petition

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January 16, 2001

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BY HAND

Honorable Janet H. Deixler
Secretary
New York Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Cases 99-C-1684 and 96-C-1174

Dear Secretary Deixler:

Enclosed please find an original and twenty-five (25) copies of Verizon New York Inc.'s Opposition to Petition for Rehearing.

Respectfully submitted,

Thomas J. Farrelly (GS-)

Thomas J. Farrelly

cc: Keith Roland, Esq. (By U.S. Mail)
Service Lists (By U.S. Mail)

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSIION

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Petition Filed by the Independent Payphone Association of New York, Inc. That the Commission Modify New York Telephone Wholesale Payphone Service Rates and Award Refunds.	:	Case 99-C-1684

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Proceeding on Motion of the Commission To Review Regulation of Coin Telephone Services Under Revised Federal Regulations Adopted Pursuant to the Telecommunications Act of 1996.	:	Case 96-C-1174

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VERIZON NEW YORK INC.'S OPPOSITION TO PETITION FOR REHEARING

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Dated: New York, New York
January 16, 2001

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VERIZON NEW YORK INC.'S OPPOSITION TO PETITION FOR REHEARING

The Commission should dismiss the Petition for Rehearing of the Independent Payphone Association of New York, Inc. ("IPANY Petition"). The IPANY Petition seeks reconsideration of the Commission's October 12, 2000 "Order Approving Permanent Rates and Denying Petition for Rehearing" ("October 12 Order"). IPANY has made no serious attempt to meet the standards for rehearing that are set forth in Public Service Law Section 22 and Section 3.7 of the Commission Rules of Procedure. Rather than showing that the October 12 Order suffers "from an error of law or fact," the IPANY Petition merely rehashes legal and factual arguments which the Commission considered and properly rejected. In addition, IPANY fails to show that "new circumstances warrant a different determination." Instead, it merely re-states points that IPANY has attempted to make in earlier pleadings.

The only thing new about the IPANY Petition is its futile attempt to shore up its claim that an alleged decline in the availability of payphones requires that the Commission adopt IPANY's proposal to radically change the basis for prices charged for payphone-related services. The October 12 Order considered this claim and found that it provided absolutely no basis for the relief requested by IPANY. In an attempt to reverse this conclusion, the IPANY Petition contends that there is additional, new evidence of "the precarious health of the [Independent Payphone Provider] industry." (IPANY Petition at 17.) In addition, IPANY's January 3, 2001 supplement to its Petition ("Supplement") provides additional argument regarding "the financial health of the public pay telephone industry."[1] As shown below, the selected data regarding the financial health of the payphone industry offered by IPANY provides absolutely no basis for reversing the October 12 Order.

I. THE COMMISSION CORRECTLY FOUND THAT IT WAS NOT BOUND BY THE WISCONSIN ORDER

The IPANY Petition argues at great length that the October 12 Order is inconsistent with the requirements of Federal law. (*See* IPANY Petition at 8-12.) This argument is founded on a contention that the Commission was bound to follow the novel interpretation of the FCC's New Services Test that was adopted by the Deputy Chief of the FCC's Common Carrier Bureau ("CCB") on March 2, 2000."[2]

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[1] Supplement at 1. The Supplement also discusses the November 28, 2000 Decision of the Massachusetts Department of Telecommunications and Energy in Docket DPU/DTE 97-88/97-18 (Phase II) ("Massachusetts Decision"). The Massachusetts Decision is addressed in Point III, *infra*.

[2] *In the Matter of Wisconsin Public Service Commission Order Directing Filings*, CCB/CPD No. 00-1, Order (rel. March 2, 2000) ("Wisconsin Order").

The October 12 Order correctly found that the Wisconsin Order "is not binding on us in reviewing Verizon's payphone rates." (October 12 Order at 7.) In challenging this finding, IPANY simply asserts that the Wisconsin Order "was a generally applicable 'roadmap' which set forth, in detail, the requirements applicable to all ILECs for complying with the FCC's New Services Test." (IPANY Petition at 8.) This assertion is not supported by a single citation. The reason for this absence of claimed legal support is clear: as the October 12 Order recognized, "by its terms [the Wisconsin Order] only applies to the named Wisconsin LEC," in the special circumstances that were before the FCC's Common Carrier Bureau in that proceeding. (October 12 Order at 7.) Far from purporting to be a "roadmap" that must be applied to all ILECs, the Wisconsin Order explicitly states that it applies only to the Wisconsin ILECs that were identified in the Order.[3] This statement by the CCB is simply ignored by the IPANY Petition. In addition, IPANY fails to address the fact that in the more than ten months since its issuance, neither the FCC nor the CCB has taken any steps to apply the holdings of the CCB in the Wisconsin Order to any other ILEC or to actually adopt rates consistent with these holdings for the four Wisconsin ILECs that are subject to the Wisconsin Order. No steps have been taken by either the CCB or the FCC to extend the holdings of the Wisconsin Order in any way.

In fact, the FCC has yet to rule on the Application for Review that was filed by a coalition of LECs in April 2000 in response to the CCB's Wisconsin Order.[4] The LECs

[3] Wisconsin Order ¶ 1, n.1.

[4] *See* Verizon's April 6, 2000 Rebuttal Comments ("Rebuttal Comments") at 1.

pointed to the major procedural flaws and substantive errors that are reflected in the Wisconsin Order.

II. THE OCTOBER 12 ORDER IS CONSISTENT WITH FCC PRECEDENT

In an effort to mask the serious deficiencies of the Wisconsin Order, the IPANY Petition argues that the holdings of that Order are consistent with other relevant orders of the FCC and that, therefore, the Commission's finding that Verizon's existing payphone rates satisfy the FCC's New Services Test is inconsistent with both this earlier precedent and the Wisconsin Order. (IPANY Petition at 8-12.) This effort is unavailing. The October 12 Order correctly applied the FCC's requirements for the New Services Test, and it is the aberrational reading of that Test in the Wisconsin Order that is at war with the prior holdings of the FCC.

The specific criticisms of the October 12 Order's application of the New Services Test do not withstand analysis. First, IPANY faults the Commission for allegedly basing its conclusion that Verizon's existing payphone rates satisfied the New Services Test on a comparison of these rates with embedded costs. In its October 12 Order the Commission found that these rates include common costs and overhead at 30% above direct, embedded costs. The Commission found that the rates fell within a range of costs-to-rate comparisons that the FCC has previously found acceptable for purposes of the New Services Test, noting that the FCC had "[t]raditionally allowed rates one to two times above direct embedded costs." (October 12 Order at 6.)

IPANY contends that, putting aside the Wisconsin Order, other FCC precedent requires that "forward looking costs" be used in conducting the New Services Test. (IPANY

Petition at 9.) It is telling that in making this claim IPANY does not at all address the precedent which Verizon cited in its Initial and Rebuttal Comments which show that the Commission's conclusions about the FCC's application of the New Services Test were correct. For example, the Colorado Commission decision cited by Verizon in its Initial Comments (Initial Comments at 9, n.22), pointed to the "wide latitude in the cost to price ratios previously employed by the FCC."[5] IPANY has consistently failed to address in *any* of its pleadings directly relevant FCC and state precedent that has been cited by Verizon. It is this precedent -- precedent that directly deals with the application of the New Services Test to payphone services -- that the Commission has correctly relied upon.[6] IPANY's various filings, including its Petition, have done nothing to contest or bring into question the fact that "the FCC has approved many services, including payphone-related features, with contribution levels in *excess* of those contained in [Verizon's] existing PAL rates." (Initial Comments at 4; emphasis in original.)

In addition to not being supported by any relevant FCC precedent, IPANY's criticism of the Commission's reference to embedded costs ignores the fact that the comparisons of costs and existing rates made by Verizon to show that its rates satisfied the New Services Test used

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[5] Docket No. 98-F-146T, *Colorado Payphone Association v. U.S. West Communications, Inc.*, Decision No. C99-765 (dated July 14, 1999) at 3.

[6] As shown by Verizon's Initial (at 4-7) and Rebuttal (at 2-4) Comments, the FCC has, contrary to IPANY's basic claim, refused to require the use of any specific cost methodology in conducting the New Services Test. In addition, by making clear that LECs can use "cost accounting studies" in conducting the New Services Test for payphone features, the FCC has obviously rejected IPANY's argument that only "forward-looking costs" can be used in measuring either direct costs or overhead costs for purposes of the Test.

filed incremental cost studies as the measure of direct costs.[7] (*See* Initial Comments at 5-7 and Exhibit 1.) The ratios that resulted from these comparisons -- 1.19 and 1.86 – fell well within the range of ratios that have been approved by the FCC for New Services Test purposes. (Initial Comments at 4-5, 7.)

Second, IPANY claims that the October 12 Order's application of the New Services Test violates the mandate of 47 C.F.R. § 61.49(f)(2) that the rates for services subject to the Test "not recover more than a just and reasonable portion of the carrier's overhead costs." (IPANY Petition at 10.) Here too, in making this claim IPANY simply ignores the FCC precedent, cited by Verizon and relied upon by the Commission, which shows that the FCC has held that rates which recover a higher percentage of overhead costs than Verizon's payphone rates satisfy the New Services Test. Contrary to IPANY's implication, Verizon has not proposed that "unsupported 'loadings'" be added to direct costs. (IPANY Petition at 10.) Rather, it has submitted two comparisons of its payphone rates with two separate measures of incremental, direct costs. These comparisons show that the resulting ratios of rates to direct costs fall well below ratios that the FCC has approved in decisions applying the New Services Test. Thus, the rates do nothing more than recover a reasonable amount of overhead costs and clearly satisfy the requirements of the New Services Test.

Third, IPANY claims that in applying the New Services Test the Commission should have found that UNE links are "'comparable' to PAL lines." (IPANY Petition at 11.) This claim is baseless. While the Wisconsin Order suggested that UNE links and payphone line

[7] One of these analyses used the Commission's approved TELRIC rates.

services are comparable, such a finding would contradict holdings of the FCC. The FCC has specifically concluded that "the pricing regime under Sections 251 and 252" of the Telecommunications Act of 1996, which applies to prices for unbundled network elements, does not apply to payphone services[8] and that the "services that incumbent LECs offer to [Payphone Service Providers] are retail services provided to end users."[9] Thus, the FCC has explicitly recognized that the provision of UNEs and the offering of payphone services are not comparable services. The October 12 Order took note of this distinction, finding that "payphone service providers (PSPs), as end user subscribers, are not entitled to the same treatment under the [1996] Act." (October 12 Order at 6.) In addition, as the Commission recognized, there are major differences between the costs of providing unbundled links to providers of telecommunication services and the costs of providing payphone services to PSPs. (*Id.* At 6-7.)

IPANY's effort to rebut this finding (IPANY Petition at 14-15) ignores the critical differences between Verizon's dealings with carriers, which purchase UNEs, on the one hand, and PSPs, which purchase payphone services, on the other. As Verizon showed,[10] the UNE rates which IPANY seeks do not provide for recovery of any of the retail costs that Verizon incurs in providing service to PSPs and other retail customers. The involvement of Verizon in

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[8] *In the Matter of Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC 2d 20541 (rel. September 20, 1996), ¶ 147.

[9] *Id.* ¶ 147, n.508.

[10] Rebuttal Comments at 4.

handling such items as service requests, addressing repair problems and providing bills is markedly greater in the case of PSPs than it is in the case of UNEs provided on a wholesale basis. For example, the major differences in addressing repairs result in costs being incurred in providing service to PSPs, which are not incurred in providing service to purchasers of UNEs. In the case of PSPs, Verizon tests the line, checks line translations and, once the nature of any problem is determined, refers the problem to an appropriate work group. In the case of a CLEC purchasing UNEs, the CLEC uses RETAS to test the line, isolates the trouble and then refers a repair request electronically.

Fourth, IPANY contends that Verizon's payphone-related services recover a higher level of overhead costs than the Commission found they do. (IPANY Petition at 12.) This claim is factually incorrect. However, even if it were correct, the percentage above overhead costs that IPANY claims, 115%, would still be within the range that the FCC has found to satisfy the New Services Test. The IPANY analysis is incorrect because its comparison of rates and costs includes the Federal PICC. As Verizon has shown, the PICC should not be included in a New Services Test analysis. The PICC provides for the recovery of costs other than those incurred in the provision of PALs and, therefore, there is no double recovery of these costs. In addition, as Verizon has shown, if the PICC revenues obtained from payphone lines were applied against the cost of the PALs, the burden of recovery of common costs would unreasonably be shifted to other customers and PSPs. (Rebuttal Comments at 6-7.)

Fifth, IPANY claims that in the case of usage rates the difference between direct costs and rates exceeds 400%. (IPANY Petition at 12.) This claims ignores the fact that the New Services Test does not apply to usage charges. The FCC has held that the unbundled features to be tariffed and to be subject to the New Services Test are payphone-specific, network-based features and functions used in configuring payphone operations provided by PSPs and LECs, such as answer supervision, coin supervision, signaling and rating, and call screening.[11] Other services that are not payphone-specific, like usage, are not subject to the Test.

III. THE MASSACHUSETTS DECISION DOES NOT SUPPORT IPANY'S POSITION

In addition to not fairly presenting the relevant FCC precedent, IPANY provides a distorted reading of the Massachusetts Decision. In its Supplement, IPANY contends that, with the exception of its treatment of usage rates, the Massachusetts Decision "is consistent with the relief sought here by IPANY." (Supplement at 3.) The Massachusetts Decision does nothing to bring the October 12 Order into question. First, and most critically, nowhere in that Decision does the Massachusetts DTE endorse the relief sought by IPANY in this proceeding. That is, the DTE has not adopted the notion that payphone rates should match UNE rates, which have been determined on the basis of TELRIC. On the contrary, the Massachusetts Decision found that PSPs must be "treated as retail customers by LECs." (Massachusetts Decision at 17.)

Second, while the Massachusetts Decision found that payphone rates should be priced on the basis of Total Service Long Run Incremental Costs ("TSLRIC"), that determination, the DTE found, was consistent with an earlier decision of the Department. (Massachusetts Decision at 14.) Here, as shown in Point IV, the October 12 Order is consistent with the

[11] *Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Bureau Limited Waiver Order, 12 FCC Rcd 21379 (rel. April 15, 1997), ¶¶ 17-18.

precedent of this Commission. This Commission, in both 1997[12] and in the October 12 Order found, after careful review, that it is appropriate to continue to price PAL rates on the same basis as business line rates. In doing so, the Commission continued a policy that had been in place since 1992, when existing PAL rates were first put in place. In addition, as shown in Point VI, any reduction of Verizon's payphone rates would have to be matched by an increase in the rates of other customers.

Third, as conceded by IPANY (Supplement at 3), the Massachusetts Decision rejected a claim that the New Services Test should apply to usage charges to PSPs.

Fourth, IPANY's claim to the contrary, the Massachusetts Decision in no way endorsed its claim that charging PSPs the EUCL or SLC results in "double recovery." (Supplement at 3.) The DTE found that "payphone providers should be treated similarly" as other retail customers are treated: that is, their rates must include payment of the EUCL or SLC. (Massachusetts Decision at 17.) Thus, the Department did not hold that "EUCL charges . . . paid on Public Access Lines should reduce the cost-based rate by an equivalent amount." (Supplement at 3.) All that it held was that, in reviewing whether rates are set to recover TSLRIC, "the Department will include revenues that Verizon receives from the SLC." (Massachusetts Decision at 17.) As shown above, in showing that its existing rates comply with the New Services Test, Verizon included the EUCL as part of the rates charged PSPs. Thus, consistent with the holding of the Massachusetts Decision, the comparisons of incremental costs to rates that Verizon conducted in this proceeding "include[d]" the EUCL.

[12] Case 96-C-1174, "Order Approving Tariff on a Temporary Basis," issued March 31, 1997.

In conclusion, the claim that the Massachusetts Decision is consistent with the positions staked out by IPANY in this proceeding is baseless. Equally baseless is the allegation that Verizon "does not wish" the Commission to be informed of a decision of a "sister commission." (IPANY January 3, 1991 Letter.) As the above discussion shows, Verizon is willing to directly address the decisions of other state agencies. In contrast, IPANY has failed to address the decisions in other states which were cited in Verizon's Initial Comments which clearly rejected the positions advocated in the IPANY Petition.[13]

IV. THE OCTOBER 12 ORDER IS CONSISTENT WITH THE COMMISSION'S OWN PRECEDENT

IPANY's argument that the October 12 Order is inconsistent with the Commission's own precedent is based solely on a claim that the Commission's treatment of certain directory database services in Opinion No. 00-02[14] should control the pricing of payphone services. As shown below, the Module 1 Order provides no basis for the reversal of the October 12 Order. On the contrary, the concerns that led to the pricing decision reflected in the Module 1 Order support the October 12 Order.

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[13] Initial Comments at 8-9. In addition to the precedent cited in those Comments, an October 6, 1999 Order of the Indiana Utility Regulatory Commission rejected claims which echo those of the IPANY Petition. Thus, the Indiana Order found that the FCC's pricing requirements for payphone services "do not mandate uniform overhead loadings," that "retail rates" for payphone services "are appropriate," that the FCC has found that rates up to "4.8 times direct costs" satisfy the New Services Test and that, in conducting the Test, embedded costs can be used. (Cause No. 40830, *In the Matter of Request of the Indiana Payphone Association for the Commission to Conduct an Investigation of Local Exchange Company Pay Telephone Tariffs*, 1999 Ind. PUC LEXIS (approved October 6, 1999.)) Each of these findings is in direct conflict with the IPANY Petition.

[14] Case 98-C-1357, "Opinion and Order in Module 1 (Directory Database Services)," Opinion No. 00-02 (issued February 8, 2000) ("Module 1 Order").

In the Module 1 Order, the Commission determined that certain directory database services should be priced on a TELRIC basis. While Verizon continues to believe that that decision was incorrect, the reason for the Commission's decision, that "competition is furthered" by such pricing of database services (Module 1 Order at 18), supports the October 12 Order.

As Verizon has shown, mandating TELRIC pricing of payphone services would have a devastating effect on wholesale service competition in New York and would conflict with the primary purpose of the 1996 Act. As shown by the Rebuttal Comments, CLECs have for some time been purchasing payphone-related services from Verizon and competing with Verizon for retail PSP customers.[15] This competition ensures that Verizon's retail PAL and business usage rates do not include excessive overhead loadings. Pricing on the basis of such loadings would only provide an advantage to the CLECs which compete with Verizon for the business of PSPs.

Mandating that retail payphone-related services be priced on a TELRIC basis would eliminate the competition offered by CLECs. In addition, doing so would mean that PSPs will be purchasing retail services at a significantly lower rate than other unregulated businesses, including businesses that rely on usage as a key input. There is no basis in any Commission precedent for a decision that would provide one group of retail customers with TELRIC pricing, while continuing contributory pricing for all other retail customers.

[15] Rebuttal Comments at 8-9.

V. IPANY'S CLAIMS ABOUT THE "HEALTH" OF THE PAYPHONE INDUSTRY ARE IRRELEVANT

The IPANY Petition points to what it claims to be the "precarious health of the PSP industry" as a reason for providing PSPs with a lower rate than similarly situated retail customers. In support of this characterization, it points to the drop in stock prices of a PSP and the fact that some PSPs have filed for bankruptcy. Similar information regarding stock prices and bankruptcies of PSPs and suppliers of payphone equipment is provided in IPANY's Supplement. This information provides absolutely no basis for reconsideration of the October 12 Order.

During any period of time some level of Verizon business customers will experience financial difficulties, such as falling stock prices or bankruptcies. There is absolutely no basis in law for the notion that such business problems provide a rationale for providing these customers with a "break" on their rates. While some PSPs doubtless experienced business problems in 2000, others may well have done well during this period. As Verizon has shown, and as IPANY concedes (IPANY Petition at 17), Verizon has continued to install additional payphone lines. While the prospect of advertising revenues may, as claimed by IPANY, be part of the reason for this activity, the fact that these installations continue to grow at a healthy level shows that some PSPs continue to believe that they can realize a profit. Verizon believes that in New York City alone, more than 2,000 permits will be issued in the first quarter of 2001 for new payphone lines.[16] In addition, the number of connections for payphone services continues to exceed disconnections of these services.

In addition, a look at particular PSPs in any period of time prior to 2000 would likely show the same pattern -- with some businesses experiencing growth and others decline. Beyond this, it is clear that the PSPs that IPANY has selected do not limit their operations to New York. Thus, it is not clear what role either general business conditions in New York or the rates charged PSPs in New York has played in the recent problems experienced by the companies selected by IPANY. It is clear, however, that these companies elected to operate with full knowledge of what Verizon's rates were -- the existing PAL rates have been in effect since 1992. Thus, the problems these companies are experiencing currently are likely to be due to the factors cited in the attachment to IPANY's Supplement: "penetration of cellular telephones and alternative calling methods." The fact that PSPs are having a difficult time dealing with these customer choices does not provide any evidence that Verizon's rates, which have already been found to be reasonable, have somehow become unreasonable.[17]

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[16] A news article noted that New York City has approved the installation of over 2,200 new payphones -- none of them to be installed by either Verizon or AT&T. *New York Times*, December 24, 2000, p. 25.

[17] According to a January 10, 2001 article in Telecommunications Report, a January 9 statement of a national organization of PSPs, the American Public Communications Council ("APCC"), pointed to what it claimed to be the removal of a large number of payphones. The article quoted the APCC as stating that this nation-wide decline was due "in large measure" to the alleged failure of the FCC to require long distance carriers and providers of pre-paid calling cards to compensate PSPs for dial-around calls. The article states that "other observers" have "pointed to the American public's embrace of wireless phones as a major factor in the decline in payphone use." The article noted that the APCC also pointed to what it claimed to be a failure of regulators to mandate "cost-based rates for pay phone lines." Thus, it seems that whatever problems the payphone industry may be experiencing are nation-wide in scope and are only

(. . . continued)

While the limited data offered by IPANY provides absolutely no basis to reach general conclusions about the health of the payphone industry in the State, even if it did, the Commission could not attempt to prop up that deregulated industry by providing PSPs a rate discount of the sort not provided other retail customers. As the Commission held in the October 12 Order, if "in the future the payphone business is becoming unprofitable and phones are not available in geographic areas where they are needed, public interest payphones may be put in place." (October 12 Order at 8.) While the Commission may not insulate one segment of the telecommunications industry from the sort of changing customer activity cited in the Attachment to the Supplement, it does have a role in ensuring the availability of public telephone service in areas where it is needed. It would satisfy this role by developing a program of public interest payphones. As the October 12 Order noted, however, there have been no requests for public interest telephones. (*Id.*)

The 1996 Act requires that the FCC adopt regulations which would both "promote competition among payphone service providers and promote the widespread deployment of payphone services." (47 U. S.C. § 276(b)(1)). Treating PSPs as if they were carriers purchasing UNEs, as urged by IPANY, would not further the achievement of these goals. In any event, as shown above, both this Commission and the FCC have recognized that such treatment is not consistent with the 1996 Act. Congress explained precisely how the FCC is to further the goals of widespread deployment in § 276(b)(1) of the 1996 Act: by ensuring that

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(Continued . . .)

secondarily ascribable to the failure of PSPs to convince state regulators that payphone services must be priced on a TELRIC basis, with the primary causes being in-roads from both cellular

(. . . continued)

PSPs are fairly compensated for every payphone call. Section 276(b)(1)(B) requires the FCC to eliminate any subsidies from other LEC services supporting payphone access lines "in favor of a compensation plan as specified in subparagraph (A)." (*Id.* § 276(b)(1)(B).) Verizon has argued that the FCC has set the per-call payphone compensation rate too low and has done far too little to ensure that providers of payphone service receive the compensation they are owed. But, the failure of the FCC to fully enforce § 276(b)(1)(A) provides no basis for the Commission to provide PSPs with the type of subsidy that IPANY seeks here.

The competitive pressures facing PSPs from the wireless industry are a reflection of the effects of *desirable* technological change. Wireless phones provide versatility and convenience that payphones cannot match, albeit at a relatively high cost. This is not to say that payphones do not continue to provide a valuable service -- they do -- nor is it to predict whether or how providers of payphone service will respond to the competitive pressures that expanded availability of wireless phones has brought to bear. But the fact remains that wireless providers have invested tens of billions of dollars constructing networks to be able to offer a service to consumers that was virtually unavailable -- and then only at prohibitive cost -- just two decades ago. To attempt to cushion other service providers from the effect of those innovations would be profoundly inconsistent with the spirit behind the 1996 Act, which was intended to promote competition, not to pick winners or to protect those who have not won.

(Continued . . .)
providers and dial-around services.

One additional point should be noted regarding IPANY's argument on the health of the payphone industry. The IPANY Petition states that one and possibly two former Bell operating companies are considering terminating payphone operations. (IPANY Petition at 17.) The payphone operations of these heavily regulated companies are subject to the same competitive pressures cited by the Supplement as the likely source of the problems apparently experienced by some of IPANY's members. That is, the increased use of cellular telephones and alternative calling methods are also reducing the payphone revenues of these companies. In addition, these companies are experiencing the same general upward pressure in costs as all other businesses. If these companies were to be required to price payphone-related services on a TELRIC-basis, the adverse impact on these regulated businesses and their payphone operations would be significant. Thus, mandating TELRIC-based rates would only encourage former Bell companies to scale back their own payphone operations.

VI. EVEN IF REHEARING WERE TO BE GRANTED THERE IS NO BASIS TO PROVIDE PSPS WITH REFUNDS

The IPANY Petition continues to argue that PSPs are entitled to receive "refunds for excessive and unlawful rates which have been in effect since April, 1997." In doing so, it totally fails to either address the fact that the Initial (at 13) and Rebuttal (at 9-11) Comments showed that there was no legal power to award such refunds, since the rates that were the subject of the IPANY challenge were permanent rates or to acknowledge that the October 12 Order found that the only payphone-related rates that had remained temporary at the time of the issuance of that Order were the rates for Public Access Smart-Pay Line ("PASPL") services which were introduced in 1997. (October 12 Order at 6.) As recognized by the October 12 Order, the

PAL rates and other payphone rates have been in place on a permanent basis since 1992. The PASPL rates were not challenged by IPANY. Since the Commission cannot provide refunds of amounts received pursuant to tariffs for permanent rates, it cannot provide refunds for any of the rates that were attacked by IPANY in this proceeding.

If, on rehearing, the Commission determines that Verizon's rates for payphone-related services should be revised pursuant to a new interpretation of the New Services Test (which it should not), the Commission cannot either order refunds or immediately set new rates for these services. Rather, the Commission would have to allow Verizon to file new cost studies and pricing support. In the Wisconsin Order, the CCB acknowledged that the costs of providing payphone-related services to PSPs could differ from the costs of providing UNEs and, therefore, is allowing the Wisconsin LECs to "explain any overhead allocations for their payphone line services that represent a significant departure from overhead allocations approved for UNE services."[18] As recognized by the October 12 Order, the services Verizon provides to retail and wholesale customers differ significantly, so it is reasonable to expect that there will be significant cost differences as well. If, after a full evidentiary pricing proceeding, the Commission adopts a new interpretation or application of the New Services Test, any rate change must be prospective only.

Finally, as Verizon has shown, under the terms of Verizon's Performance Regulatory Plan ("PRP"), the revenue loss resulting from any reduction in payphone-related services, including the PAL rates, which were frozen by the PRP, would have to be offset by an increase

[18] Wisconsin Order ¶ 11.

in the rates of other services.[19] There is no reason why the rates of other customers should be increased in an effort to provide New York PSPs, who have been paying the same PAL rates since 1992, a competitive advantage in their efforts to compete with cellular companies and providers of dial-around services.

VII. CONCLUSION

The IPANY Petition should be denied. The relief it seeks is supported neither by the laws nor facts.

Respectfully submitted,

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Counsel to Verizon New York Inc.

Dated: New York, New York
January 16, 2001

[19] Initial Comments at 3, n.12; Rebuttal Comments at 11.