

ORIGINAL

TOBIN & REYES, P.A.

LAW OFFICES
7251 WEST PALMETTO PARK ROAD
SUITE 205
BOCA RATON, FLORIDA 33433-3487
TELEPHONE (561) 620-0656
FACSIMILE (561) 620-0657

DAVID S. TOBIN
RICARDO A. REYES
JOSEPH R. GIBSON

WRITER'S E-MAIL
dst@tobinreyes.com

March 22, 2004

Via Hand Delivery

Ms. Blanca S. Bayó
Division of Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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MAR 22 4:23 PM
COMMISSION
CLERK

Re: In Re: Petition of Florida Public Telecommunications Association for Expedited Review of BellSouth Telecommunications, Inc.'s Tariffs with respect Rates for Payphone Line Access, Usage, and Features, Docket No. DN 030300-TD

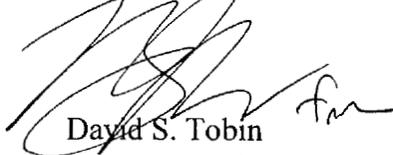
Dear Ms. Bayo:

Enclosed is an original and fifteen copies of the Florida Public Telecommunications Association, Inc.'s Prehearing Statement, which we ask that you file in the above referenced docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached certificate of service.

Very truly yours,

TOBIN & REYES, P.A.


David S. Tobin

AUS _____
CAF _____
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Enclosure

DOCUMENT NUMBER-DATE

03809 MAR 22 04

FPSC-COMMISSION CLERK

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition of Florida Public)
Telecommunications Association)
for Expedited Review of BellSouth)
Telecommunications, Inc.'s Tariffs)
with respect Rates for Payphone)
Line Access, Usage, and Features.)

Docket No.: DN 030300-TD
March 22, 2004

**PREHEARING STATEMENT OF
THE FLORIDA PUBLIC TELECOMMUNICATIONS ASSOCIATION, INC.**

The Florida Public Telecommunications Association, Inc. ("FPTA") hereby files its Prehearing Statement Pursuant to Order No. PSC-0301066-TP, issued September 24, 2004.

A. All Known Witnesses.

Witness

Bruce W. Renard
Don J. Wood
Kathy K. Blake
D. Daonne Caldwell

B. All Known Exhibits.

Letter from Michael K. Kellog to Mary Beth Richards dated April 19, 1997, regarding request for a limited waiver of the Federal Communications Commission's intrastate tariffing requirements for basic payphone lines and unbundled features and functions.

Exhibits DJW-1 and DJW-2

Exhibits DDC-1 and DDC-2

DOCUMENT NUMBER-DATE

03809 MAR 22 04

FPSC-COMMISSION CLERK

FPTA reserves the right to use appropriate cross-examination exhibits. Additionally, FPTA reserves the right to sponsor such exhibits as may be required by the addition or deletion of issues that may occur as a result of the Prehearing Conference. Finally, this list of Exhibits is preliminary. FPTA reserves the right to add exhibits to this list based upon all the evidence in the record after completion of discovery.

C. FPTA's Statement of Basic Position.

In Docket No. 970281-TL, PAA Order No. PSC-98-1088-FOF-TL (the "1998 Order"), issued on August 11, 1998, this Commission determined BellSouth's intrastate payphone rates to be in compliance with the FCC's "new services test." However, this Commission issued that order without the benefit of the FCC's *Wisconsin Order* and the FCC's many orders interpreting Section 276 of the Act. As a result, the Commission's 1998 Order is in direct conflict with the FCC's *Wisconsin Order*. The *Wisconsin Order* preempts any state requirements inconsistent with the FCC's regulations implemented pursuant to Section 276(b)(1).

BellSouth continued to charge and collect EUCL from PSPs despite clear orders by the FCC that charging and collecting EUCL from PSPs constitutes a violation of Section 276 of the Telecom Act. Additionally, notwithstanding the FCC's many orders implementing Section 276 of the Act, BellSouth continues to charge illegal PTAS rates. In her direct testimony filed in this proceeding, Ms. Kathy Blake of BellSouth testifies that "BellSouth's costs to provide PTAS service, including overhead loadings, on a statewide average basis is \$24.63." Although FPTA believes that rate to be excessive, BellSouth's current rates, which are as high as \$36.23, or \$11.60 more than BellSouth's admitted cost, are not cost based in compliance with the new services test.

The 1998 Order does not forever relieve BellSouth of its obligations under Federal law to offer cost-based PTAS rates in compliance with Section 276 of the Telecom Act. The Commission must find that BellSouth has an affirmative and continuing obligation to offer cost based PTAS rates in compliance with the new services test. Neither the FPTA, Commission Staff, nor any other third party should be burdened with the obligation to police BellSouth's PTAS rates to ensure that BellSouth's PTAS rates comply with Federal law. Any other finding would turn Section 276 of the Telecommunications Act and the FCC's many subsequent orders interpreting Section 276 of the Act, particularly the *Wisconsin Order*, directly on its head.

Finally, this Commission cannot permit BellSouth to retain the unlawful profits it has collected since April 15, 1997 by illegally overcharging payphone service providers. There can be no doubt that BellSouth has overcharged PSPs by charging and collecting EUCL charges and excessive rates. To allow BellSouth to retain those unlawful profits to the detriment of the payphone industry would continue to negatively impact the widespread deployment of payphones in the State of Florida in violation of Section 276 of the Telecom Act.

D. FPTA's Position on the Issues.

Issue 1(a): Has BellSouth reduced its intrastate payphone line rates by the amount of the interstate EUCL? If not, has BellSouth ceased charging the EUCL on payphone lines?

FPTA: BellSouth claims that it filed a revision to its General Subscriber Service Tariff, Section A7.4 to reduce the Florida payphone rates by the EUCL amount on October 27, 2003, which, BellSouth claims, became effective November 19, 2003. FPTA contends that although BellSouth filed its tariff, it continues to include EUCL on its invoices for PTAS.

Issue 1(b): As of what date was BellSouth required to reduce its intrastate payphone line rates by the amount of the interstate EUCL?

FPTA: BellSouth was required to reduce its intrastate payphone line rates by the amount of the interstate EUCL on or before April 15, 1997.

Issue 1(c): Can the FPSC order refunds to FPTA's members for the time period bracketed between (a) and (b)? If so, what is the amount of any required refunds and how should any refunds be effected?

FPTA: Yes, the Commission must order refunds. The amount of the refund should be the amount paid to BellSouth by payphone service providers for EUCL since April 15, 1997. A calculation of the refund due cannot be made until discovery in this matter is completed. The refunds should be effected by payment of the amount of EUCL as soon as reasonably practicable after the Commission's decision in this proceeding.

Issue 2. In Docket No. 970281-TL, PAA Order No. PSC-98-1088-FOF-TL, issued on August 11, 1998, this Commission determined BellSouth's intrastate payphone rates to be in compliance with the FCC's "new services" test.

Issue 2(a): Are BellSouth's intrastate payphone rates no longer compliant with the new services test? If so, when did they become noncompliant?

FPTA: BellSouth's rates are not currently in compliance with the new services test. Since the effective date of PAA Order No. PSC-98-1088-FOF-TL, BellSouth's costs have continuously trended downward (this Commission's orders regarding UNE rates are consistent with such an observation). A determination of the exact date that BellSouth's costs were reduced cannot be made until discovery in this matter is completed. However, FPTA believes that BellSouth's intrastate payphone rates were not compliant with the new services test shortly after the effective date of PAA Order No. PSC-98-1088-FOF-TL. As the FCC has made clear, the

application of the new services test is a dynamic and ongoing process that recognizes changes in cost levels over time.

Issue 2(b): If BellSouth's intrastate payphone rates are not compliant with the new services test, at what rate levels will BellSouth's intrastate payphone rates comply with the new services test?

FPTA: Based upon the cost study attached to Ms. Caldwell's direct testimony filed by BellSouth in these proceedings, BellSouth's intrastate payphone rates must be \$17.33, including the federal EUCL charge.

Issue 2 (c): Can this Commission order BellSouth to revise its intrastate payphone rates? If so, as of what date should any such rate changes be effective?

FPTA: Yes. This Commission has the authority and must require BellSouth to reduce its intrastate rates for payphone access services. Compliant rates should be required to be in place as soon as reasonably practicable after the Commission's decision in this proceeding.

Issue 2(d): If BellSouth's payphone rates became noncompliant with the new services test, can the FPSC order refunds to FPTA's members for the time period from when they became noncompliant to the date identified in Issue 2(c)? If so, what is the amount of any required refunds, and how should any refunds be effected?

FPTA: Yes. This Commission must require BellSouth to refund the difference between compliant rates and the rates actually charged to FPTA members. A calculation of the refund due for each time period cannot be calculated until discovery in this matter is completed.

E. Stipulated Issues.

The parties have not stipulated to any issues in this proceeding.

F. Pending Motions.

FPTA has no pending motions.

G. Pending Confidentiality Claims or Requests.

FPTA has no pending confidentiality claims or requests.

H. Compliance with Order No. PSC-03-1066-PCO-TP.

FPTA has complied with all requirements of the Order Establishing Procedure entered in this docket.

Respectfully submitted this 22nd day of March, 2004.

A handwritten signature in black ink, appearing to read "David S. Tobin", is written over a horizontal line.

David S. Tobin, Esq.
Tobin & Reyes, P.A.
7251 West Palmetto Park Road
Suite 205
Boca Raton, Florida 33433
(561) 620-0656
(561) 620-0657 (fax)

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Docket No.: DN 030300-TD

March 22, 2004

I HEREBY CERTIFY that one copy of FPTA's Prehearing Statement has been furnished by U.S. Mail, this 22nd day of March, 2004, to the following:

Meredith E. Mays
Regulatory Counsel
BellSouth Corporation
Legal Department
675 West Peachtree Street
Suite 4300
Atlanta, Georgia 30375-0001

Nancy White
General Counsel – Florida
BellSouth Telecommunications, Inc.
150 West Flagler Street
Suite 1910
Miami, Florida 33130



David S. Tobin, Esq.
Tobin & Reyes, P.A.
7251 West Palmetto Park Road
Suite 205
Boca Raton, Florida 33433
(561) 620-0656
(561) 620-0657 (fax)