

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

In the Matter of)	
)	
BELL ATLANTIC-DELAWARE, et al.,)	
)	
Complainants,)	
)	
v.)	File No. E-98-48
)	
FRONTIER COMMUNICATIONS)	
SERVICES, INC., et al.,)	
)	
Defendants;)	
)	
and)	
)	
AMERITECH ILLINOIS, PACIFIC BELL, et al.,)	
)	
Complainants,)	
)	
v.)	File Nos. E-98-50, E-98-54,
)	E-98-55, E-98-56, E-98-57,
FRONTIER COMMUNICATIONS)	E-98-58, E-98-59, and E-98-60
SERVICES, INC. et al.,)	
)	
Defendants.)	
)	

ORDER ON REVIEW

Adopted: April 14, 2000

Released: April 20, 2000

By the Commission:

I. INTRODUCTION

1. In this Order, we deny Applications for Review of two orders issued by the Common Carrier Bureau (Bureau) granting formal complaints brought by several Bell Operating Companies asserting that Defendants failed to pay payphone compensation as required by the Commission's rules.

Upon review, we find that the Bureau properly addressed and correctly resolved each of the issues raised by petitioners.¹

2. Complainants in this proceeding are Bell Operating Companies (BOCs)² that are also payphone service providers (PSPs). Petitioners Frontier Communications Services, et al. (Frontier) are providers of interstate and intrastate telephone toll service.³

3. In the *Payphone Orders*,⁴ we adopted rules and policies governing the payphone industry to implement Section 276 of the Telecommunications Act of 1996 (1996 Act). Specifically, these orders set forth rules implementing the statutory mandate that PSPs be “fairly compensated for each and every” call from their payphones.⁵ As part of that proceeding, we concluded that interexchange carriers (IXCs) receiving calls originating from payphones should compensate the PSP because the IXCs were the primary beneficiaries of such calls. We further concluded that local exchange carrier (LEC) PSPs would be eligible to receive compensation for completed calls originated from their payphones once the LEC “was able to certify” that it had complied with compensation eligibility prerequisites set forth in the *Order on Reconsideration*.⁶ Specifically, we stated that:

To receive compensation, a LEC must be able to certify the following: 1) it has an effective cost accounting manual (“CAM”) filing; 2) it has an effective interstate CCL tariff reflecting a reduction for deregulated payphone costs and reflecting additional multiline subscriber line charges (“SLC”) revenue; 3) it has effective interstate tariffs reflecting the removal of charges that recover the costs of payphones and any intrastate subsidies; 4) it has deregulated and reclassified or transferred the value of payphone customer premises equipment (“CPE”) and related costs as required in the Report and Order; 5) it has in effect intrastate tariffs for basic payphone service (for “dumb” and “smart” payphones); and 6) it has in effect intrastate and interstate tariffs for unbundled functionalities

¹ See, *In the Matter of Bell-Atlantic Delaware, et al. v. Frontier Communications, et al.*, Memorandum Opinion and Order, 14 FCC Rcd 16,050 (Com. Car. Bur. 1999) (*Bell Atlantic Order*); *In the Matter of Ameritech Illinois, U S West Communications, Inc., et al. v. MCI Telecommunications Corporation*, Memorandum Opinion and Order, 14 FCC Rcd 18,643 (Com. Car. Bur. 1999) (*Ameritech Order*) (jointly Bureau Orders).

² See, 47 U.S.C. §153(4).

³ Frontier Communications Services Inc., Frontier Communicaitons International Inc., Frontier Communications of the West Inc., Frontier Communications-North Central Region Inc., Frontier Communications of New England Inc., and Frontier Communications of the Mid Atlantic Inc. (collectively Frontier).

⁴ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 20,541 (1996) (*Report and Order*); Order on Reconsideration, 11 FCC Rcd 21,233 (1996) (*Order on Reconsideration*), *aff'd in part and remanded in part sub nom. Illinois Public Telecomm. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir 1997).

⁵ 47 U.S.C. §276(b)(1)(A).

⁶ *Bell Atlantic Order* at para 6.

associated with those lines.⁷

BOC payphone service providers were also required to “have approved [comparably efficient interconnection (CEI)] plans for basic payphone services and unbundled functionalities prior to receiving compensation.”⁸ The *Payphone Orders* did not, however, specify in any further detail the requirements of an adequate certification.⁹

4. The histories underlying these disputes are detailed in the Bureau Orders, which we incorporate herein by reference. It is undisputed that complainants submitted to Frontier letters, and in most cases additional documentation, “certifying” that they had satisfied the prerequisites set forth in the *Order on Reconsideration*.¹⁰ Frontier refused to accept these as certification, arguing that the *Payphone Orders* obligated LECs to provide to the IXC payors evidence proving that they had complied with the Commission’s payphone compensation prerequisites. As noted above, most of the complainants did provide additional documentation in an effort to demonstrate compliance with the Commission’s rules and orders, and even made supplemental filings in an effort to satisfy Frontier.¹¹ Nonetheless, and notwithstanding the efforts of Commission staff to informally resolve these disputes,¹² Frontier continued to refuse complainants’ demands for payment. Indeed, Frontier acknowledges that it has compensated only those LECs that followed the procedures Frontier itself established for proving compliance with the prerequisites.¹³ Accordingly, these cases turn on the question of whether the Commission’s requirement that a LEC “be able to certify” compliance entitled Frontier to refuse to compensate the LEC Defendants until each LEC proved to Frontier’s own satisfaction that the underlying prerequisites had been met.

5. On September 24, 1999, the Common Carrier Bureau (Bureau) issued the *Bell Atlantic Order* resolving Bell Atlantic’s complaints against Frontier. The Bureau held that Bell Atlantic’s letters constituted an adequate certification and triggered Frontier’s obligations to pay payphone compensation.¹⁴

⁷ *Order on Reconsideration* at para. 131.

⁸ *Order on Reconsideration* at para. 132.

⁹ *Bell Atlantic Order* at para. 6.

¹⁰ *Bell Atlantic Order* at para. 8; *Ameritech Order* at paras. 19-24. For example, in addition to stating it had complied with each prerequisite, U S West’s submission to Frontier provided a detailed status report on the removal of payphone subsidies. SBC provided specific information explaining how it had removed intrastate payphone subsidies. Bell Atlantic provided to Frontier several matrices listing how it had satisfied certain prerequisites, including detailed information on the applicable interstate and intrastate tariffs. *Id.*

¹¹ *Bell Atlantic Order* at paras. 9-10; *Ameritech Order* at paras. 19-24.

¹² As discussed in the Bureau Orders, and also below, Commission staff met with representatives of the parties in this case, along with representatives of several other IXCs that had also refused to pay compensation on similar grounds as those raised in this proceeding. During those meeting, the staff expressed the position that the Payphone Orders clearly mandated that IXC’s must compensate a LEC payphone service provider upon receipt of the LEC’s certification of eligibility without further inquiry or requirements. See *Bell Atlantic Order* at para. 10.

¹³ *Ameritech Order* at para. 9 n. 24.

¹⁴ *Bell Atlantic Order* at para. 29.

More generally, the Bureau found no merit in Defendants' argument that the language in the *Payphone Orders* that LECs "be able to certify" compliance with the payphone compensation prerequisites gave each IXC the authority to determine when it became obligated to pay such compensation. The Bureau explained that the meaning of "certification" asserted by Defendants would place in the hands of the IXC payors the ability to determine when, or even if, it should become obligated to pay compensation mandated by the Act. The Bureau concluded that such an interpretation was not only inconsistent with the plain meaning of the Commission's orders, but would constitute an abdication of both the Commission's statutory obligation under section 276 of the Act and the authority specifically delegated to the Bureau to determine whether a LEC had complied with each compensation prerequisite.¹⁵ On November 8, 1999, the Bureau issued the *Ameritech Order* resolving formal complaints filed by Ameritech Illinois (Ameritech), U S West Communications, Inc. (U S West), and Pacific Bell, et al. (SBC). In that Order, the Bureau found that these complaints raised the same issues addressed in the Bureau's *Bell Atlantic Order*, and specifically adopted that order's analysis and supporting rationale in rejecting the IXC's arguments.¹⁶

II. DISCUSSION

6. On October 25, 1999, Frontier filed its Application for Review of the *Bell Atlantic Order*. On December 8, 1999, Frontier filed an Application for Review of the *Ameritech Order*. In the interest of efficiency, we resolve both Applications for Review in this order. We agree with the Bureau that Frontier's arguments are without merit and specifically adopt herein the findings and conclusions in the Bureau Orders. Accordingly, we affirm the Bureau Orders.

A. The *Bell Atlantic Order*

7. In its Application for Review of the *Bell Atlantic Order*, Frontier first asserts that the Bureau's definition of what constitutes a "certification" is incorrect as a matter of law.¹⁷ In support, Frontier argues that a LEC PSP may unfairly receive compensation from IXCs based on the inclusion of unlawful subsidies by merely signing a certification letter. In the *Bell Atlantic Order*, the Bureau explicitly considered and rejected Frontier's argument. First, the Bureau distinguished *certification* of compliance—which merely requires a LEC to attest that it has complied with each compensation eligibility requirement—from *proof* of compliance. The Bureau then found that, under prior Commission and Bureau orders addressing the same issue, LEC PSPs need only certify—and not prove—compliance to IXCs.¹⁸ The Bureau emphasized that it is the Commission's role, and not that of the IXC, to determine if a LEC

¹⁵ *Id.* at paras. 20-22. See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order, 12 FCC Rcd. 20,997 (Com. Car. Bur. 1997)(*Bureau Order*). In the *Bureau Order*, the Common Carrier Bureau took various actions "on its own motion, pursuant to the authority delegated to it in the Order on Reconsideration to determine whether a LEC ha[d] met the requirements of the [Payphone Orders] prior to receiving compensation." *Id.* at para. 3.

¹⁶ *Ameritech Order* at para. 3.

¹⁷ Frontier Application for Review at 11.

¹⁸ *Bell Atlantic Order* at paras. 15-18.

PSP has, in fact, removed intrastate subsidies from its rates.¹⁹ The Bureau found that a letter could serve as a valid certification if it asserted that the LEC has complied with the compensation eligibility prerequisites, and that Bell Atlantic's letters clearly satisfied the Commission's certification requirements.²⁰

Upon review, we agree with the reasoning of the Bureau and hold that the Bureau correctly interpreted our decision and properly determined what constitutes certification. The argument put forth by Frontier would give the long-distance carrier the authority to create its own rules for determining when it became obligated to pay compensation as required by the Act and Commission rules. As the Bureau stated, if Frontier believed that a certifying BOC had not actually fulfilled its prerequisites for receiving payphone compensation, Frontier was entitled to bring that to the attention of the Commission through a formal complaint or other mechanism. It was not entitled, however, simply to refuse payment to the BOC at its own unilateral discretion.

8. Frontier next asserts that affirming the *Bell Atlantic Order* would constitute legal error and bad public policy.²¹ To the contrary, as stated above, we find that *Frontier's* proffered argument would be bad public policy because it would give the long-distance company unilateral authority to evaluate the certifying BOC's compliance with Commission rules, and thereby determine when the long distance company became obligated to make payments pursuant to those rules. We see no public policy or legal basis for the Commission to delegate to the IXC payors sole authority to determine compliance with the Commission's rules. Rather, we find the Bureau correctly determined that certification of compliance to the IXC was consistent with the goals of section 276 of the Act, and with the Commission's implementing orders.²² Accordingly, we affirm the Bureau's reasoning and conclusions.

9. Finally, Frontier asserts that the Bureau erred in refusing to consider Frontier's "affirmative defense" that "Bell Atlantic had not demonstrated that it qualified for payphone compensation and that Bell Atlantic, in fact, had not qualified for payphone compensation."²³ The Bureau rejected Frontier's argument that a "dispute" as to a carrier's eligibility to receive compensation negates the IXC's obligation to pay compensation in the first instance. The Bureau stated that an IXC disputing the veracity of a LEC's certification must do so by initiating a proceeding at the Commission, *e.g.*, through a Section 208 complaint against the LEC.²⁴ We agree with the Bureau that Frontier's so-called "affirmative defense" is irrelevant to evaluating Frontier's obligation to pay upon receiving certification from Bell Atlantic. The Bureau correctly concluded that Frontier's "affirmative defense" was not properly before the Bureau in the context of the LEC complaints. Rather, the proper way for an IXC to challenge a LEC's failure to remove unlawful subsidies is to initiate a Section 208 proceeding at the Commission. Since Frontier failed to do so, in this instance we conclude that the Bureau properly rejected Frontier's argument.²⁵ We therefore

¹⁹ *Id.* at para. 20.

²⁰ *Id.* at para. 24.

²¹ Frontier Application for Review at 20.

²² *Bell Atlantic Order* at paras. 19-25.

²³ Frontier Application for Review at 17.

²⁴ *Bell Atlantic Order* at paras. 26-28.

²⁵ *Bell Atlantic Order* at paras. 27-28.

affirm the Bureau's reasoning in this matter and deny Frontier's Application for Review of the *Bell Atlantic Order*.

B. The Ameritech Order

10. Frontier's Application for Review of the *Ameritech Order* is essentially a duplicate of its Application for Review of the *Bell Atlantic Order*. The Bureau held that the complaints underlying the *Ameritech Order* raised the same issues addressed in the *Bell Atlantic Order* and found that the defendants in the *Ameritech Order* proceeding had failed to raise any issues that had not been addressed in the *Bell Atlantic Order*. The *Ameritech Order* specifically incorporated the analysis and supporting rationale of the *Bell Atlantic Order* by reference.²⁶ Frontier has not challenged the Bureau's findings concerning the redundant nature of the complaints, defenses, and resolution of these two proceedings. As in its Application for Review of the *Bell Atlantic Order*, Frontier has raised no new issues in its Application for Review of the *Ameritech Order*. Accordingly, for the same reasons stated above in our affirmation of the Bureau's *Bell Atlantic Order*, we affirm the Bureau's reasoning in this matter and deny Frontier's Application for Review of the *Ameritech Order*.

III. CONCLUSION AND ORDERING CLAUSES

11. For the reasons stated above, we affirm the Bureau orders in all respects. Having reviewed the facts and history of these disputes reflected in the Bureau Orders, we are troubled by self-help actions taken by the Defendants in an apparent effort to delay payment of payphone compensation mandated by the Act and our rules. As detailed in the Bureau Orders, the parties met with Bureau staff in June of 1998 to discuss Defendant's obligations to pay payphone compensation, and specifically the issues raised in these complaints. During these meetings, the staff stated that the *Payphone Orders* clearly mandated that IXCs must compensate a LEC payphone service provider upon receipt of the LECs' certification of eligibility without further inquiry or requirements.²⁷ As discussed above, it was made clear at that time that if Frontier believed that a LEC had failed to satisfy its prerequisites to payphone compensation, the IXC was obligated to file a complaint with the Commission to that effect. Instead, Frontier continued to engage in self-help by simply refusing payment without bringing the matter to the Commission for resolution. As has been stated in other contexts, the Commission looks unfavorably on such self-help.²⁸ Accordingly, we direct the Commission's Enforcement Bureau to investigate whether further enforcement action is warranted against Defendants for apparent knowing or repeated violations of Commission rules in relation to the facts raised in these complaint proceedings.

12. Accordingly, IT IS ORDERED that pursuant to sections 1, 4(i), 4(j), 201(b), 203(c), and 208 of the Act, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201(b), 203(c), 208, and sections 1.3 and 1.106 of the Commission's rules, 47 C.F.R. §§ 1.3 and 1.106, that the Application for Review of the *Bell Atlantic Order* filed by Frontier Communications Services, Inc. IS DENIED.

²⁶ *Ameritech Order* at para. 3.

²⁷ *Bell Atlantic Order* at para. 10.

²⁸ See, e.g., *MGC Communications, Inc. v. AT&T Corp.*, Memorandum Opinion and Order, 14 FCC Rcd. 11,647 (Com. Car. Bur. July 16, 1999); *In the Matter of Communique Telecommunications, Inc. d/b/a LOGICALL*, Declaratory Ruling and Order, 10 FCC Rcd. 10,399 (Com. Car. Bur. May 23, 1995).

13. IT IS FURTHER ORDERED that pursuant to sections 1, 4(i), 4(j), 201(b), 203(c), and 208 of the Act, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201(b), 203(c), 208, and sections 1.3 and 1.106 of the Commission's rules, 47 C.F.R. §§ 1.3 and 1.106, that the Application for Review of the *Ameritech Order* filed by Frontier Communications Services, Inc. IS DENIED.

14. IT IS FURTHER ORDERED that the Commission's Enforcement Bureau SHALL INVESTIGATE whether further enforcement action is warranted consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary