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September 12, 2011

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

NOTICE OF EX PARTE

Re: CC Dkt. No 96-128

Dear Ms. Dortch:

On September 9, 2011, I had a telephone conference with Zachary Katz, Chief Legal Counsel and Senior Adviser to Chairman Genachowski. I advocated that the Chairman's office adopt an order directing the BOCs to pay refunds to payphone service providers ("PSP"s) who had been charged rates in excess of rates compliant with the New Services Test. In accordance with views previously provided to the Commission, I argued that the Commission had the authority and duty to do so under Section 276 consistent with its authority to preempt inconsistent state decisions and award reparations in cases where a carrier's rates are found to be unlawful. I also argued that given the resources already expended on this matter, it was important for the Commission to reach the right result and the Commission should expend the resources necessary to resolve this matter correctly now, since the Commission would always be under resource constraints and the matter has recently been given some attention. In addition, I mentioned that the refunds were the only source of capital for those PSPs considering offering enhanced functionality, including broadband access, from payphones and that the refunds would contribute to maintaining phones in the ground, a substantial infrastructure issue since wireless networks had shown their inability to cope with emergencies, like the 9/11 attacks, blackouts, hurricanes, and even our own recent earthquake. I also pointed out that payphones continue to be a communications link of last resort for and to serve low income consumers.

Please feel free to contact me with any questions.

Sincerely,

Albert H. Kramer
*Attorney for American Public
Communications Council*

AHK/rw
cc: **(Via E-Mail)**
Mr. Zachary Katz

