

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**

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In the Matter of )

Implementation of the Pay Telephone )  
Reclassification and Compensation Provisions )  
Of the Telecommunications Act of 1996 )

The Illinois Public Telecommunications Association's, )  
Petition for A Declaratory Ruling Regarding the Remedies )  
Available for Violations of the Commission's Payphone )  
Orders )

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CC Docket No. 96-128

**REPLY COMMENTS OF  
THE NEW ENGLAND PUBLIC COMMUNICATIONS COUNCIL, INC.**

The New England Public Communications Council, Inc. ("NEPCC"), on behalf of its members and in accordance with the Commission's Public Notice, DA 04-2487, released August 6, 2004, hereby files its brief reply comments in support of the Petition For Declaratory Ruling ("Petition") filed by the Illinois Public Telecommunications Association ("IPTA").

**I. THE COMMISSION HAS THE FULL AUTHORITY TO ACT NOW TO UPHOLD THE REQUIREMENTS OF THE PAYPHONE ORDERS**

1. The NEPCC focuses its brief Reply Comments on two arguments raised by the RBOC 's Comments.<sup>1</sup> The first relates to the authority explicitly retained by the FCC in connection with the state's delegated responsibilities for ensuring tariffed, FCC-compliant intrastate payphone access rates. The second relates to the *Payphone Orders* requirement that such FCC-compliant rates be in effect as a prerequisite for the RBOCs to receive dial-around compensation.

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<sup>1</sup> Comments of BellSouth Telecommunications, Inc. SBC Communications, Inc. and the Verizon Telephone Companies On Illinois Public Telecommunications Association's Petition For Declaratory Ruling, August 26, 2004.

2. The RBOCs effectively claim that the FCC has not retained any role in connection with the state tariffing of intrastate payphone access rates. According to the RBOCs, disappointed PSPs are left to the state courts to seek redress when the requirements of Section 276 and the *Payphone Orders* are ignored or misapplied by state public service commissions like the Illinois Commerce Commission or the Massachusetts Department of Telecommunications & Energy.

3. There is nothing in either Section 276 or the *Payphone Orders* that supports this argument. Indeed, as the RBOCs blithely ignore, in the *Second Clarification Order* the specific statement that the “Commission retains jurisdiction under Section 276 to ensure that all requirements of that statutory provision and the Payphone Reclassification Proceeding, including the intrastate tariffing of payphone services, have been met.”<sup>2</sup> The RBOCs argument would effectively erase Section 276(c) from the Act. Further, the Commission is not deprived of this expressly-retained jurisdiction until the completion of state court proceedings. There is nothing in the *Payphone Orders* that relegates PSPs who believe that a state commission has erred in applying the FCC requirements relating to intrastate payphone access tariffs from solely or initially to the state court system.

4. The RBOCs also contend that all that they were required to do was to have intrastate tariffs that were “in effect” by the deadline and there was no need for them to be FCC-compliant in order for the RBOCs to collect dial-around compensation. The language of the *Second Clarification Order* totally invalidates such an argument. The FCC in granting the limited waiver specifically stated that it related to “the requirement that the LECS have filed intrastate payphone services tariffs...*that satisfy the new services test, and that effective intrastate payphone service tariffs comply with the ‘new services test’ for the purpose of allowing a LEC to be eligible to receive payphone compensation.*”<sup>3</sup>

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<sup>2</sup> *Second Clarification Order*, at ¶ 19, n.60.

<sup>3</sup> *Id.*, at ¶18.

## II. CONCLUSION

5. The Commission made clear that state commissions were to have the first shot at implementing the requirements of the *Payphone Orders* with respect to intrastate payphone access rates. However, the Commission explicitly retained jurisdiction to oversee the state actions. The RBOC arguments to the contrary are totally without merit.

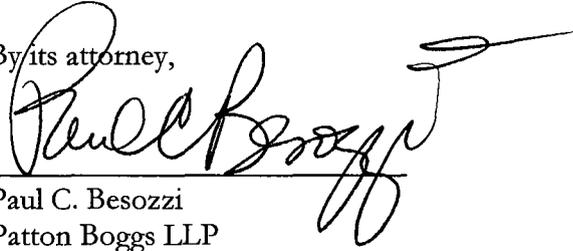
6. The terms of the *quid pro quo* between the Commission and the RBOCs were crystal clear. For the RBOCs to argue now that FCC-compliant tariffs were not part of that deal is revisionist history. The PSPs were clearly to be the principal third party beneficiaries of that *quid pro quo* and that is in part what the Commission intended. It certainly never intended for the RBOCs to obtain the benefit of that bargain while depriving their competitors of the explicit right to FCC compliant rates.

7. To prevent those requirements from being rendered meaningless by decisions like those in Illinois and Massachusetts, the Commission must grant the relief requested by the IPTA Petition. More specifically, the Commission should declare that in circumstances such as those reflected in the Illinois decision and the *DTE Order*, the PSPs are entitled to refunds for network services to the extent that the rate and charges were in excess of the cost-based rates required by the *Payphone Orders*. Otherwise, the RBOCs will have received the benefits of the *quid pro quo*, without having met one of the principal preconditions for receiving them.

Respectfully submitted,

**NEW ENGLAND PUBLIC COMMUNICATIONS  
COUNCIL, INC.**

By its attorney,

A handwritten signature in black ink, appearing to read "Paul C. Besozzi", written over a horizontal line. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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