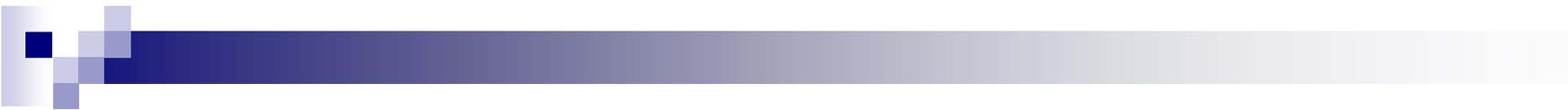


# Section 276 Compliance

Illinois Public Telecommunications Association  
Michael W. Ward, General Counsel

March 14, 2011



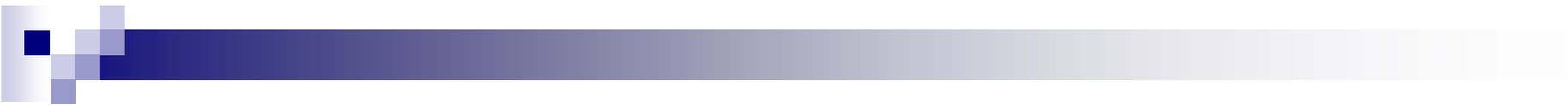
# The Commission Itself Must Resolve The Section 276 Violations

- Congress charged the Commission with the responsibility to implement Section 276 requirements - 47 U.S.C. §276(b)
- Congress prohibited inconsistent state requirements – 47 U.S.C. §276(c)
- The Commission preempted state requirements inconsistent with the Commission’s cost-based pricing orders – *First Report and Order*, ¶ 147
- “The Commission retains jurisdiction under Section 276 to ensure that all requirements ... have been met” – *Clarification Order*, fn 60; see also *Bureau Wisconsin Order*, ¶ 2; *Commission Wisconsin Order*, ¶ 35; *New England Public Communications Council, Inc. v. FCC*, 334 F.3d 69 (D.C. Cir. 2003)



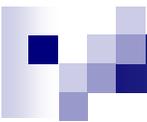
# The Illinois Violations Are Uncontested

- The Commission required that cost-based rates must be in actual effect no later than April 15, 1997 – *Order on Reconsideration*, ¶¶ 130, 163; see also *Bureau Waiver Order*, ¶ 30; *Clarification Order*, ¶ 10
  - The Illinois Commerce Commission held that cost-based rates would not be effective until December 13, 2003
- The Commission required that a BOC would not be eligible to collect dial around compensation from its payphones in a state until the BOC was in actual compliance with the cost-based rate requirement in that state – *Order on Reconsideration*, ¶¶ 130, 131, 163; see also *Ameritech v. MCI*, ¶ 27; *Bell Atlantic-Delaware v. Frontier Communications Services, Inc.*, ¶ 28
  - The Illinois Commerce Commission permitted Illinois Bell to collect \$200 million in dial around compensation on its payphones for over 6 years before actual compliance with the cost-based rate requirement



# The ICC Order Stands In Direct Violation Of The Requirements Under Section 276(b) And The Commission's Responsibility Under Section 276(c)

- To allow the Illinois Commerce Commission Order to violate the requirements of Section 276 and their specific implementation as found by the Commission is a direct violation of the express provisions of Section 276(c) prohibiting inconsistent state requirements
- Any failure of the Commission to ensure enforcement of the Section 276(b) requirements implemented in its orders or to ensure uniform application of those requirements throughout the states consistent with the Commission's orders would be a violation of the Congressional directive to the Commission under Section 276(c)



# The BOCs' Arguments Are Contrary To The Facts, Law, Commission's Orders, And Section 276

- From the outset the Act and Commission Orders have expressly preempted any state requirement inconsistent with the Section 276 requirements
- The IPTA filed its complaint at the ICC at the Commission's directive subject to the Commission's retained jurisdiction expressly to ensure enforcement
- Enforcement of the Commission's Orders is both permissible and required
- Actual cost-based rates have always been a prerequisite for a BOC's receipt of dial around compensation in that state
- The Supremacy Clause trumps state common law theories of issue preclusion
- Preempted state procedural requirements may not prevent enforcement of established Federal law and policy
- The D.C. Circuit has found that Sections 154(i) and 276 (b)(1) authorize the Commission's ordering of refunds to enforce Section 276 regulations



# This 14 Year Odyssey Must End Now

- The IPTA has actively pursued its rights since the passage of the 1996 Telecommunications Act
  - The IPTA was involved in the original rulemakings and was the lead party on the initial Court review – *Illinois Public Telecommunications Association v. FCC*, 117 F.3d 555 (D.C. Cir. 1997)
  - The IPTA initiated its complaint before the state ICC on May 8, 1997 shortly after the April 15, 1997 cost-based requirement date
  - The IPTA has continuously sought the Commission's retained jurisdiction to correct the ICC's failure to enforce the Section 276 requirements since the ICC's 2003 ruling
- Failure to ensure uniform state compliance with the Commission's implementation of Section 276 and to bring to an end 14 years of efforts pursuing the enforcement of the Section 276 requirements would violate the Act, undermine the integrity of the Commission's proceedings, and expose the Commission to disrepute
- The Commission must order the refunds and provide for Commission enforcement