

file

26

O'Keefe Ashenden Lyons & Ward
A Partnership Including Professional Corporations

RECEIVED-DOCKETING DIV

01 MAY 18 AM 10:02

PUCO

Joseph E. Donovan
jedonovan@oalw.com

May 17, 2001

FEDERAL EXPRESS

Ms. Daisy Crockron
Chief of Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215-3793

Re: *In the Matter of the Commission Ordered Investigation of the Existing Local Exchange Competition Guidelines*, PUCO Case No. 99-998-TP-COI; *In the Matter of the Commission Review of the Regulatory Framework for Competitive Telecommunications Services under Chapter 4927, Revised Code*, PUCO Case No. 99-563-TP-COI; *In the Matter of the Commission Ordered Investigation of an Elective Alternative Regulatory Framework for Incumbent Local Exchange Companies*, PUCO Case NO. 00-1532-TP-COI.

Dear Ms. Crockron:

Please find enclosed for filing an original and sixteen (17) copies of each of **The Payphone Association of Ohio's Reply Comments** in the above docketed matter. Please return one filed, date-stamped copy of each to our office with the enclosed self-addressed, stamped envelope.

Sincerely,

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business
Technician T.M.A. Date Processed 5/18/01


Joseph E. Donovan

JED:mb
Enclosures
CC: service list

Before
THE PUBLIC UTILITIES COMMISSION OF OHIO


In the Matter of the Commission)	
Ordered Investigation of the Existing)	Case No. 99-998-TP-COI
Local Exchange Competition Guidelines.)	

In the Matter of the Commission)	
Review of the Regulatory Framework)	Case No. 99-563-TP-COI
For Competitive Telecommunications)	
Services under Chapter 4927, Revised Code)	

In the Matter of the Commission Ordered)	
Investigation of an Elective Alternative)	Case No. 00-1532-TP-COI
Regulatory Framework for Incumbent)	
Local Exchange Companies)	

NOTICE OF FILING

Please take notice that on May 17, 2001, the undersigned filed an original and seventeen (17) copies of each of **The Payphone Association of Ohio's Reply Comments** with the Clerk of the Public Utilities Commission of Ohio, via Federal Express.



Joseph E. Donovan

CERTIFICATE OF SERVICE

I, Joseph E. Donovan, an attorney, on oath state that I served this **Notice of Filing** and a copy of each of **The Payphone Association of Ohio's Reply Comments** on the service list above by depositing the same in the U.S. Post Office Box at 30 N. LaSalle Street, Chicago, Illinois, with first class postage prepaid on May 17, 2001.



Joseph E. Donovan

Henry T. Kelly
Joseph E. Donovan
O'Keefe, Ashenden, Lyons & Ward
30 North LaSalle Street, Suite 4100
Chicago, IL 60602
(312) 621-0400
(312) 621-0297 facsimile

Service List
PUCO Docket No. 99-998-TP-COI, et al

Thomas E. Lodge
Thompson Hine & Flory LLP
One Columbus
10 West Broad Street, Suite 700
Columbus, OH 43215-3435
Represent: ALLTEL Communications Inc.
ALLTEL Ohio, Inc. and The Western
Reserve Telephone Company
The Small Telephone Companies
The Ohio Telecommunications Ind. Assoc.
Verizon North, Inc. & Verizon Select Services, Inc.

Jon F. Kelly
Mary Ryan Fenlon
Ameritech Ohio
150 East Gay Street, Room 4-C
Columbus, OH 43215
Represent: Ameritech Ohio
Cingular Wireless, LLC

David J. Chorzempa
AT&T Corp.
222 West Adams Street, Room 4-C
Chicago, IL 60606
Represent: AT&T Communications of Ohio, Inc.
And TCG Ohio

Douglas E. Hart
Frost Brown Todd LLC
2200 PNC Center
201 East Fifth Street
Cincinnati, OH 45202
Represent: Cincinnati Bell Telephone Company

Robert B. Hollister
Oxley, Malone, Fitzgerald & Hollister, PLL
301 East Main Cross Street
P.O. Box 1086
Findlay, OH 45839-1086
Represent: New Knoxville Telephone Company

Athan A. Vinolus
Dayton Power and Light Company
MacGregor Park
1065 Woodman Drive
Dayton, OH 45432
Represent: Dayton Power and Light Company

Boyd Ferris
Carlile, Patchen and Murphy, LLP
366 East Broad Street
Columbus, Ohio 43215
Represent: ICG Telecom Group, Inc.

Judith B. Sanders
Bell, Royer & Sanders
33 South Grant Avenue
Columbus, OH 43215
Represent: MCI World Com

Benita Kahn
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. box 1008
Columbus, OH 43216-1008
Represent: AT&T Communications of Ohio, Inc.
And TCG Ohio

David C. Bergmann
Joseph P. Serio & Terry Etter
Ohio Consumer's Counsel
10 West Broad Street, Suite 1800
Columbus, OH 4321-3485
Represent: Ohio Consumers' Counsel

Jason J. Kelroy
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
Represent: Suretel, Inc.

Sally W. Bloomfield
Julia L. Dorrian
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215
Represent: Global Crossings Local Services, Inc.
Vuvox Communications of Ohio, Inc.
Time Warner Telecom of Ohio L.P.
Allegiance Telecom of Ohio, Inc.
Association of Communications Enterprises
LDMI Telecommunications

Henry T. Kelly & Joseph E. Donovan
O'Keefe, Ashenden, Lyons & Ward
30 N. LaSalle St., Suite 4100
Chicago, IL 60602
Represent: The Payphone Association of Ohio

Pamela H. Sherwood
Time Warner Telecom
4625 W. 86th Street, Suite 500
Indianapolis, Indiana 46268
Affiliation: Time Warner Telecom of Ohio L.P.

Joseph R. Stewart
Trial Attorney
50 West Broad Street, Suite 3600
Columbus, OH 43215
Represent: United Telephone Company of Ohio d/b/a
Sprint, Sprint Communications Company L.P.,
And Sprint Spectrum L.P. d/b/a Sprint PCS

Thomas J. O'Brien
CoreComm Newco, Inc.
450 W. Wilson Bridge Rd., Suite 100
Worthington, OH 43085
Represented: CoreComm Newco, Inc.

Cornell Carter, Director
City of Cleveland
Department of Law
601 Lakeside Avenue, Room 106
Cleveland, OH 44114-1077
Represent: City of Cleveland

John W. Bentine
Todd M. Rogers
Chester, Wilcox & Saxbe
27 S. High Street, Suite 900
Columbus, Ohio 43215-3413
Represent: Verizon Wireless
XO Communications of Ohio, Inc.

William M. Ondrey Gruber
Attorney at Law
2714 Leighton Road
Shaker Heights, OH 44120
Represent: Council of the City of Cleveland
AARP

Randy J. Hart
Hahn Loeser & Parks LLP
3300 BP Tower
200 Public Square
Cleveland, OH 44114
Represent: Enron Broadband
Westside Cellular, Inc. d/b/a Cellnet of Ohio

Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. box 1008
Columbus, OH 43216-1008
Represent: City Signal Communications, Inc.
The Ohio Cable Telecommunications Assoc.

Evan Siegel
MCI WorldCom
205 N. Michigan Ave., Suite 3700
Chicago, IL 60601
Represent: MCI WorldCom

Mary W. Christensen
Christensen, Shoemaker, Winkler
Howarth & Taylor
77 E. Nationwide Boulevard
Columbus, OH 43215
Represent: McLeodUSA Telecommunications Services, Inc.

Dan A. Lipschultz
McLeodUSA Telecommunications
Services, Inc.
400 South Highway 169, Suite 750
Minneapolis, MN 55426
Represent: McLeodUSA Telecommunications Services, Inc.

Michael R. Smalz
Ohio State Legal Services Association
555 Buttles Avenue
Columbus, OH 43215
Represent: Appalachian People's Action Coalition

Noel M. Morgan
Legal Aid Society of Greater Cincinnati
215 East Ninth Street, Suite 200
Cincinnati, OH 45202
Represent: Communities United for Action

Ellis Jacobs
Legal Aid Society of Dayton
333 West First Street, Suite 500
Dayton, OH 45402
Represent: Edgemont Neighborhood Coalition

Joseph P. Meissner
Legal Aid Society of Cleveland
1223 West Sixth Street
Cleveland, Ohio 44113
Represent: Empowerment Center of Greater Cleveland

John Klein & Janet Jackson
109 N. Front Street
Columbus, Ohio 43215
Represent: City of Columbus

Kerry Bruce & Leslie A. Kovacik
Department of Public Utilities
420 Madison Avenue, Suite 100
Toledo, OH 43604-1219
Affiliation: City of Toledo

Before
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV
01 MAY 18 AM 10:02

PUCO

In the Matter of the Commission)
Ordered Investigation of the Existing) Case No. 99-998-TP-COI
Local Exchange Competition Guidelines.)

In the Matter of the Commission)
Review of the Regulatory Framework) Case No. 99-563-TP-COI
For Competitive Telecommunications)
Services under Chapter 4927, Revised Code)

In the Matter of the Commission Ordered)
Investigation of an Elective Alternative) Case No. 00-1532-TP-COI
Regulatory Framework for Incumbent)
Local Exchange Companies)

REPLY COMMENTS OF THE PAYPHONE ASSOCIATION OF OHIO

Filed by:
Henry T. Kelly
Joseph E. Donovan
O'Keefe Ashenden Lyons & Ward
30 North LaSalle
Suite 4100
Chicago, Illinois 60602
(312) 621-0400
(312) 621-0297 facsimile
Hkelly@oalw.com
JEDonovan@oalw.com

ATTORNEYS FOR THE
PAYPHONE ASSOCIATION OF OHIO

By Entry dated February 25, 2001, the Commission requested parties interested in this matter to provide comments on the Staff-modified telecommunications regulations intended to replace the currently existing Commission ordered directives found in various dockets. In addition, the Entry requested interested parties to respond to six issues relating to the regulatory treatment of telephone services provided from payphones. Numerous parties filed Initial Comments which addressed the proposed regulatory treatment of the telecommunications services issues raised in the February 25, 2001 Entry, including the payphone SP-specific issues. The Payphone Association of Ohio ("PAO") takes this opportunity to provide its reply to those Initial Comments.

A. Introduction

In its February 25, 2001 Entry, the Commission raised six specific issues relating to payphone services and asked interested parties to comment on those positions. The Commission asked the interested parties to comment on the following questions:

1. Whether the Commission should certify companies that provide telephone services from public telephones, including the separate payphone operations of ILECs, as telephone companies subject to the regulatory authority of the Commission?;
2. Whether the Commission should adopt a rule mandating that network services be made available to companies that provide telephone services through payphones (or "PSPs") at cost-based rates pursuant to the new services test as outlined by the Federal Communications Commission in CC Docket 96-128?;
3. Whether the Commission should draft regulations that require ILECs, until rates are established that are in compliance with the new services test, to make available to PSPs rates based on the total element long run incremental cost (TELRIC) methodology, subject to a true-up mechanism?;
4. Whether the Commission should require the ILECs to submit cost studies that impute all costs of the ILECs affiliate payphone divisions and to demonstrate the absence of subsidies that could discriminate against other companies that provide telephone services from payphones?;

5. Whether the Commission should adopt a requirement to annually ensure that toll providers are in compliance with their dial around payment obligation?; and,
6. Whether the Commission should permit PSPs to impose property imposed fees (PIFs), set intrastate non-coin sent call rates where necessary, and permit PSPs to charge for local calls in measured or metered time increments?

The PAO will address the comments received from other parties on each of these issues. First, however, the PAO feels it necessary to address some broad arguments raised by the parties attacking the use of the local service regulations as the means by which the Commission can address the payphone issues.

I. THE PENDING DOCKET 96-1310-TP-COI DOES NOT, AND SHOULD NOT, PRECLUDE THE COMMISSION FROM ACTING ON THE ISSUES RAISED BY THE PAO IN THIS PROCEEDING.

Several parties claim that the present rulemaking forum is not the proper forum to address the issues raised in the February 25, 2001 Entry. Specifically, Ameritech, Cincinnati Bell, Verizon, ALLTEL, AARP and the Ohio Telecommunications Industry Association ("OTIA") all claim that the Commission should defer these issues to the Commission's investigation into the tariff review proceedings in Docket 96-1310. See, Ameritech Initial Comments at 82; Initial Comments of Cincinnati Bell Telephone Company at 7; Additional Comments of Verizon North, Inc. and Verizon Select Services, Inc. at 38; Comments of ALLTEL Ohio, Inc. at 9; Updated Comments of the Ohio Telecommunications Industry Association at the Additional Issues Section, Question 1 [pages unnumbered in Comments]. In fact, Ameritech goes so far as to claim that the use of this rulemaking proceeding to address these issues amounts to a collateral attack on the previous entries in Docket 96-1310. Ameritech Ohio's Initial Comments, at 82. As such,

Ameritech urges the commission to push the issues back into the Docket 96-1310 investigation.

The PAO disagrees. In this proceeding, the PAO does not advocate the establishment of permanent payphone access rates. Rather, the PAO believes that this proceeding presents the Commission with the opportunity to establish pro-competitive, uniform regulations that will provide the structural foundation to apply to the issues under review in Docket 96-1310 on a statewide, uniform basis. The PAO acknowledges that the issue of whether certain Ohio ILEC's payphone access tariffs comply with the FCC's new services test and the Payphone Orders is under review in Docket 96-1310. The PAO hopes that Docket 96-1310 will eventually lead to nondiscriminatory payphone access rates that are based upon the direct cost of the service plus a just and reasonable overhead allocation for those ILECs whose tariffs are being reviewed. The existence of a docket addressing the specific tariff filed by a particular ILEC should not preclude the Commission from acting upon the issues raised by the PAO in this proceeding.

The present rulemaking presents an opportunity to prepare and analyze uniform, statewide regulations applicable to all carriers, including companies that provide telephone services to end users through pay telephones. The problem with deferring judgment on the issues raised in this procedure is that Docket 96-1310 is a Commission investigation rather than a general rulemaking proceeding -- the outcome will pertain to only the particular tariffs that are under investigation in that proceeding, but will not providing binding authority on the LECs for their future rates and services made available to PSPs. The Commission will make factual determinations as to how a particular tariff complies with the required new services test. As such, the rates and

policies developed in Docket 96-1310 will be completed in a carrier-specific manner rather than through the application of uniform regulations applicable to the future tariffs of these carriers.

In the proceeding, the Commission should adopt the pro-competitive policies advocated by the PAO in its initial comments, but defer the factual findings of a LECs' compliance with those policies in another proceeding. The PAO believes this Commission should make the firm policy decision in this proceeding that Ohio ILECs comply with the new services test, must submit cost studies that verify the payphone operations are not subsidized, and so on. The PAO encourages the Commission to take this opportunity to firmly establish a consistent statewide regulatory framework upon which the carrier-specific issues can be addressed in Docket 96-1310.

II. WHETHER THE COMMISSION SHOULD CERTIFY COMPANIES THAT PROVIDE TELEPHONE SERVICES FROM PUBLIC TELEPHONES, INCLUDING THE SEPARATE PUBLIC TELEPHONE OPERATIONS OF ILECS, AS TELEPHONE COMPANIES SUBJECT TO THE REGULATORY AUTHORITY OF THE COMMISSION?

The Commission asked for comments regarding whether companies that provide telephone services from public telephones should be certified as "telephone companies" subject to the regulatory authority of the Commission. Several parties provided some response to which the PAO will address its reply.

1. The payphone market has changed drastically in the last decade.

Several of the parties have commented that certification of companies that provide telephone services from public telephones is not appropriate in this proceeding, if

at all. Ameritech argues that payphones are consumer premises equipment for which PSPs merely purchase business lines from the ILEC. Ameritech Ohio's Initial Comments at 85. In support of this argument, Ameritech relies upon a 1985 Order in which this Commission determined that it would not regulate PSPs as it does other telephone companies. *In the Matter of the Commission's Investigation into the Regulation of Customer Owned Coin Operated Telephone Service*, Case No. 84-863-TP-COI (Order, January 29, 1985). Ameritech claims that nothing in the interim 17 years has changed that would warrant a modification to this 1985 decision. Ameritech Ohio's Initial Comments at 85.

However, Ameritech overlooks at least one huge change to the public telephone market that has radically altered the face of the payphone industry since 1985-- the 1996 Telecom Act.

a. The 1996 Telecommunications Act substantially altered the PSPs relationship with the ILEC and the Commission.

Through the passage of the 1996 Act, Congress determined that it is the public policy of the United States to:

1. Promote "payphone competition" among payphone service providers ("PSPs"); and,
2. Promote Universal Service through the widespread deployment of public telecommunications services.

47 U.S.C.A. Section 276(a).

In a series of Orders implementing the terms of Section 276, the FCC has vested this Commission with the authority to enact the pro-competitive policies laid out in Section 276. As the PAO explained in its Initial Comments, the FCC has determined that

the state commissions have the obligation to determine whether the ILECs are subsidizing their payphone services with revenues from noncompetitive services; whether the payphone access rates comply with the new services test; and whether the ILEC's services provided to public telephone service providers allow them to compete on a level playing surface. *See*, Payphone Association of Ohio's Initial Comments at 9.

At a very minimum, counter to Ameritech's assertions, the policies articulated in Section 276 and the correlative FCC Orders are substantial modifications to the relationship between the PSP and its ILEC, and the internal operations of the ILECs that historically provided public telephone services. The ILEC must now provide payphone access services at a cost-based rate and cannot discriminate against competing PSP by subsidizing its payphone operations. None of the duties imposed by Section 276 or the FCC's Orders were in place in 1985, but they are now and they create a federally mandated public telecommunications market. The adoption of the 1996 Telecommunications Act completely modified the manner in which ILECs interact with PSPs and the manner in which state regulatory agencies review that interaction. This is an enormous change that Ameritech may be willing to overlook, but this Commission should not be so quick to do so.

b. The form of competition has also changed since 1985 with the advent of the wireless industry.

Ameritech also fails to grasp the changes in competition that PSPs have seen over the last 16 years. In 1985, it was a rarity to see a person walking down the street using a cell phone. As the PAO explained in its Initial Comments, in 2001 it is an every day occurrence and that change over time has had a substantial impact on companies that

provide public telephone services. In the interim 16 years since the Commission adoption of the 1985 Order, regulators have adopted various pro-competitive policies intended to promote the widespread availability of wireless services while overlooking the key role of the pay telephone. By permitting wireless carriers to purchase network access at cost-based rates, regulators have provided a substantial benefit to those carriers while still forcing the PSPs to purchase network access at rates this Commission found unsupportable way back in 1997. The PAO has shown that these regulatory decisions force the PSPs to pay five times as much in network access costs for a 3.5 minute call on Ameritech Ohio's system than the exact same call would cost a wireless carrier. *See*, Initial Comments of the Payphone Association of Ohio at 3-4. The point being that this competitive pressure from wireless carriers did not exist in 1985, but it does now and, counter to Ameritech's claim, it is a substantial change in the marketplace which warrants action in this proceeding.

2. ILECs who have created a separate affiliate to provide payphone services should go through the same certification requirements as any other PSP.

Ameritech also argues that the Commission should not require ILEC payphone operations to be certified because Ameritech feels it would be a step backward. Ameritech Ohio's Initial Brief at 86. To the extent that the ILEC does not use a separate affiliate to serve as a PSP, Ameritech may have a point. However, if the ILEC's payphone operations are run through a separate affiliate, then that affiliate should be subject to the same certification requirements to which the PSPs are subject. While Ameritech may have chosen to keep its payphone operations in house, other carriers may choose to use a structurally separate affiliate. In those circumstances, it is logical to treat

that affiliate the same as any other companies that provides telephone services from a pay telephone.

3. The ILECs are mandated to provide cost-based rates to PSPs no matter if they are a "telephone company".

Ameritech Ohio, Verizon and the OTIA argue that the PAO only wants status as a "telephone company" in order to get wholesale rates for the ILEC services. The PAO continues to argue that companies that provide telephone services from payphones are already "telephone companies" under the currently existing Revised Code. However, the status of whether the PSP is or is not a "telephone company" is not relevant to the rates charged PSPs for the ILECs services. With or without the categorization as a "telephone company," the ILECs are required under Section 276 and the Payphone Orders to provide the PSPs with cost-based rates for those services.

a. Companies that provide telephone services from pay telephones are "telephone companies" under the currently existing Revised Code.

Under the currently existing Revised Code, the members of the PAO are "telephone companies." As a regular part of their business, the PSPs provide local and intrastate interexchange telephonic messages throughout the State of Ohio. Under Revised Code 4905.03(A)(2), an entity is a telephone company if it is "engaged in the business of transmitting telephonic messages to, from, through or in this state . . ." As a telephone company under the currently existing Revised Code, the PSPs would also be a telephone company under the proposed staff modifications to the regulations.

b. The ILECs are obligated to provide PSPs with cost-based rates regardless of the certification status as "telephone companies."

Under the FCC's Payphone Orders, the ILECs' tariffed rates for payphone access services must be set at the direct cost of the service plus a reasonable overhead. The direct cost must be based upon a forward-looking cost methodology and the overhead allocation may not exceed the overhead allocation of the comparable services. See, *In the Matter of the Implementation of Pay Telephone Reclassification Provisions of the Telecommunications Act of 1996*, CC Docket 96-128, Report and Order, FCC 96-388 (released September 20, 1996) at para. 147 ("Payphone Order"); Order on Reconsideration, FCC 96-439 (released November 8, 1996) at para. 163 ("Order on Reconsideration"); Order, FCC 97-678 (Com. Car. Bur. released April 4, 1997) ("Bureau Waiver Order"); Order, FCC 97-805 (released April 15, 1997) ("Clarification Order"); Order, FCC DA 00-347 (Com. Car. Bur. Released March 2, 2000) ("Wisconsin Order") (collectively referred to as the "Payphone Orders".) The Common Carrier Bureau has further clarified that the new services test requires the overhead allocations to be comparable to and no greater than the overhead allocation established for the ILEC's unbundled network elements. *Wisconsin Order* at para. 9.

Importantly, the FCC has specifically required the state commissions to verify compliance with these pricing requirements through proceedings at the state level. The PAO strongly encourages the Commission to use this opportunity to codify its duties under the Payphone Orders and Section 276. The regulations proposed by the PAO indicate that the Commission acknowledges its duty to ensure cost-based pricing for payphone access services and that the ILECs payphone access rates are nondiscriminatory.

The most efficient proceeding to adopt regulations that will apply uniformly to all ILECs and all PSPs in Ohio is in this rulemaking proceeding. The PAO strongly encourages this Commission to seize the opportunity to not only develop policies that will further the goals of Section 276 and the FCC's Payphone Orders, but will also do so in a uniform, consistent manner across the State of Ohio.

II. WHETHER THE COMMISSION SHOULD ADOPT A RULE MANDATING THAT NETWORK SERVICES BE MADE AVAILABLE TO PSPs AT COST-BASED RATES PURSUANT TO THE NEW SERVICES TEST AS OUTLINED BY THE FCC IN CC DOCKET 96-128?

The PAO has proposed regulations in this proceeding that will codify the pricing obligations imposed upon the ILECs that provide payphone access services to PSPs. In its proposed regulations, the PAO codifies the Commission's duties imposed by the Payphone Orders to ensure that the ILECs payphone access rates are (1) cost-based, including complying with the new services test; (2) comply with the terms of Section 276; and, (3) do not discriminate against PSPs. Those regulations imposing the terms of the new services test in Ohio are found in the PAO's Appendix A to its Initial Comments at Section 4905:6-45(F).

1. The Commission has held that certain ILEC's rates contained in their payphone access tariffs are unsupported.

Ameritech argues that nothing would be accomplished by codifying the terms of the new services test in Ohio regulations. Ameritech claims that the Commission has already adopted the terms of the new services test in an Entry in Docket 96-1310. Ameritech goes on to argue that it filed payphone access tariffs that comply with the new services test that were reviewed by the Staff and the tariffs were allowed to go into effect.

Verizon makes a similar claim, but does not make any substantive arguments against codifying the new services test in Ohio.

Initially, the PAO observes that this Commission has specifically held that these same tariff filings that Ameritech touts as decrying the need to codify the new services test were filed without the necessary documentation needed to support the rates as tariffed. On January 28, 1999, the PUCO issued an Entry in Docket 96-1310 granting the PAO's Motion to Conduct Hearings and found "that there is insufficient evidence, at this time, to satisfy the Commission that the payphone tariffs of Ameritech Ohio, GTE, CBT, Sprint and Alltel fully comply with the requirements of Section 276 of the 1996 Act and the rules subsequently promulgated by the FCC." It was this determination that lead to the Commission's pending investigation in Docket 96-1310. For Ameritech and Verizon to now rely upon these unsupported tariffs as an indication of their compliance with the new services test speaks volumes as to why the codification of the new services test is necessary in Ohio.

Further, the PAO went into great detail in its Initial Comments explaining that the FCC has consistently held that an ILEC may not establish rates for payphone access services that exceed the direct cost of the service plus "a reasonable and just portion of the carrier's overhead costs." *Payphone Order* at para. 147, *Order on Reconsideration* at para. 163. For a detailed explanation of the FCC's holdings with regard to the application of the new services test and the state commission's duties, see the PAO's Initial Comments at 10-15.

The proposed regulations are completely in line with these FCC holdings. The FCC has mandated that the state commissions have the duty to ensure that the payphone

access rates are set at the direct cost of the service (based upon a forward looking cost methodology) plus a just and reasonable portion of the ILEC's overhead costs (based upon the ILECs comparable UNE overheads, absent justification). The modifications proposed by the PAO are a codification of these requirements imposed by the *Payphone Orders*. The Commission should take this opportunity to adopt regulations in this proceeding that will provide a uniform, statewide regulatory framework and meet the Commission's duties under the federal law.

III. WHETHER THE COMMISSION SHOULD REQUIRE THE ILECs TO SUBMIT COST STUDIES THAT IMPUTE ALL COSTS OF THE ILEC'S AFFILIATE PAYPHONE DIVISIONS AND TO DEMONSTRATE THE ABSENCE OF SUBSIDIES THAT COULD DISCRIMINATE AGAINST THE PSPs?

As the PAO demonstrated in its Initial Comments, the PAO believes that the Commission need look no further than Section V(D)(1) of the currently existing Local Service Guidelines governing the application of an imputation analysis to determine that the Ohio ILECs must submit a cost study that imputes all of the ILEC's payphone operation costs. *See*, Initial Comments of the PAO at 16-19. The PAO's proposed regulation to mandate an imputation analysis for the ILEC's payphone operations proposed by the PAO merely clarifies that requirement.

Similarly, the Congress was concerned with the ability of the ILEC's to discriminate in favor of its own payphone operations. For this reason, Congress adopted 47 U.S.C.A. Section 276(a)(1) and (2), which require that any ILEC that provides payphone operations may not discriminate against PSPs and that the ILEC remove all of the network side subsidies of its payphone division. The PAO believes that the only

manner in which to accomplish these goals mandated by Congress is through an imputation analysis.

The issue of whether to require the ILECs to submit cost studies that impute all of the ILEC's costs of the payphone operations to ensure that the revenue received in the division is enough to cover the costs associated with its operations was not substantively addressed in most of the comments received at the Commission. In a rather peripheral sense, Cincinnati Bell and Ameritech both argue, without citation to any case law, that the question of whether the Commission should adopt regulations that require an imputation analysis is an attempt by the PAO to collaterally attack previous Commission decisions in Docket 96-1310. *See*, Initial Comments of Cincinnati Bell Telephone Company at 8; Ameritech Ohio's Initial Comments at 84. Cincinnati Bell further argues that nothing has changed since the adoption of the April 2000 Entry which would merit what CBT calls a "reversal" of the decision not to order imputation analysis. *Id.*

The PAO disagrees with these assertions. As explained above, the only way in which to complete the goals of the currently enacted Local Service Guideline Section V(D)(1) and Section 276 is through the use of an imputation analysis. The Commission has, however, deferred its application of the imputation requirements at this time. The PAO believes that the current rulemaking presents the Commission with an excellent opportunity to enact a regulation clarifying that the ILECs that have payphone operations must provide a cost study that imputes all costs and demonstrate the absence of subsidies.

IV. WHETHER THE COMMISSION SHOULD DRAFT REGULATIONS THAT REQUIRE THE ILECs, UNTIL PERMANENT RATES ARE ESTABLISHED THAT ARE IN COMPLIANCE WITH THE NEW SERVICES TEST, TO MAKE AVAILABLE TO PSPs RATES BASED UPON THE TELRIC METHODOLOGY, SUBJECT TO A TRUE-UP MECHANISM?

The PUCO has ordered that, while the investigation in Docket 96-1310 is pending, the PAO members are obligated to honor the terms and conditions of the ILEC's payphone access tariffs, including the rates contained therein - even though the PUCO has acknowledged that there is "insufficient evidence" to support those rates. The PAO believes that the rates contained in those tariffs are excessive and unsupported and that its members have had to pay excessive rates for more than 4 years while the PUCO has stalled its investigation. This delay and the obligation of the PAO members to pay the excessive and unsupported rates have placed a large financial burden on the PAO members.

With this background in mind, the PAO has proposed a modification to the proposed regulations that would mandate the ILECs to provide the PSPs the network access rates on an interim basis based upon the known forward-looking economic costs of the ILECs, subject to a true-up upon the conclusion of Docket 96-1310. The members are entitled under Section 276 of the Telecommunications Act of 1996 and the FCC's Payphone Orders to cost-based rates for the network access services and this proposal goes a long ways in providing the PSPs access to the network services at rates they should have had four years ago.

The PAO proposed Section 4901:1-6-45(F)(2) establishes an interim rate for payphone access services based upon the known forward-looking cost of the company. This interim rate will be in effect only until such time as the Commission adopts

permanent rates in Docket 96-1310, and any variance will be subject to a true-up at that time.

OTIA also mischaracterizes the PAO's position on the impact of the *Wisconsin Order* in DA 00-347. OTIA claims "the PAO believes that the FCC Common Carrier Bureau Order in 00-347 establishes that payphone specific services should be priced based upon TELRIC methodology." Initial Comments of OTIA at Additional Issues, Question 3 [pages not numbered in Comments]. Cincinnati Bell also confused the issue by summarizing it as "some form of true-up mechanism available to PSPs back to April 15, 1997, in the event that the Commission reverses its prior approval of ILEC payphone rates as cost based and nondiscriminatory." Initial Comments of the Cincinnati Bell Telephone Company at 8. The PAO is a bit confused as to how the Commission determination regarding refunds in Docket 96-1310 is applicable to whether the Commission should adopt interim rates in this proceeding subject to a true-up in this proceeding. The language used by OTIA and Cincinnati Bell to support their argument has nothing to do with whether interim rates should be used until such time as permanent, cost-based rates are developed. While the PAO does believe that the FCC's Payphone Orders require the ILEC whose rates have been found to not comply with the new services test to issue refunds to the PSPs, that issue is not the one being addressed in this proposed rulemaking.

The position of the PAO is that the *Wisconsin Order* clarifies that the new services test requires payphone access services to be priced at the direct cost (based upon a forward looking pricing methodology) with a just and reasonable overhead allocation (no greater than the overhead allocation used in a comparable service which the Bureau

clarified was the ILEC's UNE overhead allocations). The PAO has never argued that the rates must be TELRIC rates as the other parties claim. Rather, the PAO has consistently argued that the rates must be based upon a forward-looking cost methodology, which is completely in line with Section 276, the FCC's Payphone Orders and the holding in FCC Docket No. 00-347. It is under this view that the PAO proposed its recommended modifications. If the known forward-looking costs are based upon TELRIC studies, then those would be the rates assessed PSPs. If the known forward-looking costs are based upon LRSIC studies, then those would be the rates assessed PSPs. The important piece to remember is that the PSPs should be paying nothing more than the direct forward-looking cost of the service plus a just and reasonable overhead no greater than the UNE overhead allocations, unless otherwise justified.

V. WHETHER THE COMMISSION SHOULD ADOPT A REQUIREMENT TO ANNUALLY ENSURE THAT TOLL PROVIDERS ARE IN COMPLIANCE WITH THEIR DIAL AROUND PAYMENT OBLIGATION?

The PAO has proposed regulations that would require all IXCs operating in Ohio to provide evidence to the Commission that they are meeting their obligation to fully comply with its duty to compensate PSPs for calls using the payphone. As the PAO explained in its Initial Comments, the FCC determined in its *Payphone Order* that the PSP should be permitted to levy a charge against the IXC each time a caller completes a dial around call. *See*, Initial Comments of the PAO at 19-21. The FCC has held that the carrier to whom the call is routed is responsible to track the call and remit the appropriate compensation to the PSP. *Payphone Order* at paras. 50-51.

Unfortunately, many IXCs have failed to live up to their duties under the dial around compensation scheme. The PAO believes that it is incumbent upon any certified carrier in Ohio to be prepared to live up to its obligations and abide by the decisions of the regulatory agencies that govern them. If the IXC is not living up to its duties, then it should not be allowed to operate in the state. For this reason, the PAO proposed that IXCs operating in Ohio submit evidence of either its adherence to the dial around requirements or a plan it will operate under to ensure the proper payments are made.

1. The April 5, 2001 FCC Second Order on Reconsideration in CC Docket 96-128 does not alleviate the need for the proposed regulations.

Ameritech claims in its Initial Comments that the April 5, 2001 Second Order on Reconsideration in 96-128 nullifies the need for additional regulations in Ohio. Ameritech Ohio's Initial Comments at 86. However, Ameritech fails to understand that, even under the new dial around payment scheme, there will still be IXCs responsible to the PSPs for payment of dial around compensation. The need for the proposed regulation still exists. Rather than 150 IXCs required to file the required information under the previous dial around compensation scheme, the new FCC order may lower that number to a significantly fewer number of companies. However, that fact that fewer companies are responsible for tracking and paying the dial around compensation does not mean that the companies that are responsible should not have to comply with the duty to compensate PSPs. Nor does it mean that those obligated companies that do not compensate PSPs are any less culpable than the other IXCs who have been shirking their obligations for years and are now not responsible due to the new order. That is exactly why the PAO made its proposal.

Filing a plan with the Commission will not burden any company that already complies with its obligations under the *Payphone Orders*. For those that are not, they need to know that this Commission will either force them to do so or revoke the IXCs authority to do business in Ohio.

VI. WHETHER THE COMMISSION SHOULD PERMIT PSPs TO IMPOSE PROPERTY IMPOSED FEES (PIFs), SET INTRASTATE NON-COIN SENT CALL RATES WHERE NECESSARY, AND PERMIT PSPs TO CHARGE FOR LOCAL CALLS IN MEASURED OR METERED INCREMENTS?

Rather than adopt rates for non-coin sent traffic, the PAO encourages this Commission to establish state regulations that are consistent with federal regulations and FCC orders regarding rate disclosure of operator provided services and their relationship with end users. As such, there will no longer be a need to set rate caps as the carrier will be forced to divulge the rates up front, before the end user is charged any money. The PAO also urges the commission to adopt regulations that allow for metered or measured increments.

1. Mirroring federal rate disclosure regulations will protect the interests of the end user.

The PAO encourages this Commission to adopt rate disclosure regulations rather than developing a system of rate regulations for operator services. As explained in the PAO's Initial Comments at 19-25, the FCC faced a similar situation several years ago when it investigated the need for a system of rate regulations for operator services. Rather than set rates, the FCC opted instead for a system of full rate disclosure. *See*, 47 C.F.R. Part 64, Subpart G, Section 64.703(4). Under the previous rules, the caller was

forced to call a separate number in order to discover how much the service would cost. Under the new rules, the FCC required the operator services provider ("OSP") to disclose orally how to obtain the total cost of the call prior to connecting the call and incurring an expense.

The PAO seeks to parallel the system established by the FCC for intrastate services in Ohio. Adoption of the proposed regulations proffered by the PAO will result in a better informed customer and better serve the public interest than if the Commission will establish set rates for the services. The PAO finds itself agreeing with the parties urging the Commission to allow the educated payphone customers and the market conditions to determine pricing rather than regulatory impositions. *See*, Ameritech Ohio's Initial Comments at 87; Initial Comments of Verizon at 40.

The PAO does disagree with Ameritech when it claims that the Commission's adoption of the PAO's proposed regulations would conflict with previous FCC decisions. Because the PAO's proposed regulations mirror on an intrastate basis what the FCC adopted on the interstate basis, the PAO's proposed regulations would compliment the federal interstate regulations. The PAO fails to see how its proposed regulations can conflict with federal decisions as Ameritech claims.

2. The Commission should permit PSPs to charge for local calls in measured or metered increments.

In its Initial Comments, the PAO encouraged the Commission to adopt regulations that allowed the PSPs to charge for local calls on a minute of use basis. The PAO noted that many of the ILECs charge the PSPs costs on a timed basis, but the

current regulations force the PSPs to charge its end users a flat rate – thus creating a market distortion. See, Initial Comments of PAO at 26-27.

The carriers in their comments generally agree that the market, not the Commission, should set the prices charged for local calls on payphones. Some parties representing consumer groups, however, do not agree. Representative of this group are the comments provided by AARP. AARP urges the Commission to reject the proposed regulations as questionable and not persuasive, while not making any proposals of their own nor substantively addressing the issue. While AARP's goals of protecting low-income seniors from market based rates may be a laudable goal, the PAO will withhold comment until it sees alternative proposals from the consumer groups.

CONCLUSION

For each of the reasons stated above, the Payphone Association of Ohio again respectfully requests that this Commission adopt the modifications to the Commission's proposed rules as set out in the PAO's Appendix A to its Initial Comments.



By, One of its Attorneys

Henry T. Kelly
Joseph E. Donovan
O'Keefe Ashenden Lyons & Ward
30 North LaSalle
Suite 4100
Chicago, Illinois 60602
(312) 621-0400
(312) 621-0297 facsimile
Hkelly@oalw.com
JEDonovan@oalw.com