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Decision 91-07-013 July 2, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation instituted on the Commission's own motion into the operations, practices and regulation of coin and coinless customer-owned pay telephone service.

I.88-04-029
(Petition for Modification
Filed March 4, 1991)

ORIGINAL

(I&S)

Case 85-02-051
(Filed February 21, 1985)

And Related Matters.

Case 85-07-048
(Filed July 17, 1985)

**OPINION DENYING PETITION FOR
MODIFICATION OF DECISION 90-06-018**

Summary

This opinion reviews and denies the petition of Pacific Bell, California Payphone Association, and Consumer Action (petitioners) to modify Decision (D.) 90-06-018 to fund, on an interim basis, a trial program established in November 1990 to implement the Customer Owned Pay Telephone (COPT) enforcement goals identified in D.90-06-018.

Request for Modification

Petitioners assert that approval for interim funding is essential to permit those who are working to implement the Commission's COPT enforcement goals in an effective and timely manner. Accordingly, petitioners request that an ordering paragraph be added to D.90-06-018 stating that:

"The Workshop, under the direction of CACD, is authorized to establish a trial to test a proposed enforcement program. Portions of the funds described in Appendix A, Article V(E)5(e) may be used to fund the trial. The invoices for expenses incurred in conducting the trial shall be submitted to a committee consisting of

one representative from each of the following: the Commission's Division of Ratepayer Advocates (DRA), the Commission's Advisory and Compliance Division (CACD), California Payphone Association, Consumer Action and a representative from one of the involved Local Exchange Carriers (Contel, Pacific Bell and GTEC). The Directors of CACD and DRA respectively shall appoint the CACD and DRA representatives to the committee. This committee of five shall be responsible for the review of each submitted invoice and shall have the ability to request additional supporting information from any entity submitting an invoice for review. The committee shall vote on whether to approve or disapprove the invoice for payment. A majority vote of three members is required for approval. If the claimant is also a committee member they must abstain. Disapproved invoices may be appealed by letter to the Commission's Executive Director. Such appeals must state the basis for the appeal. After investigation, the Commission may approve the previously disapproved invoice for payment by Commission resolution or Commission decision. If at any time during the trial it appears that the trial expenses will exceed \$20,000 per month then the expenses must also be reviewed and approved by the Commission by resolution or decision.

"A report containing recommendations for a permanent enforcement program, including an annual budget, will be submitted to the Workshop for approval. Upon approval of the Workshop the recommendation will be incorporated in the report to the Commission prescribed in ordering paragraph 2.

"If, at the time of approval of the enforcement program by the Workshop, the Workshop has not completed other items required for the report recommended enforcement program shall be submitted separately, by the Workshop, to the Commission for approval.

"During the time period from approval of the enforcement program by the Workshop until approval by the Commission, the trial,

including any changes recommended by the Workshop, will continue."

Comments

DRA filed comments and supplemental comments to the petition on April 3, 1991 and April 17, 1991, respectively. DRA is in complete agreement with petitioners and urges that D.90-06-018 be modified as requested by petitioners.

Discussion

Although petitioners seek authority to fund only a trial COPT enforcement program, their proposed ordering paragraph substantially expands petitioners' request without providing any discussion or reason for requiring:

- a. The establishment of a committee consisting of industry and consumer personnel responsible for the review, analysis, and approval of expenses associated with COPT enforcement programs.
- b. The Commission's Executive Director to act as an appeals board to review expense claims not approved by the committee and to review, analyze, and approve all monthly COPT enforcement expenses in excess of \$20,000. Appealed expenses claims and monthly enforcement expenses in excess of \$20,000 can be resolved only through a Commission resolution or decision.
- c. An annual COPT enforcement budget to be prepared by unknown parties, and to be submitted to the "Workshop"¹ thereby continuing the workshop into perpetuity.
- d. Commission approval of workshop reports.

¹ Pursuant to D.90-06-018's Appendix A workshop report, the workshop consists of local exchange companies (LECs), COPT vendors, an interexchange carrier, the California Payphone Association, consumer groups, operator service providers, and Commission staff from the Consumers Affairs Branch, DRA, and CACD.

The settlement agreement adopted in D.90-06-018 already authorizes the LECs to fund COPT enforcement programs. Specifically, Article V(E)5(e) of the settlement agreement authorizes the LECs to include in monthly COPT pay phone access line rates a rate to pay for the cost of the enforcement program, as shown in Appendix A to the decision. The LECs' establishment of a rate in their respective tariffs for enforcement inherently provides the LECs authority to incur and to pay enforcement program costs. No further authority is needed in this regard. The petition for authority to fund a trial enforcement program is moot and should be denied.

We remind parties that D.90-06-018 adopted, with certain modification, a stipulated agreement entered into by a majority of the parties to this proceeding. To attain a stipulated agreement, as discussed by the parties throughout this proceeding, it was necessary for parties to compromise on various aspects of the agreement. Petitions to modify D.90-06-018 for other than "minor changes" should not be condoned because they may compromise a party's position used to attain the adopted agreement and may dilute the adopted settlement agreement. Any subsequent changes should be requested through the filing of an application.

Although we have determined that the petition should be denied, we find it necessary to discuss petitioners' intent to establish a committee and require the Executive Director to review and approve invoices, and to require Commission approval of the workshop report, or reports, that will be submitted to the Commission within 90 days of completion of the workshop, pursuant to Ordering Paragraph 2 of D.90-06-018.

This investigation was opened to address the numerous COPT complaints, both formal and informal, that have been received from consumers confused about the absence of uniform standards for pay phone service, and to address the dissatisfaction of both COPT providers and the LECs with COPT regulations. It makes no sense to

divert this investigation or the Executive Director's office to handling mundane matters such as to determine whether a bill should or should not be paid. The LECs are provided a mechanism to bill the appropriate market segment for COPT enforcement programs, the collected funds of which are not placed in a common trust. It is the LECs that should determine whether bills submitted to them from vendors for enforcement program costs are reasonable and due payment. In turn, the LECs will be accountable for such costs, as they are for their other costs associated with providing telephone service, in proceedings such as tariff filings and rate requests. Petitioners should direct their attention to resolving consumer COPT concerns.

The workshop report required by Ordering Paragraph 2 of the decision is not a formal filing in this proceeding. CACD was required to reduce to writing the results of the workshops pertaining to COPT enforcement, public pay phone policy, and the development of a store and forward monitoring program. We will review the workshop conclusions to determine whether a new investigation should be started to address additional concerns or regulation of COPT matters.

Findings of Fact

1. Petitioners seek authority to fund a COPT enforcement program.
2. DRA supports petitioners' request for funding a COPT enforcement program.
3. Article V(E)5(e) of the settlement agreement attached to D.90-06-018 authorizes the LECs to fund COPT enforcement programs.
4. The LECs' establishment of a rate in their respective tariffs for enforcement inherently provides the LECs authority to incur and to pay enforcement program costs.
5. The LECs are accountable for COPT enforcement expenditures, as they are for other costs associated with providing

telephone service, in proceedings such as tariff filings and rate change requests.

Conclusion of Law

The petition should be denied because D.90-06-018 already authorized LECs to expend and recover COPT enforcement program costs.

ORDER

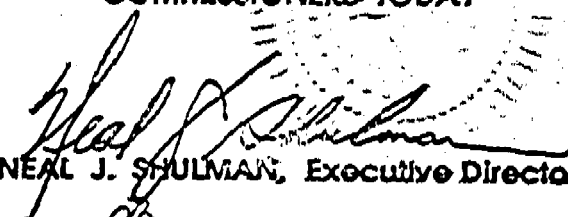
IT IS ORDERED that:

1. Pacific Bell's, California Payphone Association's, and Consumer Action's joint petition for modification of D.90-06-018 requesting authority to fund COPT enforcement programs and to establish a committee to review and approve enforcement costs is denied.
 2. Any further requests for substantive change or modification of the stipulated agreement adopted with modification in D.90-06-018 shall be made by the filing of an application.
- This order becomes effective 30 days from today.
Dated July 2, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY

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NEAL J. SHULMAN, Executive Director