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Lynn Starr
Vice President-Federal Regulatory

EX PARTE

Filed via ECFS

June 28, 2006

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *In the Matter of Payphone Access Line Rates* - CC Docket No. 96-128

Dear Ms. Dortch:

On June 27, 2006, Lynn Starr and Melissa Newman, in person, and Bob McKenna, Jerry Thompson and Glenda Weibel, by telephone, all of Qwest, met with Scott Bergmann to discuss the above-captioned proceeding.

The attached powerpoint presentation was used as the basis for discussion.

This *ex parte* is being filed electronically pursuant to 47 C.F.R. §§ 1.49(f) and 1.1206(b). Please contact me at 202.429.3125 if you have any questions.

Sincerely,

/s/ Lynn Starr

Attachment

Copy to:
Scott Bergmann

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In the Matter of Payphone Access Line Rates
CC Docket No. 96-128

June 27, 2006

Overview

- The FCC cannot grant refunds to the payphone providers.
- The FCC cannot order refunds under the Communications Act without suspension and accounting order.
- Delegation of authority to the states did not reserve refund authority.
- Refund evaluation would need to be conducted on a case-by-case basis—essentially through federal rate cases.
- The "Wisconsin Order" was a rate order and operates only prospectively.
- The payphone providers' "waiver" argument is spurious, and does not apply to Qwest in any event.

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What Payphone Providers Want the FCC to Do

- **Rule that ILEC intrastate PAL rates were unlawful between 1997 and (in Qwest's case) 2002.**
- **Rule that this unlawfulness is caused by failure to abide by a ratemaking order in 2002 (the *Wisconsin Order*).**
- **Rule that normal principles of filed rate and retroactive rulemaking do not apply because the RBOCs made a "promise" in 1997 that essentially eviscerates these doctrines forever.**
- **Rule that a federal right of refund exists, and that this right supersedes:**
  - **Federal law on federal refunds.**
  - **State law on refunds based on intrastate tariffs.**

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What the FCC did Concerning PAL Tariffs

- **Delegated authority to states to review intrastate PAL tariffs under state tariff processes.**
- **Described standards under which such review was to be conducted (e.g., "new services test").**
- **Maintained oversight to describe additional standards for state tariffs.**
- **In *Wisconsin Order*, provided final (as of this time) set of rules to be followed by states and RBOCs.**
- **Otherwise relegated issue to state processes.**

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What the FCC Could Have Done

- Could have required that PAL tariffs be filed at FCC subject to federal tariff procedures and processes.
- Could have reserved additional authority over state PAL rates (subject to basic division of jurisdiction concerns).
- Could have intervened in state rate cases and other proceedings.
- In any or all of these events, basic legal protections against unlawful refunds through retroactive ratemaking would have had to be preserved.
- But the FCC chose a different route.

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FCC's Refund Authority is Limited by Statute

- FCC has been delegated extensive preemptive authority over state payphone services.
- This did not include preemption of state refund rules in a manner that bypassed the FCC's own refund statute.
- In order to accomplish that preemption, FCC would have needed to adhere to its own statutorily mandated rules regarding refunds.
- The FCC instead left the matter of refunds to state law.
- This is not a question of what preemptive power the FCC might have exercised—it is a question of what power it actually exercised in a lawful fashion.

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What Payphone Providers Have Done

- Filed complaints under state law objecting to intrastate PAL tariffs.
- Objected to intrastate rates.
- Sought refunds and/or reparations under state law.
- Used state appellate procedures if state regulatory authority did not apply both state law and FCC guidelines appropriately.
- Filed federal lawsuits seeking damages.

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FCC Cannot Bypass Statutory Limits on Refunds Through Delegation

- FCC refund authority limited by federal statute.
- State refund authority limited by state statutes.
- Payphone providers want to bypass both protections against unlawful refunds by having a federal refund from charges under a state tariff.
- Such action would clearly be unlawful.

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So-called "Waiver" Argument is Spurious

- **Payphone providers claim that a promise by RBOCs that, if they filed new PAL rates between April 4 and May 19, 1997, these rates would be effective as of April 15, 1997, constituted an eternal waiver of the filed rate doctrine and all FCC and state rules regarding tariff processes and retroactive ratemaking.**
- **This argument is frivolous on its face.**
- **In addition, Qwest had no tariffs covered by this promise or the subsequent *Waiver Order*.**
- **Moreover, Qwest's certification of compliance with the "new services" test was challenged before the FCC, and the challenge was rejected.**

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