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

In the Matter of	)	
	)	CC Docket 97-140
Local Exchange Carriers'	)	
Payphone Functions and Features	)	
	)	
Bell Atlantic Telephone Companies	)	
Revisions to Tariff F.C.C. No. 1	)	Transmittal Nos. 962 and 966
	)	
GTE System Telephone Companies	)	
Revisions to Tariff F.C.C. No. 1	)	Transmittal No. 206
	)	
GTE Telephone Operating Companies	)	
Revisions to Tariff F.C.C. No. 1	)	Transmittal No. 1095

ORDER DESIGNATING ISSUES FOR INVESTIGATION

Adopted: August 18, 1997 **Released: August 19, 1997**

Filing Schedule

Direct Case: September 3, 1997
Oppositions or Comments: September 10, 1997
Rebuttal: September 17, 1997

By the Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On May 19, 1997, the Bell Atlantic Telephone Companies (Bell Atlantic), GTE Systems Telephone Companies (GSTC), and GTE Telephone Operating Companies (GTOC) filed Transmittal Nos. 962, 206, and 1095, respectively, to make available under their federal access tariffs various payphone features and functions.[1] The American Public Communications Council (APCC) filed petitions urging the Commission to reject, or alternatively, to suspend and

[1] Bell Atlantic Access Tariff FCC No. 1, Transmittal No. 962; GSTC Access Tariff FCC No. 1, Transmittal No. 206; and GTOC Access Tariff FCC No. 1, Transmittal No. 1095.

investigate these transmittals.[2] Replies to these petitions were filed jointly by GSTC and GTOC and by Bell Atlantic.[3] On June 2, 1997, the Competitive Pricing Division (Division) of the Common Carrier Bureau (Bureau) released the *LEC Payphone Functions and Features Suspension Order*, in which it concluded that the Bell Atlantic, GSTC and GTOC (collectively "GTE") tariffs raised questions of lawfulness.[4] The Division ordered the carriers to advance by one day the effective date of each of these transmittals, to June 2, 1997, suspended each transmittal for one day to June 3, 1997, initiated an investigation, and imposed an accounting order.[5] On June 9, 1997, Bell Atlantic filed Transmittal No. 966, which, among other things, adjusts a rate that it states was incorrectly displayed in its earlier Transmittal No. 962. On June 11, 1997, the Division released an order finding that Bell Atlantic's proposed rate adjustment raised the same issues of lawfulness as Transmittal No. 962.[6] Accordingly, the Division suspended Transmittal No. 966 for one day insofar as it proposed to adjust rates made available under Transmittal No. 962. In addition, the Division instituted an investigation of that part of the transmittal, consolidated that investigation with the pending investigation of Bell Atlantic Transmittal No. 962, and imposed an accounting order.[7] In this Order, we designate issues for investigation Bell Atlantic's Transmittal Nos. 962 and 966, GSTC's Transmittal No. 206, and GTOC's Transmittal No. 1095.

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[2] Petitions of APCC to Suspend and Investigate Bell Atlantic Transmittal No. 962 ("APCC (BA) Petition"), GSTC Transmittal No. 206 ("APCC (GSTC) Petition"), and GTOC Transmittal No. 1095 ("APCC (GTOC) Petition").

[3] Reply of Bell Atlantic to APCC Petition to Suspend and Investigate Bell Atlantic Transmittal No. 962 ("Bell Atlantic Reply"); Reply of GTE Service Corporation to APCC Petition to Suspend and Investigate GSTC Transmittal No. 206 and GTOC Transmittal No. 1095 ("GTE Reply").

[4] *Local Exchange Carriers' Payphone Functions and Features*, CC Docket No. 97-140, Suspension Order, DA 97-1149 (rel. June 2, 1997) (*Suspension Order*). The *Suspension Order* also suspended and initiated an investigation of the NYNEX Telephone Companies (NYNEX) Transmittal No. 452. On July 2, 1997, the Division, on its own motion, reconsidered that Order with respect to NYNEX Transmittal No. 452 and found, based on the record before it, that the NYNEX transmittal did not warrant investigation and that the investigation of the transmittal should be terminated. *Local Exchange Carriers' Payphone Functions and Features*, CC Docket No. 97-140, Order on Reconsideration, DA 97-1396 (rel. July 2, 1997).

[5] *Local Exchange Carriers' Payphone Functions and Features*, CC Docket No. 97-140, Erratum, DA 97-74559 (rel. June 5, 1997).

[6] *Local Exchange Carriers' Payphone Functions and Features*, CC Docket No. 97-140, Suspension Order, DA 97-1233 (rel. June 11, 1997).

[7] *Id.*

II. BACKGROUND

2. The *Payphone Reclassification Orders*[8] advanced the twin goals of Section 276 of the Communications Act (Act) of 1934, as amended: "promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public."[9] In the *Payphone Order*, the Commission required, among other things, that local exchange carriers (LECs) tariff payphone services at the federal level.[10] The *Payphone Order* also required that network services provided by a LEC to its own payphone operations be federally tariffed as well.[11] In the *Payphone Reconsideration Order*, the Commission required LECs to file tariffs for basic payphone lines at the state level only, but required that unbundled features and functions provided by the LEC to its own payphone operations or to others be tariffed at both the state and federal levels.[12]

3. In the *Payphone Clarification Order*, the Bureau clarified the interstate tariffing requirements for unbundled features and functions.[13] In addition, the Bureau restated that tariffs for payphone services, including unbundled features and functions filed pursuant to the *Payphone Reclassification Proceeding*, must be cost-based, nondiscriminatory, and consistent with both Section 276 and the *Computer III* tariffing guidelines.[14] Finally, the *Payphone Clarification Order* granted a limited waiver of the deadline for filing the federal tariffs for unbundled features and functions allowing LECs to file the required tariffs within 45 days after the release of that Order, with a scheduled effective date no later than 15 days after the date of filing.[15]

III. TRANSMITTAL AND PLEADING SUMMARY

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[8] *Implementation of the Pay Telephone Reclassification And Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541 (1996) (*Payphone Order*); Order on Reconsideration, 11 FCC Rcd 21233 (1996) (*Payphone Reconsideration Order*), *aff'd in part and remanded in part, sub nom.* Illinois Public Telecommunications Assn. v. FCC and United States, Case No. 96-1394 (D.C. Cir. July 1, 1997).

[9] 47 U.S.C. § 276(b)(1).

[10] *Payphone Order,* 11 FCC Rcd at 20615.

[11] *Id.* at 20615-16.

[12] *Payphone Reconsideration Order,* 11 FCC Rcd at 21307-09.

[13] *Implementation of the Payphone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket 96-128, Order, DA 96-678 (Com. Car. Bur., rel. April 4, 1997) (*Payphone Clarification Order).*

[14] *Payphone Clarification Order* at para. 2, *citing Payphone Reconsideration Order,* 11 FCC Rcd at 21308.

[15] *Id.* at para. 1.

A. Bell Atlantic Transmittal No. 962

4. In Transmittal No. 962, Bell Atlantic proposes to include in its federal access tariff six unbundled payphone features currently offered under its state tariffs to payphone service providers (PSPs).[16] These services assist independent PSPs in making payphone services available to the public, for example, by helping them prevent fraudulent calls from their payphones.

5. APCC petitions for suspension and investigation of this Bell Atlantic transmittal because, in its view, the proposed charges for many of these features are greatly in excess of Bell Atlantic's disclosed costs and, thus, fail to meet the requirements of Section 276 of the Act[17] and the Commission's *Payphone Orders*. For example, APCC contends Bell Atlantic's proposed overhead loadings on its direct charges for certain of these features fail to meet the requirements of the new services test applicable to such rates.[18] Bell Atlantic replies that its proposed rates are just and reasonable when viewed in the context of its overall payphone service, as well as when viewed in isolation.[19] Bell Atlantic adds that it set these rates to remain compensatory while avoiding arbitrage between its interstate and intrastate rates, and that its overall overhead loadings for these payphone services are reasonable when compared with other services that it offers.[20]

B. GTE System Telephone Companies Transmittal No. 206 and GTE Telephone Operating Companies Transmittal No. 1095

6. In these two transmittals, GTE proposes to add to its two federal access service tariffs an unbundled, payphone-specific feature called Selective Class of Call Screening (SCOCS), which blocks outgoing 1+, 0+, and 0- calls that are charged to the originating number. In these transmittals, GTE also clarifies certain matters unrelated to payphone features, such as the application of its multiline end-user subscriber line charges and the addition of certain provisions

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16 Bell Atlantic Transmittal No. 962, Description and Justification (D&J) at 2. These unbundled Bell Atlantic features are line-side answer supervision (LSAS), inward callblocking, outward callblocking, incoming/outgoing call screening, outward call screening, and limited interLATA dialing. *Id.* Pursuant to Section 276(d) of the Act, the term "payphone service" is defined as "the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services." 47 U.S.C. § 276(d).

17 47 U.S.C. § 276.

18 APCC (BA) Petition at 1, 6. For Bell Atlantic's recurring rates on five of these six unbundled services, APCC contends that the rate to cost (or overhead) ratios range from 27 to over 3400.

19 Bell Atlantic Reply at 2-3.

20 *Id.*

regarding the warehousing and hoarding of toll-free subscriber numbers.[21]

7. APCC petitions for suspension and investigation of each of these transmittals because, in its view, GTE's direct costs are far in excess of the costs reported for similar services by other major LECs.[22] Therefore, APCC asserts, these companies' proposed tariff revisions fail to meet the requirements of Section 276 of the Act and the Commission's *Payphone Orders*. More specifically, APCC contends the disparities between the direct costs of GTE and other companies prevent GTE's proposed rates from meeting the requirements of the new services test.[23] GTE replies that its proposed tariff revisions meet the required new services criteria and that it will revise its tariff to clarify that its federal tariff includes all unbundled screening features.[24]

IV. ISSUES DESIGNATED FOR INVESTIGATION

8. The *Suspension Order* concluded that the transmittals described above raise significant questions of lawfulness, including whether they are unreasonably discriminatory in violation of Section 202(a) of the Communications Act, whether they contain any unjust and unreasonable charges, practices, classifications, or regulations in violation of Section 201(b) of the Act, and whether they include any subsidy, preference, or discriminatory provision in violation of Section 276 of the Act.[25] As set forth below, we now designate in greater detail issues to be investigated in the transmittals noted above.

1. Bell Atlantic Transmittal No. 962

Issue A: Whether Bell Atlantic's proposed overhead loading on its direct costs for unbundled payphone features is unreasonable and excessive under the new services test.

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[21] GTOC Tariff F.C.C. No. 1, Transmittal No. 1095, and GSTC Tariff F.C.C. No. 1, Transmittal No. 206, both issued May 19, 1997. We excluded from the application of the *LEC Payphones Functions and Features Suspension Order* the tariff revisions included in these two transmittals that are unrelated to GTE's provision of payphone features and functions. Those provisions became effective on June 3, 1997.

[22] GSTC's cost justification is based upon a claimed investment of about $50 per line, which APCC contends, is far higher than the investment reported for similar features by other large LECs such as Bell Atlantic, Southwestern Bell, and US West. APCC asserts these other LECs report direct investments of $1.50 for similar features. APCC (GSTC) Petition at 6.

[23] APCC (GTE Companies) Petition at 1 and 6.

[24] GTE Companies Reply at 2. *See* GTOC Transmittal No. 1105 and GSTC Transmittal No. 213 filed July 9, 1997.

[25] *Suspension Order* at para. 9.

9. In the *Payphone Order*, the Commission concluded that the "new services" test should be used to price payphone services.[26] Pursuant to the *BOC ONA Proceeding*,[27] and the *Part 69 ONA Order*,[28] the new services test is a cost-based test that establishes the direct cost of providing the new service as a price floor.[29] LECs then add a reasonable level of overhead costs to derive the overall price of the new service.[30]

10. In reviewing Bell Atlantic's transmittal regarding the proposed payphone features, we have examined the ratios of rates to direct costs, which provide a measure of the overhead loadings. We find that the rates for these payphone features range from a low of 27 times greater than the direct costs to a high of more than 6,900 times greater than the direct costs. The current record does not justify such high levels of rates in relation to direct costs. We therefore direct Bell Atlantic to explain why these services should recover such a large share of Bell Atlantic's overhead costs.

Issue B: Whether Bell Atlantic's determination of rates is consistent with the "new services test."

11. Bell Atlantic notes in its Description and Justification (D&J) that it determined the rates for these six unbundled payphone features on the basis of "the cost, the pricing of these service features as they currently exist in Bell Atlantic's intrastate tariffs, the available competitive alternatives, and other information on the value of these services."[31] Upon initial analysis, we find that Bell Atlantic has set rates based on considerations not relevant under the

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26 *Payphone Order*, 11 FCC Rcd at 20614.

27 *Filing and Review of Open Network Architecture Plans*, CC Docket No. 88-2, Memorandum Opinion and Order, 4 FCC Rcd 1 (1988) (*BOC ONA Order), recon., Filing and Review of Open Network Architecture Plans*, Memorandum Opinion and Order on Reconsideration, 5 FCC Rcd 3084 (1990) (*BOC ONA Reconsideration Order*); *Filing and Review of Open Network Architecture Plans*, Memorandum Opinion and Order, 5 FCC Rcd 3103 (1990) (*BOC ONA Amendment Order*) *erratum, Filing and Review of Open Network Architecture*, Erratum, 5 FCC Rcd 4045, *pets. for review denied, California v. FCC*, 4 F.3 1505 (9th Cir. 1993), *recon., Filing and Review of ONA Plans*, Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 97 (1993) (*BOC ONA Amendment Reconsideration Order*); *Filing and Review of Open Network Architecture Plans*, Memorandum Opinion and Order, 6 FCC Rcd 7646, 7649-50 (1991) (*BOC ONA Further Amendment Order), pet. for review denied. California v. FCC*. 4 F.3d 1505 (9th Cir. 1993) (collectively "*BOC ONA Proceeding*").

28 *Amendment 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, Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 4524 (1991) (*Part 69 ONA Order*).

29 *Part 69 ONA Order*, 6 FCC Rcd at 4531.

30 *Part 69 ONA Order*, 6 FCC Rcd at 4531. For purposes of this order, an overhead loading is defined as the percent by which a rate exceeds the direct cost for a particular service.

31 Bell Atlantic D&J at 8.

new services test. We therefore direct Bell Atlantic to explain in detail how its development of rates for these features complies with the new services test, Section 276, and the *Payphone Orders*.

2. GSTC Transmittal No. 206 and GTOC Transmittal No. 1095

Issue A: Whether GSTC's and GTOC's direct investment for SCOCS is reasonable.

12. In its petition, APCC points out that GTE's cost justification for SCOCS in the GSTC and GTOC transmittals is based upon a claimed investment of about $50 per line. APCC contends that this amount is far higher than the investment reported for similar features by other large LECs.[32] APCC asserts that other LECs report direct investment of $1.50 for similar features.[33]

13. In reply, GTE states that it is unable to determine how other LECs developed their cost information, but that in any event its proposed rates are reasonably similar to the rates proposed by other LECs for similar services.[34] GTE contends that the rates proposed in its transmittals recover the direct costs of the service plus a reasonable share of joint and common costs and thus meet the requirements of the "new services test."[35]

14. We have analyzed GTE's cost support for SCOCS and find that its direct investment for SCOCS is significantly higher than the direct investments reported by other LECs, including Bell Atlantic, for similar services. For example, Bell Atlantic reports a direct investment of $1.50 for a similar service. We therefore tentatively conclude that GTE's direct investment of $50 per line for SCOCS is unreasonable. We find irrelevant to our assessment of GTE's compliance with the new services test its argument that its proposed rates for SCOCS satisfy the test because the rates are similar to the rates proposed by Bell Atlantic for its outward call screening feature, the service most similar to GTE's SCOCS. The issue is whether GTE's rates are based on its direct cost of providing SCOCS. In addition, we note that Bell Atlantic's rates for this service are also being investigated in this proceeding. To ensure that GTE's rates for SCOCS do not contain any unjust and unreasonable charges in violation of Section 202(a) of the Act and are consistent with Section 276, we direct GTE to provide detailed information regarding its derivation of the unit investment of $50 per line for SCOCS.

Issue B: Whether GTE's rates for SCOCS are consistent with the "new services

[32] APCC (GSTC) Petition at 6-7; APCC (GTOC) Petition at 6-7.

[33] *Id.*

[34] GTE Reply at 3.

[35] *Id.*

test."

15. APCC contends that GTE's imposition of nonrecurring installation charges for its SCOCS service is arbitrary.[36] For example, it points out that GTE's Transmittal No. 206 for one geographic area sets a $1.99 monthly charge for SCOCS with no nonrecurring charges whereas Transmittal No. 1095, for another geographic area establishes a $23.00 nonrecurring charge for SCOCS and discounts the monthly charge by only $0.30 at $1.69.[37]

16. GTE states that its rates for SCOCS are recovered through both recurring and nonrecurring charges.[38] Furthermore, it indicates that, where feasible, it mirrored the nonrecurring installation charges contained in its existing local exchange tariffs in an effort to minimize arbitrage and tariff shopping that might result between GTE's federal and local exchange tariffs. GTE explains that the variance in nonrecurring installation charges for SCOCS in GTE's services areas is attributable to differences in investment costs in the two service areas covered by Transmittal Nos. 206 and 1095 and the fact that the existing local exchange tariff for one service area does not include a recurring charge while the local exchange tariff for the other service area does include a nonrecurring charge.[39] In any event, GTE states that the proposed rates for SCOCS only recover the direct cost of the service plus a reasonable allocation of company overheads.[40] Based on our analysis, we are concerned that by mirroring the nonrecurring installation charges contained in its existing local exchange tariffs, GTE has set rates for SCOCS based on considerations not relevant under the new services test. We therefore direct GTE to explain in detail how its determination of rates complies with the new services test, Section 276, and the *Payphone Orders*. In particular, we direct GTE to demonstrate how the nonrecurring charges and any recurring charges for SCOCS individually comply with the new services test.

V. PROCEDURAL MATTERS

A. Filing Schedules

17. This investigation will be conducted as a notice and comment proceeding to which the procedures set forth below shall apply. Bell Atlantic, GSTC, and GTOC shall file a direct case addressing each issue designated above no later than 15 days after release of this Order.

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[36] APCC (GTE Companies) Petition at 7.

[37] *Id.*

[38] GTE Reply at 4.

[39] *Id.* at 5.

[40] *Id.*

18. Pleadings responding to the direct cases may be filed no later than 7 days after filing of the direct case and must be captioned "Opposition to Direct Case" or "Comment to the Direct Case." "Rebuttals" to the oppositions or comments may be filed no later than 7 days after the filing of comments on or oppositions to the direct case.

19. An original and seven copies of all pleadings must be filed with the Secretary of the Commission. In addition, one copy must be delivered to the Commission's commercial copying firm, International Transcription Service, Room 246, 1919 M Street, N.W., Washington, D.C. 20554. Also, one copy must be delivered to the Competitive Pricing Division, Room 518, 1919 M Street, N.W., Washington, D.C. 20554. Member of the general public who wish to express their views in an informal manner regarding the issues in this investigation may do so by submitting one copy of their comments to the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Such comments should specify the docket number of this investigation.

B. *Ex Parte* Requirements

20. This proceeding is designated non-restricted for purposes of the Commission's *ex parte* rules. *Ex parte* contacts, (*i.e.,* written or oral communications that address the procedural or substantive merits of the proceeding and are directed to any member, officer, or employee of the Commission who may reasonably be expected to be involved in the decisional process in this proceeding) are permitted in this proceeding until the commencement of the Sunshine Agenda period. The Sunshine Agenda period terminates when a final order is released and the final order is issued. Written *ex parte* contacts and memoranda summarizing oral *ex parte* contacts must be filed on the day of the presentation with the Secretary and Commission employees receiving each presentation. For other requirements, see generally Section 1.1200 *et seq.* of the Commission's Rules, 47 C.F.R. §§ 1.1200 *et seq.*

VI. ORDERING CLAUSES

21. IT IS ORDERED, that pursuant to Sections 4(i), 201(b), 202(a), 204, and 205 of the Communications Act, 47 U.S.C. §§ 154(i), 201(b), 202(a), 204 and 205, and Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, the issues set forth in this Order ARE DESIGNATED FOR INVESTIGATION.

22. IT IS FURTHER ORDERED that the Bell Atlantic Telephone Companies, GTE System Telephone Companies, and GTE Telephone Operating Companies SHALL BE PARTIES TO THIS PROCEEDING.

23. IT IS FURTHER ORDERED THAT the Bell Atlantic Telephone Companies, GTE System Telephone Companies, and GTE Telephone Operating Companies SHALL EACH FILE a direct case addressing each issue designated above no later than 15 days after the release of this Order.

24. IT IS FURTHER ORDERED that Pleadings responding to the direct cases SHALL BE FILED no later than 7 days after filing the direct case and must be captioned "Oppositions to Direct Case" or Comment to the Direct Case."

25. IT IS FURTHER ORDERED that "Rebuttals" to the opposition or comments may be filed no later than 7 days after the filing of comments or oppositions to the direct cases.

FEDERAL COMMUNICATIONS COMMISSION

A. Richard Metzger, Jr.

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Deputy Chief, Common Carrier Bureau.