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February 19, 2009

**By Electronic Filing**

**Ex Parte Presentation**

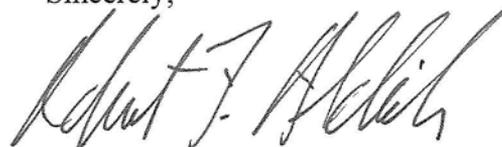
Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W., TW-A325  
Washington, DC 20554

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

Dear Ms. Dortch:

Yesterday, February 18, 2009, the enclosed letter from Willard R. Nichols, President, American Public Communications Council ("APCC"), was delivered to Acting Chairman Michael J. Copps. The enclosed copy is hereby submitted for inclusion in the record of this proceeding.

Sincerely,



Robert F. Aldrich

Enclosure



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**American Public Communications Council, Inc.**

Willard R. Nichols  
President

February 18, 2009

Chairman Michael J. Copps  
Federal Communications Commission  
445 12th Street, S.W., Room 8B115  
Washington, DC 20554

**Re: Matters Appropriate and Ripe For Immediate Disposition: CC Docket No. 96-128, Illinois Public Telecommunications Association et al., Petitions for Declaratory Ruling**

Dear Chairman Copps:

I am writing on behalf of the American Public Communications Council ("APCC") to urge you to decide, and grant, as promptly as possible, the long-pending petitions of five state payphone associations seeking a Commission order granting refunds of excessive Bell Operating Company line charges.<sup>1</sup> The petitions before you are ripe for decision and fit comfortably within the parameters you have outlined in recent statements regarding the issues that are appropriate for decision during your tenure as Chairman.

Indeed, the petitions are exactly the type of "backlog" items that you have stated you will give high priority during the transition to a permanent chairman. Three of the five petitions were filed in 2004; the other two were filed in 2006. In addition to the petitions, there is a pending referral of the refund issue from the Massachusetts Supreme Judicial Court, dated

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<sup>1</sup> See Illinois Public Telecommunications Association, Petition for Declaratory Ruling (filed July 30, 2004); Southern Public Communication Association, Petition for Declaratory Ruling (filed Nov. 8, 2004); Petition of the Independent Payphone Association of New York, Inc. for an Order of Pre-Emption and Declaratory Ruling (filed Dec. 29, 2004); Petition of the Florida Public Telecommunications Association, Inc. for a Declaratory Ruling and for an Order of Preemption (filed Jan. 31, 2006); Petition of the Payphone Association of Ohio to Preempt the Actions of the State of Ohio Refusing to Implement the FCC's Payphone Orders, Including the Refund of Overcharges to Payphone Providers in Ohio, and for a Declaratory Ruling (filed Dec. 28, 2006).

March 6, 2006, requesting “prompt” guidance from the Commission.<sup>2</sup> There is also a letter from the Oregon Public Utility Commission, dated November 23, 2005, requesting that the Commission act “as expeditiously as possible” to provide guidance on the refund issue so that a long-pending proceeding in that agency can be resolved.<sup>3</sup>

While the petitions are not “routine items,” the issues they raise are narrow and specific to the industry segment and parties involved – the payphone service providers and the Bell Operating Companies. A decision granting the petitions would have no application to or policy implications for any other segment of the industry. All that must be decided is whether the Commission’s prior payphone decisions and Section 276 of the Communications Act require the Bell Operating Companies to refund the excess charges collected from payphone service providers in the past, as far back as 1997. Thus, the petitions concern the enforcement of previously issued Commission orders.

Moreover, deciding these petitions would not detract from the Commission’s current focus on smoothing the Digital TV transition. The petitions are *not* the sort of “wildly controversial,” time- and attention-consuming items that you have suggested should be deferred to the next Chairman. Indeed, deciding the petitions would not involve *any* prospective policy decisions at all. The issues at stake are wholly *retrospective*. The charges at issue were long ago found to be unreasonable by state public service commissions and were adjusted by those commissions on a prospective basis, applying Commission decisions and regulations. There are no factual issues to be resolved, and this Commission is not being asked to overturn any factual findings of any state Commission. All that is involved is an interpretation of federal law as applied to past events. Thus, a decision granting the pending refund petitions would in no way tie the hands of a future chairman in setting telecommunications policy going forward. Moreover, although the petitions involve interpretations of federal law made by a handful of state commissions, as is the case with regard to the impact on the future Chairman, this Commission’s decision would have no effect on the ability of the states to pursue their own policies in the future. Nor are these petitions and requests for guidance likely to be quickly addressed upon the new FCC taking office, particularly in the face of the other pressing, complex and broad issues that you have recognized will immediately face the new FCC.

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<sup>2</sup> See Letter to Chairman Kevin Martin, FCC, from Maura S. Doyle, Clerk, Commonwealth of Massachusetts Supreme Judicial Court for Suffolk County (Mar. 6, 2006); *New England Public Communications Council, Inc. Filing of Letter from Supreme Judicial Court of Massachusetts Regarding Implementation of the Pay Telephone Compensation Provisions of the Telecommunications Act of 1996*, Public Notice, DA 06-780 (Apr. 3, 2006).

<sup>3</sup> See Letter to Chairman Kevin Martin, FCC, from Chairman Lee Beyer, Commissioner John Savage, and Commissioner Ray Baum, Oregon Public Utility Commission (Nov. 23, 2005).

Chairman Michael J. Copps  
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By contrast, a decision granting the petitions is urgently needed by the members of APCC. Timely refunds would provide critical economic relief in these difficult times to the small payphone businesses that make up the vast bulk of the independent payphone industry. On their behalf, I urge you to give high priority to a prompt decision granting the pending "backlogged" payphone association petitions.

Sincerely,



Willard R. Nichols

cc: Jennifer McKee  
Julie Veach  
Marcus Maher