

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
North Carolina Payphone Association)	CCB/CPD No. 99-27
Petition for Declaratory Ruling)	
)	
Oklahoma Local Exchange Carrier Petition for)	CCB/CPD No. 99-31
Declaratory Ruling)	
)	
Michigan Payphone Association Petition for)	CCB/CPD No. 99-35
Declaratory Ruling)	

ORDER

Adopted: March 4, 2002

Released: March 5, 2002

By the Chief, Common Carrier Bureau:

1. In this Order, the Common Carrier Bureau (Bureau) addresses three petitions for declaratory ruling in light of the *Wisconsin Order* recently adopted by the Commission.¹ In the *Wisconsin Order*, the Commission interpreted section 276 of the Communications Act of 1934, as amended, and its own precedent as requiring Bell Operating Companies (BOCs) to set their intrastate payphone line rates according to the cost-based, forward-looking “new services” test.² In light of the *Wisconsin Order*, we grant the North Carolina³ and Michigan⁴ petitions for further state commission proceedings consistent with the *Wisconsin Order*, and we deny the Oklahoma⁵ petition.

2. In the North Carolina Petition, petitioners argue that the North Carolina Utilities

¹ *In the Matter of Wisconsin Public Service Commission: Order Directing Filings*, CCB/CPD No. 00-01, *Mem. Op. and Order*, FCC 02-25 (rel. Jan. 31, 2002) (*Wisconsin Order*).

² *Id.* at para. 43. See also *id.* at para. 12 (defining new services test).

³ In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996: Petition of North Carolina Payphone Association for Expedited Review of, and/or Declaratory Ruling Concerning, Local Exchange Company Tariffs for Basic Payphone Services (Aug. 13, 1999) (North Carolina Petition).

⁴ In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996: The Michigan Pay Telephone Association’s Petition for Declaratory Ruling Regarding the Prices Charged by Ameritech Michigan and GTE North, Inc. for Network Access Services Made Available to Payphone Providers in Michigan (Nov. 10, 1999) (Michigan Petition).

⁵ In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996: Oklahoma Independent Telephone Companies Petition for Declaratory Ruling (Sept. 22, 1999) (Oklahoma Petition).

Commission (NCUC) did not comply with section 276 and Commission precedent in setting local payphone line rates above cost.⁶ They claim that the NCUC set such rates according to a revenue ratio test and did not require the incumbent LEC to develop cost-based line rates or justify its overhead allocation.⁷ Similarly, in the Michigan Petition, petitioners state that the Michigan Public Service Commission (MPSC) erred by dismissing a complaint alleging that the incumbent LECs' intrastate payphone line rates were not set according to the new services test.⁸ These petitioners also argue that the incumbent LECs set overhead ratios at levels that improperly subsidized other services.⁹

3. The decisions of both the NCUC and MPSC appear to be inconsistent with the *Wisconsin Order*. The Commission concluded in the *Wisconsin Order* that BOCs' intrastate payphone line rates must be set according to the new services test and that BOCs may not recover more than a reasonable amount of overhead.¹⁰ The *Wisconsin Order* also provided several methods for calculating an acceptable overhead allocation and stated that BOCs should adjust payphone line rates to account for the Subscriber Line Charge.¹¹ Consistent with their own procedures, the NCUC and MPSC should re-evaluate their respective decisions concerning the pricing of BOCs' intrastate payphone line rates and overhead ratios to ensure compliance with the *Wisconsin Order*.¹²

4. In the Oklahoma Petition, petitioners are a group of non-BOC incumbent LECs seeking a determination that the Corporation Commission of Oklahoma (CCO) erred in precluding them from introducing evidence showing that their payphone line rates are cost-based.¹³ The CCO ruling, petitioners claim, will prevent them from collecting compensation from payphone service providers.¹⁴

5. As a matter of jurisdiction under section 276, the *Wisconsin Order* rulings do not extend to non-BOC LECs. The Oklahoma Petition was filed by a group of independent incumbent LECs,¹⁵ which are not required to comply with the rulings in the *Wisconsin Order*

⁶ The North Carolina Court of Appeals recently reversed and remanded the NCUC decision that is the subject of the instant petition; the appellate court's ruling is presently under review in the North Carolina Supreme Court. See *State of North Carolina ex rel. Utilities Comm'n v. North Carolina Payphone Ass'n*, No. COA00-178 (N.C. Ct. App. Jan. 2, 2002) (unpublished disposition), *appeals and petition for discretionary review filed*, No. 78A02 (N.C. filed Feb. 6, 2002).

⁷ NCPA Petition at 29-35.

⁸ Michigan Petition at 12-14.

⁹ *Id.* at 16-18.

¹⁰ *Wisconsin Order* at paras. 51-58.

¹¹ *Id.* at paras. 59-61.

¹² As the Commission noted in the *Wisconsin Order*, however, the MPSC, like any state commission, may also choose to apply the *Wisconsin Order* to non-BOC LECs as a matter of state law. See *infra* nn.15-17 and accompanying text.

¹³ Oklahoma Petition at 4-7.

¹⁴ *Id.* at 2 & n.5.

¹⁵ *Id.* at 1 n.1.

that apply to BOCs only.¹⁶ This limitation is one of federal jurisdiction, not discretion, although the CCO may certainly choose to apply the new services test to all incumbent LECs, whether BOC or not.¹⁷

ORDERING CLAUSE

6. Accordingly, pursuant to sections 4(i), 205, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 205, and 276, and sections 0.91, 0.291, and 1.2 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.2, IT IS HEREBY ORDERED that the petitions for declaratory ruling filed by the North Carolina Payphone Association and the Michigan Pay Telephone Association are GRANTED for further state commission proceedings consistent with the Commission's *Wisconsin Order* and that the petition for declaratory ruling filed by the Oklahoma Independent Telephone Companies is hereby DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Dorothy T. Attwood
Chief, Common Carrier Bureau

¹⁶ See *Wisconsin Order* at para. 42.

¹⁷ See *id.*