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Federal Communications Commission
Office of the Secretary

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions Of the Telecommunications Act of 1996	)))	CC Docket No. 96-128
The Illinois Public Telecommunications Association's, Petition for A Declaratory Ruling Regarding the Remedies Available for Violations of the Commission's Payphone Orders	))))	

REPLY COMMENTS OF THE FLORIDA PUBLIC TELECOMMUNICATIONS ASSOCIATION, INC.

The Florida Public Telecommunications Association, Inc. ("FPTA"), on behalf of its members, hereby files Reply Comments in the above captioned proceeding, in accordance with sections 1.415 and 1.419 of Federal Communications Commission ("FCC" or "Commission") rules and the Public Notice released by the Commission on August 6, 2004.

By these reply comments, FPTA hereby adopts and reiterates the very same legal and administrative precedents and arguments set forth by the following parties in their initial comments: New England Public Communications Council, Inc.; American Public Communications Council, Inc.; Atlantic Payphone Association, Inc.; Northwest Public Communications Council, et al.; and Independent Payphone Association of New York, Inc.

Moreover, based on all of the initial comments filed in this proceeding, FPTA reiterates to the Commission the need for guidance on the issues raised in the IPTA Petition as a matter of broad national concern and not limited solely to the State of

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Illinois. Proper resolution of IPTA's declaratory ruling request remains critical both to the proper enforcement and implementation of the Commission's prior orders on this subject and to the statutory mandates of Section 276 of the Telecommunications Act of 1996 (the "Act").

The instant reply comments respond to two fundamental lines of argument set forth in the initial comments of the Illinois Commerce Commission ("ICC") and the RBOC Coalition; namely, that this Commission (1) intended to (or could) completely abdicate it jurisdiction over non-compliant RBOC payphone interconnection tariffs to the various state authorities; and (2) should find that the equities weigh in favor of not ordering refunds of overcharges to PSPs. Both the law and the facts mandate a prompt and complete rejection of these fallacious positions.

1. The Jurisdiction and Preemption Provisions of Section 276 of the Act Support the Requested Refund Relief

Both the ICC and the RBOCs argue that the Commission intended to leave exclusively to state remedies the question of whether RBOC payphone implementation tariffs were lawful. They also argue that state law should circumscribe refunds for non-compliant tariffs. Neither position holds water. If either were valid, this Commission would never have issued its Wisconsin Orders. While seeking to rely on state regulators to implement admittedly intrastate tariffs for payphone interconnection, this Commission has already seen the need to provide clarification and guidance to the states to ensure that the federal payphone orders were in fact properly implemented.

Despite the RBOCs backhanded attempt to characterize the Wisconsin Orders as having "radically modified" the initial payphone orders, and as being limited solely to Wisconsin, the Commission well knows that neither is the case. A plain reading of those orders demonstrates that they were merely providing clarification of the original intent of the payphone implementation orders, not creating new requirements. Moreover, the Commission clearly intended by the language of those orders to provide guidance that would be helpful to all state regulators in properly implementing a new and somewhat complex set of requirements for post-Act payphone interconnection rates. The same broad need for clarification there is equally applicable here—where the RBOCs have once again sought to obfuscate, delay and deter the Commission's intentions to their own benefit. The fact is that the requested relief, declaring that refunds are in order for non-compliant payphone interconnection tariffs, will be useful and applicable in a number of other jurisdictions.

Moreover, the degree to which the ICC and RBOC arguments fundamentally miss the mark is shown by a plain reading of Section 276 (c), which states: "To the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements." Under this straightforward language, state law and procedure only govern to the extent they are fully consistent with applicable FCC requirements in this area. As such, where the relevant intrastate payphone tariffs are inconsistent with Commission requirements and have never been compliant with Section 276 of the Act, as here, they must be subject to corrective action by the FCC upon reasonable request. To suggest that the Commission must simply sit idle while state processes 'take their course' is equally misplaced. It serves neither principles of comity nor any other legal or equitable doctrine to allow state regulators or courts to expend their limited resources, when clarification from the federal agency whose preemptive orders are being enforced would provide much needed guidance and avoid the compounding of prior errors. This is especially so in view of the broad preemptive provisions contained in Section 276 of the Act. It is also true where time is of the essence, as in the case of the financially challenged U.S. pay telephone industry.

2. <u>Basic Equity Supports the Requested Refund Relief</u>

ICC and the RBOCs have attempted to argue that the equities here do not support the requested refund relief. Nothing could be further from the truth. It is only twisted logic that would support the RBOCs ability to retain hundreds of millions of dollars in collected dial around compensation, while also being permitted to retain admitted overcharges in payphone interconnection rates—especially when compliant payphone rates charged to competitors were supposed to be a condition precedent to collecting such dial around compensation in the first place.

Once again, the RBOCs would like to have their cake and eat it too. This Commission, however, should once more not allow itself to be made a party to such a scheme. Doing otherwise would violate all principles of fundamental fairness and sanctify the unjust enrichment of the RBOCs. Instead, a clear statement that refunds are to be made where payphone interconnection rates post-April 15, 1997 were non-compliant would serve the interests of both justice and equity. As stated in FPTA's initial comments, it would also serve the Commission's interests in having its orders complied with and fully enforced.

Suggestions by the RBOCs and the ICC that too much time passed before remedial action was pursued likewise do not withstand scrutiny under the present facts.

Many states looked to this Commission for the clarification ultimately provided in the Wisconsin orders, which (in the face of the RBOCs administrative and judicial appeals) took several years to issue and be finalized. To suggest that the independent PSPs had to also undertake state challenges during this time is unfair and ignores the financial realities and state-level resource limitations of the industry.

Further, in Illinois and other jurisdictions, the state proceedings themselves took many years (just short of six years in the Illinois case) to produce a ruling—whose basis and results could only then be tested and challenged. Neither of these realities is a valid basis to now penalize independent PSPs and allow the RBOCs to benefit by or be insulated from refunds of overcharges generated by plainly non-compliant payphone tariffs. ICC and RBOC logic would have this Commission hold that simply having tariffs 'in effect' and earlier deemed compliant with applicable FCC requirements, precludes both refunds and FCC corrective action, no matter how non-compliant those tariffs may have been. The inequity of this position should be obvious and should not be embraced by the Commission under any circumstances.

FPTA would again point to the Florida situation, where BellSouth chose to finally reduce its rates by the exact amount of the EUCL—right before filing testimony in the relevant FPSC proceeding, over six years (and tens of millions of dollars in dial around collections) after compliant tariffs were supposed to have been in effect. In addition to flying in the face of this Commission's Order on Reconsideration, as enumerated in the RBOCs own initial comments here, such a result is at complete odds with all notions of equity and fairness.

Many other state jurisdictions find themselves in the same posture as Illinois and this Commission can provide significant assistance on a national basis by providing the declaratory relief sought here to guide the states in acting consistent with applicable FCC precedent and the preemptive nature of Section 276. Given the fact that two of the four RBOCs have exited the payphone business just this year, the continued widespread deployment of payphones in our nation as mandated by the Act depends on it.

WHEREFORE, the FPTA respectfully requests that the Commission grant the IPTA Petition for Declaratory Ruling and provide the necessary clarification and guidance so vital to the public interest.

Respectfully submitted,

/s/

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