

**BEFORE THE PUBLIC SERVICE COMMISSION OF
THE STATE OF MISSOURI**

Tari Christ, d/b/a ANJ Communications, Bev Coleman, an)	
individual, Commercial Communication Services, L.L.C.,)	
Community Payphones, Inc., Coyote Call, Inc.,)	
William J. Crews, d/b/a Bell-Tone Enterprises,)	
Illinois Payphone Systems, Inc., Jerry Myers,)	
d/b/a Jerry Myers Phone Co., John Ryan, an)	
individual, JOLTRAN Communications Corp.,)	Case No. TC-2003-0066
Bob Lindeman, d/b/a Lindeman Communications,)	
Monica T. Herman, d/b/a M L Phones,)	
Midwest Communication Solutions, Inc., Mark B.)	
Langworthy, d/b/a Midwest Telephone, Missouri)	
Public Pay Phone Corp., Missouri Telephone)	
& Telegraph, Inc., Pay Phone Concepts, Inc., Toni M.)	
Tolley, d/b/a Payphones of America North,)	
Jerry Perry, an individual, PhoneTel Technologies, Inc.,)	
Sunset Enterprises, Inc., Teletrust, Inc., Tel Pro, Inc.,)	
Vision Communications, Incorporated, Gale Wachsnicht,)	
d/b/a Wavelength, LTD.)	
)	
Complainants,)	
)	
Southwestern Bell Telephone Company, L.P., d/b/a)	
Southwestern Bell Telephone Company,)	
Sprint Missouri, Inc., d/b/a Sprint, and)	
GTE Midwest Incorporated, d/b/a Verizon Midwest,)	
)	
Respondents.)	

MOTION FOR FILING OF SUPPLEMENTAL AUTHORITY

COMES NOW Respondent Sprint Missouri, Inc. ("Sprint"), and for its Motion to provide supplemental authority states as follows:

1. Sprint filed a Motion to Dismiss the Complaint in this matter on October 3, 2002 and a Reply to Complainants' Suggestions In Opposition to its Motion to Dismiss on November 1, 2002. Two of the grounds discussed by Sprint for dismissing the Complaint are addressed in a recent decision from the Public Utilities Commission of Ohio (PUCO).

One of Sprint's arguments to dismiss the Complaint is that the FCC's new services test does not apply to non-BOC ILECs and thus the Commission should dismiss the Complaint. Sprint also argues that the Complaint's request for refunds back to 1997 constitutes unlawful retroactive ratemaking.

2. The PUCO issued an order on November 26, 2002 that should be considered in this matter.¹ In the Ohio Payphone Order, the PUCO determined that all non-BOC incumbent local exchange companies are dismissed as parties to the proceeding because the FCC's Wisconsin Decision imposes the new services test only upon RBOCs.² Thus, in a proceeding similar to the one here in Missouri, the PUCO dismissed non-BOC ILECs from any consideration of revising their payphone rates in light of the FCC's Wisconsin Decision.

3. In addition, the PUCO determined that it could not order refunds with respect to Ameritech's rates from the time period 1997 - 2002 because such refunds would constitute unlawful retroactive ratemaking.³

4. This recent authority from Ohio is applicable to the Complaint here in Missouri and should be considered by the Commission. Sprint attaches to this Motion the Ohio Payphone Order.

5. This additional authority became available after Sprint filed its Reply in support of its motion to dismiss. Moreover, Complainants filed additional suggestions in this matter. The authority provided here rebuts those additional suggestions.

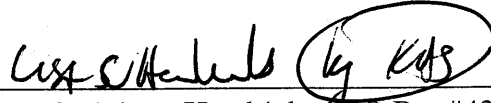
¹ *In the Matter of the Commission's Investigation Into the Implementation of Section 276 of the Telecommunications Act of 1996 Regarding Pay Telephone Services*, Case No. 96-1310-TP-COI, Entry (PUCO, November 26, 2002), (Ohio Payphone Order)

² Ohio Payphone Order, p. 11 ¶ 32. *See* Reply Of Respondent Sprint Missouri, Inc. To Complainants' Suggestions In Opposition To Respondents' Separate Motions To Dismiss Complaint, TC-2002-0066, pp. 9-15 for a discussion of the FCC's Wisconsin Decision.

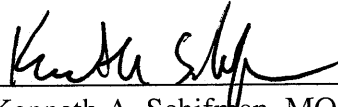
³ Ohio Payphone Order, p. 11 ¶33.

WHEREFORE, Sprint respectfully requests the Commission accept and take notice of the supplemental authority provided with this motion.

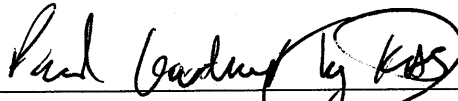
Respectfully submitted,
SPRINT MISSOURI, INC. d/b/a SPRINT

Handwritten signature of Lisa Creighton Hendricks in black ink, with a circled "by KCS" next to it.

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CERTIFICATE OF SERVICE

Copies of the foregoing were served on the following parties by first-class/electronic/facsimile mail, this 6th day of December, 2002.


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Attorney for Sprint

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).

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
<u>2-Wire Cross Connect</u>	<u>\$ 0.15</u>	<u>\$ 0.15</u>	<u>\$ 0.15</u>
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,


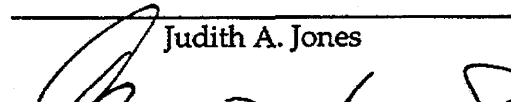
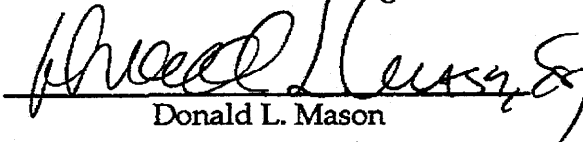
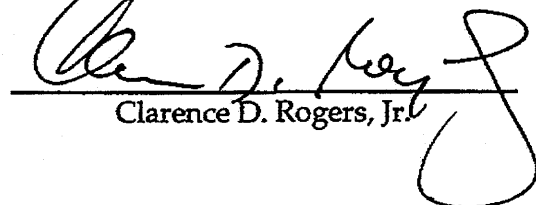
ORDERED, That, in accordance with Finding (33), Ameritech shall provide notice of interim rates to payphone service providers. It is, further,

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.

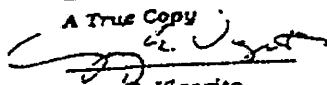
THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman
Ronda Hartman Pergus
Judith A. Jones
Donald L. Mason
Clarence D. Rogers, Jr.

LDJ/vrm

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Gary E. Vigorito
Secretary