costs to provide this function, as well as a 31% loading of shared and common costs. (Tr. at 302) However, because of the *de minimus* nature of this charge, we decline to adopt Mr. Wood's proposal. Instead we find

that BellSouth should offer Billed Number Screening as an integral part of PTAS service, in the same fashion as Blocking and Screening. Our finding stems from BellSouth's inclusion of Billed Number Screening in its cost study as a component of PTAS service. See, Hearing Exhibit No. 4, Rice Prefiled Exhibit 3. Based on the inclusion of \$0.01 for Billed Number Screening in the BellSouth cost study, we adopt this cost proposal of \$0.01 for Billed Number Screening and add \$0.01 to our approved \$22.75 rate, for an inclusive rate of \$22.76.

11. The Commission further adopts without adjustment the monthly usage sensitive direct and overhead costs proposed by BellSouth, an amount of \$2.73. When this is added to the amount we have approved for non-traffic sensitive costs, we arrive at a total monthly PTAS rate of \$25.49. This amount is inclusive of direct, shared and common costs for monthly usage, and allows BellSouth to recover a return on investment that has been previously approved by the Commission.

12. The SCPCA claims that the ultimate rates determined by this Commission for BellSouth's PTAs and SmartLine® Service should include charges SLC and PICC and common carrier line charge ("CCLC"). First, the SCPCA states that BellSouth's rates must include "only the LEC's direct costs plus an appropriate level of overhead costs." (Tr. at 258) Later the SCPCA modifies this position by stating that the rates should be "no higher than the LEC's total – that's direct and overhead – costs for the service, minus the dollar value of each of these revenue elements [SLC, PICC, and CCLC]." (Id.) (emphasis added). The SCPCA then opines that the Commission must "subtract the SLC and the PICC to set a cost based rate for BellSouth or any other LEC," with no mention of the CCLC. (Tr. at 259, 270)

In determining whether BellSouth's rates are cost-based, the Commission finds that it is not appropriate to offset such rates by the SLC and PICC or the CCLC charges. The FCC in its Report and Order released September 20, 1996, concluded that to avoid discrimination among payphone providers, the multi-line business SLC must apply to subscriber lines that terminate at both LEC and competitive payphones. (FCC 96-388 Order at ¶87) The FCC does not state that revenue used from this charge should be used to offset payphone costs. Furthermore, the SLC is a federally mandated charge over which neither this Commission nor BellSouth has control. Therefore, it would be improper for the Commission to require reductions in the payphone access line rates by offsetting them by the SLC charge.

Also, it would be improper for the Commission to require reductions in the payphone access line rates by offsetting them by the PICC, which is a separate charge set forth in FCC Tariff No. 1 and is assessed against all lines. This 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"), or assessed individually on each end user who does not choose a preferred interexchange carrier. (Tr. at 299) If the SLC and PICC together do not recover the interstate-allocated common line costs, LECs can assess IXCs a per-minute CCLC. (*Id.*) These CCLC charges are interstate charges assessed against the IXCs, not the PSPs, and should not be used to offset the payphone access line rates.

13. While the Commission has found that the SLC and PICC, as well as the CCLC, should not be used to offset the payphone access line rate, the Commission is also mindful of the purposes of the SLC and PICC. The purpose of the SLC is to recoup part

or all of the local loop costs allocated to the interstate jurisdiction. (Tr. at 298) To the extent that the SLC does not recover all of the interstate loop costs, the remaining costs are recovered by means of the PICC, a flat, per-line charge assessed to each customer's presubscribed interexchange carrier ("PIC"), or assessed individually on each end user (PSP) who does not choose a PIC. (Tr. at 299) Like the SLC, the PICC is a mechanism to recover local loop costs.

The SCPCA asserts that allowing BellSouth full compensation for its interstate costs while at the same time allowing BellSouth to collect additional rate elements such as the SLC and PICC would give BellSouth a double-recovery of its interstate costs associated with payphone lines. To avoid a double-recovery, the SCPCA proposes that the rate approved for payphone access lines should be reduced by the amount of the SLC and PICC.

The Commission cannot endorse reducing the rate for PTAS lines by the SLC and PICC. As stated above, the SLC and PICC are federally mandated charges which are not fixed amounts, but rather are the product of a calculation, which may vary from year to year. See, 47 C.F.R. §§69.104(c) and 69.152(b). Thus, the Commission finds a fixed reduction of the rate for PTAS lines by the SLC or PICC would not be appropriate.

14. The Commission finds that BellSouth's PTAS rates should be set at a flat rate of \$36.37 per month. This rate includes the direct and shared and common costs as this Commission found appropriate from the BellSouth cost information [as contained in BellSouth's response to Staff Data Requests and as found in Hearing Exhibit No. 4 (Rice Exhibit 3)] and includes the federally mandated SLC and PICC charges. BellSouth may not charge more than \$36.37 for PTAS lines including the SLC and PICC. In other words,

the sum of the SLC, PICC, and BellSouth's payphone rates shall equal \$36.37 – no more. This rate of \$36.37, which includes the SLC, PICC, and direct, shared and common costs accords with the evidence presented to the Commission in this proceeding. This rate will allow BellSouth to recover its direct costs of providing PTAS, a reasonable return on investment, and an appropriate amount of shared and common costs as well as the federally-mandated SLC and PICC.

15. As to the rates set herein, the Commission also finds that BellSouth is required to make refunds or credits as required by Order No. 97-367, dated May 2, 1997, and Order No. 97-519, dated June 16, 1997. BellSouth is therefore ordered to make refunds or give credits, including appropriate interest at the rate of 8.75% per annum, back to April 15, 1997.

16. As to the rate for SmartLine® Service, the Commission approves the rate as filed by BellSouth. The SCPCA presented no evidence in opposition to the BellSouth proposed rates for SmartLine® Service. Therefore, the Commission finds the rate of \$38.00 plus usage per month, or where usage rate service is not available the fixed equivalent rate of \$44.00 per month, as filed by BellSouth to be the appropriate rate for SmartLine® Service.

17. The Commission finds that BellSouth's rates for PTAS, as established herein, and for SmartLine® Service, as approved herein, meet the new services test. The FCC's new services test which is applicable to this proceeding provides

Each tariff filing submitted by a local exchange carrier ... that introduces a new service or a restructured unbundled basic service element (BSE) ... must be accompanied by cost data sufficient to establish that the new service or

unbundled BSE will not recover more than a just and reasonable portion of the carrier's overhead costs.

47 C.F.R. §61.49(f)(2).

The Commission finds that the rates approved herein meet the new services test as these rates are cost based as supported by the TELRIC cost data referenced by the Commission throughout this Order. The TELRIC cost data on which the Commission has relied throughout this Order includes the direct cost of providing the service, an appropriate amount of shared and common costs, as well as a reasonable return on investment or return component. As the cost data upon which the Commission has relied in setting the rates herein contain what the Commission has determined to be an appropriate amount of shared and common costs as well as a reasonable return on investment, as previously determined appropriate by this Commission, the Commission concludes that the rates as established herein do not recover “more than a reasonable portion of the carrier's overhead costs.”

18. The Commission finds that BellSouth's PTAS rates as established herein and the SmartLine® Service rates as approved herein meet the requirements of Section 276 of the 1996 Act and are not discriminatory. Section 276 of the 1996 Act requires in part that “any Bell operating company that provides payphone service ... (1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations ... and (2) shall not prefer or discriminate in favor of its own payphone service.”

While not required by the 1996 Act, BellSouth separated its payphone service from its local exchange service. (Tr. at 188) By setting up this structural safeguard,

BellSouth has removed the subsidies of its payphone service from its telephone exchange service operations, as required by the 1996 Act. (Tr. at 186, 188) Further, as Dr. Taylor testified, “the PTAS rate and the SmartLine® rate exceeds [sic] their incremental costs, which to an Economist means they are not subsidized.” (Tr. at 186)

The September 20 and November 8, 1996, Payphone Orders required the BOCS to set up the non-structural safeguards outlined in the Computer III guidelines in the form of a Comparably Efficient Interconnection (“CEI”) Plan describing how they will not discriminate in providing payphone service. (FCC 96-388 Order at ¶¶ 194-195, 200; Tr. at 33). The FCC approved BellSouth’s CEI Plan on April 15, 1997. (Tr. at 34) BellSouth CEI Plan certifies that BellSouth offers the same tariffed services, such as PTAS and SmartLine® Service, at the same rates and conditions to its own payphone affiliate that BellSouth offers to other PSPs. (Tr. at 46) Likewise, service ordering, installation, maintenance and repair services are handled through the same channels for BellSouth Public as for any other PSP. (Tr. at 46)

The SCPCA presented no convincing evidence that BellSouth’s rates are discriminatory. Its arguments that BellSouth’s charges for PTAS and SmartLine® Service to its affiliate are simply going from one BellSouth pocket to another does not consider the fact that if BellSouth Public places a payphone in a location, BellSouth forgoes the PTAS price that BellSouth will receive from another PSP for that payphone. As Dr. Taylor noted, this is a real economic cost to BellSouth Corporation that cannot be ignored and that shows there is no discriminatory treatment regarding BellSouth’s rates for the payphone services. (Tr. at 187-188) The SCPCA’s arguments on this point are not persuasive.

Therefore, the Commission finds that BellSouth's rates for PTAS, as established herein, and for SmartLine® Service, as approved herein, meet the requirements of Section 276 of the 1996 Act and are nondiscriminatory as required by the 1996 Act and the Payphone Orders.

CONCLUSIONS OF LAW

1. The Commission holds that BellSouth bears the burden in this proceeding of demonstrating that its proposed rates for payphone access line and associated features are cost based, consistent with the requirements of §276 of the 1996 Act, non-discriminatory, and in compliance with the FCC's new services test. We hold that the rate we adopt for PTAS in this Order, comprised of the sum total of the elements described in the Findings of Fact above, provides BellSouth with full recovery of its direct costs, plus an appropriate level of overhead costs, in compliance with the new services test. We find that the rates approved herein are otherwise in compliance with the requirements of §276 of the 1996 Act and are non-discriminatory.

2. The Commission holds that the rates we adopt today shall apply to payphone lines and features purchased by providers of inmate telephone services in confinement facilities. As demonstrated by SCPCA witness Townsend, Section 276(d) of the 1996 Act defines "payphone service" as "the provision of public or semi-public payphones, *the provision of inmate telephone service in correctional institutions*, and any ancillary services." (emphasis added) The cost based rates requirements of the 1996 Act and the Payphone Orders apply with equal force to the payphone lines and features

provided by BellSouth to inmate providers. BellSouth has offered no evidence to contest this conclusion.

3. The Commission holds that the rate we adopt for PTAS herein shall include all amounts charged by BellSouth to PSPs for the SLC and PICC, as more fully detailed in the Findings of Fact above.

4. The Commission also holds that the rates adopted herein comply with the requirements of the 1996 Act and the Payphone Orders; specifically they are “cost based,” “consistent with the requirements of Section 276 of the 1996 Act,” nondiscriminatory, and consistent with the FCC’s *Computer III* tariffing guidelines, *i.e.* in compliance with the new services test.

5. The rates approved herein recognize the actual costs that BellSouth is expected to incur in providing payphone service on a going-forward basis as supported by the cost study provided in this proceeding. The Commission concludes that these rates will fairly and adequately compensate BellSouth for the services, functions and features it provides to PSPs, and provide BellSouth a reasonable return on investment, while promoting competition among PSPs and promoting the widespread deployment of payphone services to the benefit of the general public.

6. The Payphone Orders required BellSouth to have rates filed in compliance with the standards we apply in this Order by April 15, 1997. See, *Second Bureau Waiver Order* at ¶¶ 1-2. The Commission has twice, in Order No. 97-367, dated May 2, 1997, and in Order No. 97-519, dated June 16, 1997, confirmed that any rate reductions resulting from this proceeding will be applied retroactively. Accordingly, we require BellSouth to provide a refund or a credit to its PSP customers in an amount equal to the

difference between the rates approved herein and those rates PSPs actually paid, including any SLC and PICC, from April 15, 1997, until the date BellSouth places its new rates into effect.

7. The refund or credit shall cover the period from April 15, 1997, through the date BellSouth places the rates approved herein into effect. Further, the refund or credit shall include interest at 8.75% per annum, which is the legal rate of interest established by S.C. Code Ann. Section 34-31-20 (1976, as amended), from April 15, 1997, until the refund or credit is made.

8. The Commission approves the rates for BellSouth's Smartline® Service and associated features as filed, since we received no opposition to BellSouth's proposed rates for this service.

9. On May 19, 1997, BellSouth filed a petition in this proceeding requesting an order that its pay telephone rates, as filed in tariffs on or before May 19, 1997, comply with the FCC's implementation of the Pay Telephone Reclassification and Compensation provisions of the 1996 Act. In addition, BellSouth asserted that its pay telephone rates should be declared by this Commission to have met the new services test. In Order No. 97-519, we declined to do either, pending our hearing and final decision in this matter. Based upon the Commission's decision in this order, we hereby grant BellSouth's request, and declare that, upon implementing the rates set forth herein, and making appropriate refunds or credits, BellSouth has fully met these requirements.

10. Further, the Commission concludes that BellSouth should be allowed to present evidence in the Universal Service proceeding ("USF") that the implicit subsidies which have been removed from PTAS rates in this proceeding should be subject to USF

funding. The Commission is mindful that, historically, business rates and services have been priced in the context of Universal Service to support basic residential service that is often priced below cost. With that philosophy in mind, the Commission believes that fairness dictates that BellSouth be allowed the opportunity in the USF proceeding to persuade the Commission that the implicit subsidies which have been removed in the instant proceeding be recoverable to USF funding.

IT IS THEREFORE ORDERED THAT:

1. The Commission approves the rates for PTAS and associated features and SmartLine® Service and associated features as set forth herein.

2. The new PTAS rates shall be inclusive of any monthly SLC and PICC paid by each PSP customer, as more fully explained in our Findings of Fact.

3. BellSouth shall file revised tariff pages containing the rates approved herein within 30 days of receipt of this Order. These revised pages shall bear the effective date of April 15, 1997.

4. Within sixty (60) days of receipt of this Order, BellSouth shall provide refunds or credits to its PSP customers in an amount as described in our Conclusions of Law, above, and shall provide proof of these refunds or credits to the Commission Staff within thirty (30) days thereafter.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)