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October 3, 2006

Ex Parte Presentation

By Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., TW-A325
Washington, DC 20554

Re: CC Docket No. 96-128, Illinois Public Telecommunications Association, Petition for Declaratory Ruling

Dear Ms. Dortch:

On September 28, 2006, Albert H. Kramer and Robert F. Aldrich of Dickstein Shapiro LLP, representing the American Public Communications Council ("APCC"), met with Wireline Competition Bureau Associate Chief Donald Stockdale, Acting Pricing Policy Division Chief Albert Lewis, and Acting Assistant Division Chief Pamela Arluk, and staff attorney Lynne Engledow. We discussed the matters summarized in the attached document, which was handed out at the meeting.

Sincerely,

Robert F. Aldrich

cc: Donald Stockdale
Albert Lewis
Pamela Arluk
Lynne Engledow

POINTS RE LEGAL WAIVER ISSUE

- **To meet the *Waiver Order's tariff filing condition,* the Bell Companies had to file any payphone line tariffs that had not been reviewed for NST compliance -- *not* just those rates that the Bell Companies believed needed revision.**
  - The *Payphone Orders* delegated NST compliance review to *state commissions*, not to the *Bell Companies*.
  - To comply with the *Payphone Orders,* the Bell Companies had to file and submit cost support for *all* their intrastate payphone line rates so that state commissions could review the rates for NST compliance, whether or not the Bell Companies proposed to revise the rates.
  - To meet the *Waiver Order's tariff filing condition* as well, the Bell Companies had to file and submit cost support for NTS-compliant "intrastate tariffs for payphone services . . . within 45 days . . ." (¶ 19) without distinguishing between rates that the Bell Companies did or did not propose to revise.
    - The Bureau rejected "alternatives to granting a waiver" that would defer the entire Section 276 reclassification for 90 days and *compel* LECs to refile all their intrastate payphone service tariffs. ¶¶ 17, 21. But it did condition the *waiver* on refiling of any rate that had not yet been reviewed for NST compliance.
    - It would have been irrational for the Bureau to reward the Bell Companies for noncompliance by waiving the required NST review of existing payphone line rates.
    - After the *Waiver Order* was issued, most Bell Companies *did* file cost support for existing payphone line rates, indicating that they too construed the order to require such filings.
- **The *Waiver Order's refund* condition likewise applied to *all* the yet-to-be-reviewed payphone line rates -- *not* just those rates that the *Bell Companies* believed needed revision**
  - The *Waiver Order's* refund requirement clearly applied to all the rates submitted for state NTS review.
  - Section 276(a), as interpreted by the *Payphone Orders*, required NST compliance by 4/15/97.
  - Without refunds, the Bureau's limited 45-day waiver of this requirement would be *unlimited,* continuing for however many years it took to bring the Bell Companies' rates into NTS compliance.

- The Common Carrier Bureau had no authority to waive the statutory requirement without providing for refunds to make compliance retroactive to 4/15/97.

- **Waiver refund period ended when NST-compliant rates became effective**

  - The *Waiver Order* expressly required refunds, "once the new intrastate tariffs are effective," where NST-compliant rates "when effective, are lower than the existing rates."

  - The delay in NST compliance could be "mitigated" as the Commission intended only by refunding the difference between existing payphone line rates and *NST-compliant* rates – not the difference between existing payphone line rates and non-compliant rates proposed by the Bell companies.

  - If refunds applied only to Bell-proposed non-compliant rates, the Bureau's limited 45-day waiver of the NTS requirement would be *unlimited,* continuing for however many years it took to bring the Bell Companies' rates into NTS compliance.

- **As the 9th Circuit stated in *Davel*, "[a]s the current dilemma may not have been contemplated at the outset by the agency, interpreting the Waiver Order requires consideration of policy considerations similar to those that gave rise to the FCC's [*Payphone Orders*]." 2006 U.S. App. Lexis 21098, *31.**