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March 28, 2007

By Electronic Filing **Ex Parte Presentation**

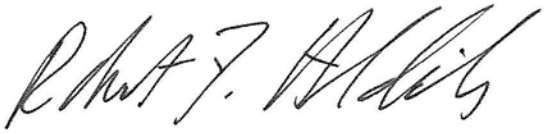
Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, DC 20554

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

Dear Ms. Dortch:

On March 28, 2007, Randy Nichols, President of the American Public Communications Council ("APCC"), Albert H. Kramer and Robert F. Aldrich of Dickstein Shapiro LLP, met with Commissioner Robert McDowell and his legal advisor John Hunter. We discussed the matters summarized in the enclosed document handed out during the meeting.

Sincerely,



Robert F. Aldrich

Enclosure

cc: Commissioner Robert McDowell
John Hunter

APCC

BELL COMPANIES MUST BE ORDERED TO REFUND PAYPHONE LINE CHARGES IN EXCESS OF NEW SERVICES TEST COMPLIANT RATES

American Public Communications Council
March 2007

BACKGROUND

- Section 276 of the 1996 Act prohibited Bell Operating Companies (BOCs) from discriminating in favor of their own payphone operations and against independent providers.

- To prevent discrimination, the FCC in 1997 required the BOCs to conform state-tariffed payphone line rates to the federal "New Services Test" ("NST") adopted in the Computer III proceeding.

- The FCC made NST compliance a condition of the BOCs' eligibility to receive dial-around compensation for their own payphones.

- The deadline for BOC compliance was set for April 1997

BACKGROUND (cont'd)

- The determination of whether specific rate proposals complied with the NST was left up to the states by the FCC, with the Commission explicitly preserving its jurisdiction to determine BOC compliance.

- Prior to the deadline, the BOCs applied for and received a waiver of the new rules to allow them to begin collecting dial-around compensation before complying with the NST.

- The BOCs promised to pay refunds if their rates were found to be excessive, and the Commission expressly conditioned the waiver on payment of refunds.

- Rather than providing the required cost based rates, the BOCs between 1997 and 2002 engaged in vigorous efforts in state commissions and courts (and before the Commission) to avoid, minimize and delay compliance.

BACKGROUND (cont'd)

- In January 2002, in order to address the disparity of tariff proceedings around the country, the FCC issued additional guidance to the states, but did not address the question of refunds.

- Most states ultimately found the Bell rates to be noncompliant with the NST and ordered rate reductions, exceeding 50% in most cases.

- States varied widely on whether independent payphone service providers ("PSPs") should be granted refunds.

CURRENT PROCEEEDINGS

- Beginning in July 2004, six state and regional payphone associations filed petitions (Illinois, New York, Massachusetts, Florida, Ohio and Mississippi) requesting the FCC to order refunds.

- The Oregon PUC, the Massachusetts appellate court, and the US Ninth Circuit Court of Appeals have sought guidance from the FCC on whether refunds are appropriate.

- Some petitions have been pending for more than two-and-a-half years.

REFUNDS ARE NECESSARY TO MAKE PSPs WHOLE, SUPPORT PAYPHONE DEPLOYMENT, AND MAINTAIN THE INTEGRITY OF FCC PROCESSES

- PSPs were to be charged cost-based payphone line rates as of April 1997.
- Excessive charges borne by independent payphone operators have accelerated removal of payphones.
- As the BOCs continue to exit this business, independent payphone operators are taking on the majority of the responsibility for providing payphone services for the American public.
- The BOCs have collected dial-around compensation for ten years while evading compliance with their eligibility conditions.

THE COMMISSION MUST ORDER THE BOCs TO PAY REFUNDS

- It is the FCC's responsibility to ensure a remedy for BOC violations of Section 276 and the federal NST.

- The FCC had a mandate to ensure that payphone line rates were nondiscriminatory effective April 1997. The only remedy that can undo the BOCs' years of noncompliance is payment of refunds.

- Under *USTA II*, the Commission could use state commissions as "short-cuts" to ensure BOC compliance only if state commissions are "superintended by the [Commission] in every respect."

- As part of this supervisory role, the Commission must overrule inconsistent state rulings and order the BOCs to pay refunds.