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October 22, 2010

Chairman Julius Genachowski
Federal Communications Commission
8th Floor
445 12th Street, S.W.
Washington, D.C.20554

Re: Docket 96-128: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996
Illinois Public Telecommunications Association Petition for Declaratory Ruling

Dear Chairman Genachowski:

I want to express the appreciation of myself and the other members of the payphone industry for your taking the interest to meet with us this past Monday on our pending petitions before the Commission. We are cognizant that you have many demands in your oversight of the nation's communications industry and are thankful that, among all these activities, you recognize that a 14 year delay in enforcement of federal law and policy is a matter that necessitates immediate address. In that regard, I would like to briefly reiterate the need and the means to bring this matter to a final resolution. Only a definitive Commission order (1) requiring refunds with interest of BOC charges to payphone providers that exceeded the new services test compliant rates on and after April 15, 1997 and (2) finding that a payphone provider may file a complaint at the Commission against any BOC that fails to comply with the refund order, will conclude this matter without additional and extended administrative proceedings between the states and the Commission. It would be unconscionable to expose these small businesses to the possibility, or probability, of years more in state and federal administrative hearings.

In implementing the requirements of Section 276 of the Act, the Commission has already issued numerous orders that BOC local telephone rates to payphone providers must be new services test compliant no later than April 15, 1997 and that the BOCs are not eligible to receive dial around compensation on their payphones until they are in actual compliance with this requirement. The Commission directed the industry to raise compliance issues first with the state commissions, subject to this Commission's nondelagable jurisdiction to ensure that the federal requirements are implemented as directed by the Commission. In Illinois, we followed that procedure and definitively established that AT&T violated the Commission's orders (1) by charging rates in excess of new services test compliant rates for six and a half years and (2) by illicitly collecting dial around compensation on AT&T payphones during this time before being eligible to do so. Now, only a Commission order definitely stating that AT&T must refund the excess charges, with 11.25% interest, can effect those numerous Commission orders that have been violated and

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achieve a uniform application of the Act. No other remedy will place the Illinois payphone providers in the position required by the provisions of Section 276 as implemented by the Commission and as enjoyed by payphone providers in numerous other states. As Congress has charged the Commission to see to the implementation of the Section 276 provisions, and as Congress in Section 276(c) has expressly preempted the states from having any requirement inconsistent with the Section 276 requirements, it is incumbent upon the Commission to enforce the Section 276 provisions on behalf of the payphone providers in Illinois and other states.

In the proceedings on this petition, the Illinois Association has constantly advocated enforcement of the numerous Commission orders implementing Section 276, while AT&T has just as constantly advocated (without substance) a plethora of ways that the Commission's orders may be avoided. There is no purpose, and potentially great harm, at this time, six years after the filing of the petition, in sending this matter back to the state commission to implement the refund requirement. As before, it can be expected that AT&T will continue to argue before the state commission how the Commission's refund order may also be avoided, possibly necessitating yet another request to the Commission for enforcement of its requirements. And it is unnecessary. The 2003 Illinois decision has established the new services test compliant rates. The refund is the difference between the rates charged and the rates that should have been charged, plus the 11.25% interest that the Commission has found to be appropriate in the other Section 276 orders. Should AT&T violate the refund order and fail to pay the refunds with interest, the refund order should state that the payphone provider should file a complaint at the Commission for AT&T's violation of the refund order. There is no need in this situation to involve the state commission.

In states such as New York or Florida, where new services test compliant rates were established for later time periods, those rates should be applied back to April 15, 1997. Or for Michigan, where a new services test compliant rate has yet to be established, the Commission could correct the error by uniformly applying the overhead allocation in the record to the local usage rate, thereby establishing a new services test compliant rate. These states would then be in a similar position to Illinois in that the calculation of the refund and interest amounts owed would be liquidated. The petitioners could then file a complaint at the Commission should they not be paid. However, should the Commission feel a need to remand these cases to the states for a state order to establish the rates back to April 15, 1997, the remand must specify that the states are required to apply the methodology of the *Wisconsin Order* and other new services test requirements going back to April 15, 1997 and that the states are required to provide for refunds of the excess charges, with interest, for that time period.

After 14 years of proceedings, it is critical to the integrity of the Commission that Congress' charge to the Commission to implement the requirements of Section 276 be achieved and to see that the Commission's orders are given full and uniform effect. We appreciate your attention to bringing these matters to an appropriate conclusion.

Sincerely,

/s/

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