

February 21, 2007

Paul C. Besozzi
202-457-5292
pbsozzi@pattonboggs.com

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **CC Docket No. 96-128 - Letter From The Supreme Judicial Court of Massachusetts**

Dear Ms. Dortch:

On April 3, 2006, the Commission announced the filing, by the New England Public Communications Council, Inc., of an order of the Supreme Judicial Court of Massachusetts (“Court”) and a letter from the Court requesting Commission guidance in interpreting and applying Commission orders implementing Section 276 of the Communications Act of 1934, as amended, and various Commission payphone orders. In particular, the Court seeks guidance on the circumstances under which those orders might require refund of payphone intrastate line rate charges. FCC Public Notice, DA 06-780, released April 3, 2006.

The Court sought this guidance in the context of a pending appeal before the Court relating to the same issues. The Court made this submission after having stayed, for 6 months from February 16, 2006 until August 16, 2006, the pending appeal so that these questions could be raised before the Commission. During that period, the United States Court of Appeals for the Ninth Circuit also issued an opinion concluding that very similar issues were within the primary jurisdiction of the FCC, only reinforcing the Court’s inquiry.

On August 18, 2006, the Court entered an order further extending the stay of the appeal for another 6 months, until February 18, 2007, giving the Commission additional time to answer the Court’s questions. However, contemporaneously, by separate order, the Court scheduled a hearing on the appeal for March 7, 2007. That date is now soon upon us.

Ms. Marlene H. Dortch
February 21, 2007
Page 2

The Supreme Judicial Court of Massachusetts is the highest court of the Commonwealth of Massachusetts. The Court was presumably assuming that it was not unreasonable to expect that some 12 months after first raising these questions, the substance of which had already been pending before the FCC for some time and which squarely involve the FCC's implementation of the requirements of Section 276 and the application of the Commission's own orders, the Court would at least have some indication from the FCC as to when the Commission would address the Court's questions. Time and resources will have to be expended if the Court, because of the FCC's continuing silence, concludes that it is uncertain whether or when its clear and formal inquiry will be addressed by the FCC and, therefore, the appeal should go forward, even though it is clearly the Commission's responsibility to implement Section 276 and uphold the requirements of its own orders. The NEPCC respectfully submits the Commission should promptly indicate to the Court its intentions.

Sincerely,



Paul C. Besozzi

Counsel to the New England Public Communications Council, Inc.

cc: Michelle Carey
George Niden