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A5692.0428

May 22, 2007

## By Electronic Filing

## Ex Parte Presentation

Marlene H. Dortch, Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W., Room TW-325  
Washington, DC 20554

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

Dear Ms. Dortch:

The American Public Communications Council (“APCC”) hereby responds to Qwest’s attempt to refute APCC’s arguments by interlineating APCC’s previously filed ex parte.

Qwest’s interlineations not only are demonstrably wrong, but also frequently mischaracterize the Commission’s previous orders and the record in this proceeding; indeed, at times Qwest’s interlineations mischaracterize the APCC arguments to which they respond (and which appear directly above Qwest’s interlineations). APCC’s replies are provided in the enclosed further interlineations of APCC’s previous ex parte. In this letter, we briefly summarize some of the key points.

- o Qwest’s repeated assertions that it “met the compliance deadline” and that its payphone line rates have always complied with the new services test (“NST”) are wrong, unsupported, and unsupportable. Like the other Bell Operating Companies (“BOCs”), Qwest unjustifiably *assumed* that its rates complied. When the Commission issued the *Wisconsin Order*, and Qwest was effectively forced to comply more than five years after the deadline, Qwest reduced its rates by up to 72%.<sup>1</sup> These precipitous rate reductions are a tacit admission that, like the other BOCs, Qwest had never come close to complying.

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<sup>1</sup> See table below, adapted from Letter to Marlene H. Dortch from Brooks E. Harlow (May 5, 2006).

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	RATES			
AZ	\$34.30	\$10.44	(\$23.86)	(69.6%)
CO	\$43.54	\$15.04	(\$28.50)	(65.5%)
ID	\$58.74	\$16.41	(\$42.33)	(72.1%)
IA	\$31.35	\$14.20	(\$17.15)	(54.7%)
MN	\$43.61	\$15.13	(\$28.48)	(65.3%)
MT	\$38.94	\$16.91	(\$22.03)	(56.6%)
NE	\$33.80	\$19.32	(\$14.48)	(42.8%)
NM	\$43.74	\$12.80	(\$30.94)	(70.7%)
ND	\$31.54	\$11.93	(\$19.61)	(62.2%)
OR	\$30.50	\$9.73	(\$20.77)	(68.1%)
SD	\$38.65	\$18.99	(\$19.66)	(50.9%)
UT	\$37.00	\$24.79	(\$12.21)	(33.0%)
WA	\$28.89	\$14.10	(\$14.79)	(51.2%)
WY	\$28.10	\$18.58	(\$9.52)	(33.9%)

- o In most states, Qwest not only failed to comply with the NST but also failed to even submit its rates and underlying costs for NST compliance review by state commissions, as the *Payphone Orders* required.<sup>3</sup>
- o Qwest mischaracterizes the issue as one of the FCC’s authority to overrule state *ratesetting* decisions. *Ratesetting is not the issue here.* None of the petitions asks for a rate to be reviewed. The issue is whether refunds are necessary to remedy the BOCs’ indisputable violations of federal law by having non-complying rates in effect for years.<sup>4</sup>
- o Implementation of Section 276 was entrusted solely to the FCC. In claiming that the FCC lacks refund authority, Qwest disregards this fundamental point. Under *USTA II*,<sup>5</sup> the

<sup>2</sup> In Arizona the new rates took effect earlier than 2002, and in Colorado there was a partial rate reduction prior to 2002.

<sup>3</sup> *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Reconsideration, 11 FCC Rcd 21233, 21308 ¶ 163 (1997) (“*First Payphone Reconsideration Order*”) (“all required tariffs, both interstate and intrastate, must be filed no later than [the filing deadline]”). See Letter to Marlene H. Dortch from Brooks E. Harlow (February 22, 2007).

<sup>4</sup> Although ratesetting is not at issue in this proceeding, even with respect to ratesetting the Commission clearly has, and has exercised, authority to overrule the states. See *North Carolina Payphone Association, et al.*, 17 FCC Rcd 4275, 4276 (2002). *A fortiori* the Commission has authority to overrule state determinations as to the necessary federal remedy.

<sup>5</sup> *United States Telecomms. Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

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Commission may not lawfully delegate authority to the states to implement and enforce federal law while abandoning any effective supervision of their decisions. Therefore, in overruling state *refund decisions* (not rates), the Commission will not intrude on state jurisdiction; rather, it will exercise its own jurisdiction to provide the necessary remedy for violations of federal law and regulations for which it is solely responsible.

Sincerely,



Albert H. Kramer  
Robert F. Aldrich

Enclosure

cc: Daniel Gonzalez  
Scott Deutchman  
Scott Bergmann  
John Hunter  
Nicholas Alexander  
Thomas Navin  
Donald Stockdale  
Albert Lewis  
Pamela Arluk  
Lynne Engledow  
Christopher Killion  
Diane Griffin  
Tamara Preiss  
Paula Silberthau



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

**(with interlineated comments by Qwest and replies by APCC)**

American Public Communications Council  
May 2007

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## 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.

**Qwest:** *This is true. The new services test is a flexible test based on forward looking costs.*

**APCC:** No response necessary.

- 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.

**Qwest:** *This is true but incomplete. The Commission originally required the filing of interstate tariffs, subject to the full panoply of protections in the Communications Act. On reconsideration it decided to adopt guidelines for state tariffs for payphone access lines. It was recognized that states would and could apply their own forward looking cost methodologies to payphone access line tariffs in their jurisdiction.*

**APCC:** The issue is not whether the Commission should review state commissions’ ratemaking methodologies or decisions under the NST. The only issue is whether the BOCs should be required to refund the difference between the rates charged by the BOCs and the NST-compliant rates.

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

**Qwest:** *This is true. BOCs were required to certify to carriers that their payphone rates were compliant with the FCC’s rules in order to collect per call compensation.*

**APCC:** No response necessary.

## BACKGROUND (cont'd)

- The deadline for BOC compliance was set for April 1997

**Qwest:** *This is true. BOCs were required to either have their intrastate payphone rates in compliance with the FCC's rules by April of 1997, or, if they could not meet this deadline, to agree to provide a true-up for their new rates (slower than existing rates) back to April 15, 1997. Qwest met the earlier deadline and did not need to true up any rates.*

**APCC:** The last sentence is simply wrong. Qwest effectively admitted its rates were far from NST-compliant. After the Commission issued the *Wisconsin Order* in 2002, Qwest had to reduce its rates in virtually every state by 33% - 72%. Not only did Qwest fail to comply with the NST, but it also failed to even submit its rates and underlying costs for NST compliance review by state commissions as the *Payphone Orders* required. *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Reconsideration, 11 FCC Rcd 21233, 21308 ¶ 163 (1997) (“*First Payphone Reconsideration Order*”) (“all required tariffs, both interstate and intrastate, must be filed no later than [the filing deadline]”). For both these reasons, Qwest was ineligible for dial-around compensation. Qwest must provide refunds to remedy its violations and make PSPs whole.

## 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.

**Qwest:** *This implies that the FCC reserved the right to intervene in or review state tariffed rates, state ratemaking processes, or state practices. This statement is false. The FCC reserved the right to outline mandatory guidelines for state ratemaking (although the guidelines left much room for state flexibility), and these guidelines were to be implemented by the states in accordance with their own laws, subject to their own appellate processes.*

**APCC:** “We delegate authority to the Chief, Common Carrier Bureau, to make any necessary determination as to whether a LEC has complied with all requirements as set forth above.” *First Payphone Reconsideration Order*, 11 FCC Rcd at 21294.

“The Commission retains jurisdiction under Section 276 to ensure that all requirements of that statutory provision and the [Payphone Orders], including the intrastate tariffing of payphone services, have been met.” *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order, 12 FCC Rcd 21370, 21379 n. 60 (CCB 1997).

- 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.

**Qwest:** *This is not true. All of Qwest's payphone access rates met the new services test prior to April of 1997, and Qwest did not rely on the waiver.*

**APCC:** Qwest, along with the other BOCs, explicitly requested and received a waiver. Whether or not it “relied” on the waiver, Qwest violated the *Waiver Order* as well as the *Payphone Orders* by failing to submit its payphone line rates for state review, failing to bring its rates into NST compliance, and collecting dial-around compensation despite having non-NST-compliant rates.

## BACKGROUND (cont'd)

- 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.

**Qwest:** *This is not true in any respect. The BOCs that relied on the waiver (and Qwest was not one of them) promised to true up any differential owed to customers if the new payphone rate taking effect up to 45 days after April 15, 1997 was lower than the existing rate. If the new rate was higher than the existing rate, no further action was allowed. The use of the phrase “the new tariffs” in the Waiver Order makes this clear.*

**APCC:** There is nothing in the *Waiver Order* that even suggests refunds were limited to 45 days. 45 days only established a new *filing* date (45 days from April 4, 1997, *i.e.* May 19, 1997) for *filing* rates for state review. The refund period ran from the *effective* date of *NST-compliant* rates back to April 15, 1997.

## BACKGROUND (cont'd)

- 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.

*Qwest: This is not only factually false; it is grossly insulting to state regulators and courts. In Qwest's experience these administrative and judicial bodies took their obligations to conduct rate reviews and proceedings in accordance with the new services test very seriously. Rather than attempt to delay proceedings, Qwest's payphone access line rates have always been compliant with the FCC's guidelines and state law. In those instances where a state regulator found that adjustments needed to be made to comply with the new services test, these adjustments were made (including refunds).*

**APCC:** Qwest misrepresents APCC's position: It is Qwest and the other BOCs, not the states, that didn't take their NST obligations seriously. Qwest, for example, did nothing until 2002, in virtually any of its states, to even begin to make the 33% - 72% reductions necessary to bring its rates into compliance. Thus, Qwest's self-serving statement that its rates "have always been compliant" is simply false. APCC acknowledges, and has pointed out, that some states (although none of the Qwest states) ordered refunds, as the statute requires.

## 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.

**Qwest:** *This is a misleading statement. The January 2002 Wisconsin Order involved a very specific rate proceeding, not a rulemaking. The Wisconsin Commission had declined to exercise jurisdiction, and accordingly Wisconsin Bell would have been required to file a federal tariff. The FCC acted on an application for review of a Bureau Order that established how the FCC wanted a carrier to defend its federal rates when the state declined jurisdiction. On review, the FCC went beyond the original proceeding and issued guidelines to assist state commissions, and returned the case to Wisconsin on the assumption that the new guidelines would assist the Wisconsin Commission in reviewing new intrastate tariffs. The Commission noted that the guidance given to the Wisconsin Commission would also assist other state commissions in future rate proceedings. The Commission obviously did not “address the question of refunds” because it would have been inappropriate to do so. Had Wisconsin chosen to return the tariff to the FCC one more time, refunds could have been ordered if the process of Section 204 of the Act were followed. Had Wisconsin chosen to keep the tariff and apply its own law (which it ultimately did), Wisconsin law would govern the question of refunds.*

**APCC:** Qwest’s additional background information undermines rather than supports its accusation that APCC is misleading the Commission. Qwest agrees that the *Wisconsin Order* provided guidance to the states. The Commission clearly intended that other states view the *Wisconsin Order* as binding; it expressly directed that two state rulings pending review by the Commission be revisited with “further state commission proceedings consistent with the *Wisconsin Order*.” *North Carolina Payphone Association, et al.*, 17 FCC Rcd 4275,4276 (2002). Indeed, Qwest’s actions in response to the *Wisconsin Order* belie its assertions. In response to the *Wisconsin Order*, Qwest filed rate reductions in virtually every state. Why would Qwest have filed rate reductions if the guidelines were applicable only to Wisconsin?

## BACKGROUND (cont'd)

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

**Qwest:** *This is not true in the case of Qwest. Qwest's rates were generally found to be compliant with the new services test. It is true that, when the Wisconsin Order was released in 2002, Qwest reviewed its payphone access line rates and made appropriate adjustments.*

**APCC:** This is absurd. Notably, Qwest does not say ***by whom*** its “rates were generally found to be compliant.” ***Qwest may*** have reviewed its rates and may have itself found them compliant, but there was no determination by a state commission in virtually any Qwest state finding Qwest's rates to be NST-compliant. Qwest's rates could not be “found compliant” because most were never submitted for state review. When effectively compelled to make “appropriate adjustments” to comply with the *Wisconsin Order*, Qwest reduced its rates by 33% - 72%.

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

**Qwest:** *This is not only true but necessary and appropriate under the federal scheme that the FCC implemented. The FCC did not have the power to preempt state ratemaking authority or statefiled tariff rules, nor did it even remotely purport to do so. At the very least such a massive intrusion into state jurisdiction would have been explicit and would have required a detailed analysis.*

**APCC:** Qwest concedes the truth of APCC's assertion. The rest of Qwest's commentary is another of Qwest's attempts to distort the issue before the Commission. Again, ***none of the petitions asks the Commission to revisit a state commission's determination of the NST-compliant rate.*** The issue is only whether refunds are the necessary ***federal*** remedy for the BOCs' unforeseen “massive” *failure* to comply with Section 276.

## CURRENT PROCEEDINGS

- 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.

**Qwest:** *This appears to be true.*

**APCC:** No response necessary.

- 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.

**Qwest:** *The Oregon PUC sent a letter to the FCC requesting guidance from the FCC on the meaning of the Waiver Order. The Ninth Circuit did not seek guidance from the FCC. Instead the Ninth Circuit remanded the case to the district court with instructions to seek primary jurisdiction from the FCC on the nature of the “waiver” filed by the BOCs. As noted, this waiver did not apply to Qwest because its rates already complied with the new services test.*

**APCC:** The first two statements are meaningless nitpicks; the last is incorrect as discussed above.

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

**Qwest:** *This appears to be true.*

**APCC:** No response necessary.

## 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.  
**Qwest:** *Qwest has charged payphone service providers costs based rates since prior to April 1997.*  
**APCC:** Unsupportable and incorrect for the reasons stated above. Qwest and other BOC rates were several times costs.
- Excessive charges borne by independent payphone operators have accelerated removal of payphones.  
**Qwest:** *Qwest's charges have not been excessive or discriminatory. Qwest submits that cellular telephony and text messaging have accelerated the removal of payphones.*  
**APCC:** Of course wireless has caused removal of payphones. But by charging rates several times in excess of costs, the BOCs inflated PSPs' costs and made it much harder for PSPs to avoid removing phones.
- 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.  
**Qwest:** *Qwest agrees that payphones continue to play an important, although substantially diminished, role in American telecommunications. This does not provide any support for the payphone providers' efforts to obtain unlawful "refunds" from BOCs.*  
**APCC:** It is Qwest's and the other BOCs' refusal to provide refunds that is unlawful.

## THE COMMISSION MUST ORDER THE BOCs TO PAY REFUNDS

- The BOCs have collected dial-around compensation for ten years while evading compliance with their eligibility conditions.  
**Qwest:** *Qwest has never evaded compliance with its eligibility conditions. Indeed, its certification of compliance was challenged by AT&T and MCI. The FCC rejected the challenge.*  
**APCC:** Qwest not only failed to submit its rates for state review, but also joined the other BOCs in challenging the FCC's jurisdiction to require NST compliance, effectively delaying their NST compliance for several years. It is misleading for Qwest to state that in "reject[ing] the [IXCs'] challenge" to Qwest's certification of compliance, the FCC somehow affirmed that Qwest was in compliance with the NST. The Commission merely held that the IXCs could not engage in self help by withholding payment based on alleged BOC non-compliance with Section 276, but rather must challenge BOC compliance in a proper proceeding, as the PSPs did. *See Bell Atlantic – Delaware v. MCI Telecomms. Corp.*, Memorandum Opinion and Order, 14 FCC Rcd 16050, 16068 (CCB 1999); *Ameritech Illinois v. MCI Telecomms. Corp.*, Memorandum Opinion and Order, 14 FCC Rcd 18643, 18651 (CCB 1999) (denying IXCs use of self-help to "challenge" Qwest certification "for the reasons stated in *Bell Atlantic v. Frontier*").
- It is the FCC's responsibility to ensure a remedy for BOC violations of Section 276 and the federal NST.  
**Qwest:** *The FCC did provide for such a remedy when it delegated this authority to state regulators and courts. There is no federal remedy that could be lawfully imposed retroactively at this time.*  
**APCC:** Incorrect for the reasons stated above. Under *United States Telecomms. Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTAI*") the Commission could not lawfully delegate such authority to the states.

## THE COMMISSION MUST ORDER THE BOCs TO PAY REFUNDS (cont'd)

- 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.

**Qwest:** *There is no evidence of discrimination, and Qwest did not discriminate. State regulators were charged with preventing such unlawful discrimination in payphone rates.*

**APCC:** Section 276 charges the FCC, not the states, with preventing unlawful rate discrimination.

- 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.”

**Qwest:** *The payphone providers here argue that, if the FCC did not reserve the right to micromanage state tariff proceedings in its delegation to state regulators of the authority and obligation to supervise RBOC compliance with Section 276 of the Act, the payphone orders might have been illegal under the USTA II decision. The payphone orders never pretended to reserve this type of supervisory authority over state regulators, a fact made absolutely clear from the Wisconsin Orders and the appellate proceeding concerning them. It is far too late for the payphone providers to challenge the lawfulness of the enforcement structure adopted by the FCC for dealing with payphone access line rates. But even a cursory reading of the Wisconsin Orders demonstrates conclusively that the FCC did not establish a regulatory regime that “superintended state regulation in every respect.” Indeed, for such a novel and legally controversial regulatory structure to be enacted, the FCC would have needed to give detailed notice of exactly what it intended. To the contrary, the FCC made it perfectly plain that state costing principles and state enforcement mechanisms (including enforcement by state judicial officials where appropriate) would provide the means of ensuring that the FCC’s guidelines were followed.*

**APCC:** The Commission needed to superintend the states only to the extent necessary to ensure that they enforced federal law, and it reserved its authority to do so. It is the unsupervised delegation of FCC responsibilities to the states, as now advocated by the BOCs, that is “novel and legally controversial” – in fact, unlawful.

## THE COMMISSION MUST ORDER THE BOCs TO PAY REFUNDS (cont'd)

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

*Qwest: The Commission simply does not have the authority to “overrule” “inconsistent” state rulings and order the BOCs to pay refunds. When one considers the fact that all of the payphone orders, including the Wisconsin order, recognized that state regulators were expected to apply their own costing methodologies (and not a federal costing methodology) in determining compliance with the new services test, it is clear that it would be difficult or impossible to determine just what an “inconsistent state ruling” was, and far more so to determine what the proper rate under the state interpretation of the new services test should have been if the FCC had stood in the shoes of the state regulators during the years that they were making the variety of rate decisions that the payphone providers now challenge.*

*The FCC cannot legally order “refunds.”*

**APCC:** Again, **RATESETTING IS NOT THE ISSUE HERE.** No state rate determination is being challenged. The Commission’s task is much easier: It need only determine that refunds are necessary under federal law to make PSPs whole and remedy the BOCs’ ten years of noncompliance with the *Payphone Orders*.

**[This slide added by Qwest]**  
**THE WISCONSIN ORDER DOES NOT JUSTIFY REFUNDS**

**Qwest:** *[“]There is a significant doubt that either set of petitioners has suffered an injury sufficient to establish standing. The Commission made no determination as to the actual payphone line rate to be charged in Wisconsin or anywhere else. It did not ‘review or evaluate’ the Wisconsin BOCs’ tariffs, but simply ‘urge[d] the Wisconsin Commission to review its jurisdiction to apply the new services test.’ Wisconsin Order Paragraph 66. The order on review, in other words, did not establish a rate that is different from the rate already being charged in Wisconsin. It established only a standard under which BOC payphone line rates must be judged.”\**

*In order to show injury, the BOCs would have to demonstrate that as a result of the order on review they must charge less for payphone line service than they otherwise would have. At this point, with no change in the existing rate having been ordered, such a showing would appear impossible to make. Indeed, the BOCs previously indicated to the Commission that their existing tariffs meet the new services test. . . . Nor can the Court presume an injury; the burden is on the petitioners to demonstrate one. The BOCs also lack standing to claim that they are entitled to have state agencies assess their tariffs under state established standards. A state regulatory agency would presumably have standing to press such a claim (and state agencies often do, *see Illinois*, 117 F.3d 555). But in the absence of a rate differential the BOCs’ own interests are not affected by the identity of the regulator.*

\* *FCC Brief in New England Public Communications Council v. FCC*, pps. 17, 18.

**[This slide added by Qwest]**  
**THE WISCONSIN ORDER DOES NOT JUSTIFY REFUNDS (cont.)**

**Qwest:** *[“]The BOCs’ injury is both clear and immediate. The Order’s forward-looking cost-based rate setting methodology means that the BOCs cannot recover certain expenses beyond the current cost of providing service – namely, expenses owing to inefficiencies such as poor management or inflated capital and depreciation – that they could recover under a historical-cost method. . . . To comply with the Wisconsin Order, the BOCs will almost certainly have to modify their tariffs to lower their existing rates – or at the very least, refrain from raising their rates – before submitting their tariffs for state review.”*

\* *New England Public Communications Council v. FCC, 334 F. 3d 69, 74 (DC Cir. 2003).*

[This slide added by Qwest]

## ***THE WISCONSIN ORDER DOES NOT JUSTIFY REFUNDS (cont.)***

**Qwest:** The Wisconsin Order established guidelines under which states would be expected, in future payphone access line rate proceedings, to apply their own forward looking cost methodologies. It was never intended to establish a standard for federal evaluation of existing intrastate payphone access line rates, although, if state law so permitted, a state regulator could have commenced a proceeding at any time to determine whether new standards had been adopted and whether they should be applied to existing rates (as opposed to awaiting new tariff filings initiated by the BOCs). This is apparent from the language of the Wisconsin Orders and from the representations that the Commission made to the Court reviewing the first Wisconsin Order.

**APCC:** To the extent that Qwest is arguing that the *Wisconsin Order* itself did not mandate refunds, APCC agrees – as APCC said on p. 7 above, the *Wisconsin Order* “did not address the question of refunds.”

To the extent that Qwest is arguing that the standards in the *Wisconsin Order* did not apply to existing payphone line rates or rate proceedings, Qwest is wrong. The *Wisconsin Order* clarified the pre-existing NST standard, which had already been mandated by the *Payphone Orders* for application to payphone line rates, whether pre-existing or newly filed. This is apparent from the court of appeals language quoted by Qwest on the preceding page. Thus, the guidelines as clarified by the *Wisconsin Order* applied just as strictly to existing proceedings as to “future” proceedings and just as strictly to existing rates as to newly filed rates. That is why the Commission expressly found that the North Carolina and Michigan decisions “appear[ed] inconsistent” with the *Wisconsin Order* and directed that they be revisited “consistent with the *Wisconsin Order*.” *North Carolina Payphone Association, et al.*, 17 FCC Rcd 4275,4276 (2002).