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of Counsel

November 13, 2008

By Electronic Filing **Ex Parte Presentation**

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

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

Dear Ms. Dortch:

On November 12, 2008, Michael W. Ward, General Counsel for the Illinois Public Telecommunications Association, and Keith J. Roland, General Counsel for the Independent Payphone Association of New York, met with Nicholas Alexander, Legal Advisor to Commissioner Robert M. McDowell, to discuss the Associations' respective positions already on file in their petitions for declaratory ruling in the above-captioned proceedings, the matters summarized in their previous filings, and the following document.

Sincerely,

Michael W. Ward

Enclosure

cc: Nicholas Alexander
Keith J. Roland

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Illinois Public Telecommunications Association Petition for Declaratory Ruling, FCC Docket 96-128

Section 276 Compliance

I. What is already established:

A. Rates to PSPs must be NST cost-based no later than April 15, 1997
First Report & Order, ¶¶ 146 – 147
Order on Reconsideration, ¶¶ 130 – 131, 163
Bureau Waiver Order, ¶ 30 (4/4/97)

B. Any inconsistent state requirement is preempted
First Report & Order, ¶¶ 147

C. BOC must be in compliance with NST rate requirement to be eligible to receive dial around compensation (DAC)
Order on Reconsideration, ¶¶ 130 – 131
Bureau Waiver Order, ¶ 30 (4/4/97)
Clarification Order, ¶ 10 (4/15/97)

D. BOC certification of NST compliance does not substitute for the requirement to be in actual NST compliance to be eligible for DAC
Ameritech v. MCI, ¶ 28 (11/8/99)

E. PSPs did not receive NST cost-based rates by April 15, 1997 because IL Bell did not comply until December 13, 2003
ICC Investigation into Certain Payphone Issues, ICC Dkt #98-0195

F. IL Bell collected $100s millions of DAC prior to becoming eligible for DAC on December 13, 2003
ICC Investigation into Certain Payphone Issues, ICC Dkt #98-0195 (record facts)

G. FCC procedure to be followed:

1. PSPs should first raise issues about NST rates before the state commission
Order on Reconsideration, ¶ 163
Wisconsin Bureau Order, (3/2/00), aff'd 334 F.3d 69
Done: *ICC Investigation into Certain Payphone Issues*, ICC Dkt #98-0195 (initiated May 8, 1997 as ICC Dkt #97-0225)

2. FCC retained jurisdiction over NST rate compliance

Clarification Order, fn 60 (4/15/97)
NC Utilities Comm'n Order, ¶ 2 (3/20/98)
Wisconsin Bureau Order, ¶ 2, (3/2/00), aff'd 334 F.3d 69

3. BOC receipt of DAC based on false certification of NST compliance will be addressed by the Commission
Bell Atlantic v. Frontier Comm'ns, ¶ 28 (9/24/99)
Ameritech v. MCI, ¶ 28 (11/8/99)
Submitted: *IPTA Petition for Declaratory Ruling*

II. What remains to be decided:

A. Whether the FCC will enforce its own orders that PSPs must receive NST cost-based rates no later than April 15, 1997, by ordering refunds of the IL Bell charges from April 15, 1997 to December 12, 2003 that were in excess of the NST cost-based rates as found by the Illinois Commerce Commission.

B. Whether the FCC will enforce its own orders that a BOC must be in actual compliance with the NST cost-based rate requirement before being eligible to receive DAC, notwithstanding the BOC's incorrect certification of compliance, by ordering IL Bell's forfeiture of DAC collected by IL Bell before it was eligible.

III. IPTA proposed holdings:

A. Grant the IPTA Petition for a Declaratory Ruling in finding that: (1) as a matter of uniform federal law and policy, IL Bell is required to refund the amounts charged to PSPs from April 15, 1997 through December 12, 2003 that exceeded the NST cost-based rates as found by the Illinois Commerce Commission in ICC Dkt. #98-0195, with 11.25% simple interest from the date paid by the PSP until the refund is received; (2) the FCC's previous holding, preempting any state requirement inconsistent with the FCC requirement for NST cost-based rates to be in effect no later than April 15, 1997, remains in effect (*First Report & Order*, ¶¶ 147); and (3) if the refunds are not made within six months of this Order, any party or PSP may enforce this Order by filing a complaint for enforcement with the FCC.

B. Also, grant the IPTA Petition for a Declaratory Ruling in finding that, as a matter of uniform federal law and policy, IL Bell is required to forfeit the DAC collected for April 15, 1997 through December 12, 2003, the period before IL Bell was in actual compliance with the NST cost-based rate requirement, and thus before IL Bell was eligible for DAC under the FCC orders.

Partial List of States with Refunds for NST Overcharges

Colorado
Idaho
Indiana
Iowa
Kentucky
Louisiana
Michigan (partial)
Minnesota
Nebraska
New Mexico
North Dakota
Pennsylvania
South Carolina
South Dakota
Tennessee
Utah
Washington
Wisconsin
Wyoming