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Decision 91-12-032 December 18, 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.

And Related Matters.

ORIGINAL

(Petition for Modification filed September 13, 1991)

(I&S)

Case 85-02-051

(Filed February 21, 1985)

Case 85-07-048

(Filed July 17, 1985)

(For appearances see Decision 90-06-018.)

OPINION MODIFYING DECISION 90-06-018

On September 13, 1991 the Division of Ratepayer Advocates (DRA) filed a petition for modification of public policy pay phone procedures authorized by Decision (D.) 90-06-018. Specifically, DRA requested that we:

- a. Delete DRA's public policy pay phone remarks from the Appendix A workshop report attached to D.90-06-018.
- b. Transfer the responsibility of approving and denying policy pay phone applications from the Public Policy Pay Phone Committee (Committee) to the Executive Director.
- c. Transfer the responsibility of receiving a Committee report on the effectiveness of the current public pay phone procedures from the Administrative Law Judge to the workshop participants. If the workshop participants conclude that changes to the current procedures are needed, a report recommending changes will be submitted to the Commission for appropriate changes.

d. Make minor wording changes.

DRA explained that its remarks attached to the workshop report were part of a working draft report and should not have been included as part of the workshop report. Because its comments do not add to the report, DRA recommended that its comments be deleted from the report. The remaining changes proposed by DRA were made to simplify the public policy pay phone procedures identified in Appendix A of the order.

Copies of DRA's petition were served on all known parties of record. Notice of the petition also appeared in the Commission's Daily Calendar of September 18, 1991. No protests to the petition were filed.

As discussed by the parties throughout the proceeding, each party compromised on various aspects of the agreement to reach a stipulated agreement. To adopt other than minor changes may compromise a party's position used to attain the adopted agreement and may dilute the adopted agreement. Accordingly, we concluded by D.91-07-013, an order regarding a prior petition for modification of D.90-06-018, that petitions to modify the pay phone decision for other than "minor changes" should not be condoned.

DRA's requested changes to D.90-06-018 are minor in nature and are intended to simplify the public policy pay phone process. However, DRA's third modification is ambiguous. It allows the workshop to issue a report to the Commission on modifications to the public pay phone procedures and requires the Commission to issue an order on the report. DRA does not explain how such a report could be filed with the Commission or explain how we could issue an order addressing a report not part of a formal proceeding.

The report, if sent to the Commission, could be filed under this investigation. However, this investigation was closed by Ordering Paragraph 10 of D.90-06-018. No party has filed a motion to reopen this proceeding. Even if such a motion was filed,

we would not be inclined to reopen this proceeding to receive a report that "may" be served.

We will modify DRA's proposed language to state that if the workshop participants conclude that changes to the current public policy pay phone procedures are needed, the workshop should submit a report to the Commission Advisory and Compliance Division Director with a request that the Commission issue an order instituting investigation into changes of the public policy pay phone procedures. DRA's remaining modifications should be adopted.

Findings of Fact

1. No protests to the petition were filed.
2. D.91-07-013 concluded that petitions to modify the pay phone decision for other than minor changes should not be condoned.
3. DRA's proposed changes are minor in nature and are intended to simplify the public policy pay phone process.
4. DRA does not provide a mechanism whereby a workshop report addressing modifications to the public policy pay phone procedures may be acted on by the Commission.

Conclusion of Law

DRA's petition should be granted to the extent provided in the following order.

ORDER

IT IS ORDERED that:

1. The public policy pay phone procedures set forth in Appendix A of Decision (D.) 90-06-018 shall be modified to the extent provided in Appendix A of this order. Because Appendix A to D.90-06-018 consists of 99 pages, only the section applicable to public pay phone procedures is attached to this order

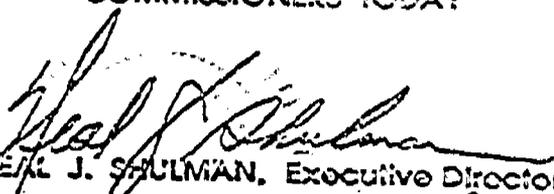
2. Investigation 88-04-029, Case (C.) 85-02-051, and C.85-07-048 are hereby closed.

This order becomes effective 30 days from today.

Dated December 18, 1991, at San Francisco, California.

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

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


NEAL J. SHULMAN, Executive Director

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APPLICATION PROCEDURE FOR INSTALLATION OF A
PUBLIC POLICY PAY PHONE

If the property owner or community representative ("Applicant") wants a public policy pay phone to be installed in a particular location, he or she must complete an application. The application will be submitted to the Public Policy Pay Phone Committee ("the Committee") for review ~~(for information regarding this Committee, see below)~~ and submittal to the CPUC Executive Director. If the application is granted approved by the Committee Executive Director, a pay phone provider will install a public policy pay phone at the requested site. The pay phone provider will be authorized to recover from the public policy pay phone fund ("the Fund") the full cost of installation and ongoing maintenance of the public policy pay phone.

If the applicant wants a pay phone installed at a particular site immediately, he or she should direct the request to the pay phone provider of his or her choice. If the pay phone provider, in its estimation, determines that a pay phone in that site would not generate enough revenue to cover ~~cost costs~~, *it the pay phone* provider will be authorized to charge the applicant the recurring and non-recurring charges for semi-public pay phone service. The pay phone provider will install a semi-public pay phone at the requested site if the applicant agrees to these charges. The applicant may then file an application with the public policy pay phone committee to re-classify the semi-public pay phone as a public policy pay phone. If the ~~Committee~~ CPUC Executive Director decides that the semi-public pay phone installed is indeed a public policy pay phone, the pay phone provider will be instructed to refund all charges paid by the applicant for semi-public pay phone service. The pay phone provider would recover the full cost of installation and maintenance from the fund. However, if the Committee Executive Director decides that the semi-public pay phone installed is not a public policy pay phone, the applicant must either continue to pay the recurring rates for semi-public service or risk the removal of that pay phone by the pay phone provider.

~~(It is not clear from the workshop's decision whether the pay phone provider ought to recover its costs of removing the pay phone, if it chose to do so.)~~

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EMERGENCY SITUATIONS

The pay phone provider may, at its discretion, install a public pay phone in a location it deems necessary for public health and safety in the case of an emergency. The pay phone provider may then file an application with the committee to re-classify the public pay phone as a public policy pay phone.

THE PUBLIC POLICY PAY PHONE COMMITTEE

The public policy pay phone committee ("the Committee") will be chaired by a CPUC staff member appointed by the CPUC Executive Director. The Committee chairperson will have no voting rights, except in the instance where there is a tie vote. The presence of the chairperson and two voting members constitute a quorum.

The three voting members of the Committee shall be appointed recommended by CACD, and approved by the Executive Director, and shall consist of representatives of ~~workshop participants~~ from the following groups:

1. A consumer group representative selected recommended by CACD and approved by the Executive Director
2. A private pay phone operator provider
3. A member from of the California Telephone Association

The workshop recommends that the consumer group representative shall be paid by from the public policy pay phone fund ("the Fund") a stipend, plus travel expenses, for each committee meeting he or she attends.

The Committee will meet monthly (for not more than six months) to review all pending applications for public policy pay phones.

The Committee will meet only as necessary after this interim period.

~~After the six-month interim period, the Committee may, at its discretion, recommend an alternate mechanism to evaluate applications for public policy pay phones. (The DRA staff believes this is still too ambiguous. It suggests the following language to avoid confusion in the future. After a six-month interim period, the Committee will submit a report to the Administrative Law Judge, who will evaluate the effectiveness of the current mechanism, and who will outline recommendations for changes, if any. Pursuant to a ruling by the Administrative Law~~

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~~Judge, the workshop will reconvene to discuss the Committee report. If the workshop determines that changes are needed, it should submit a workshop report to the Commission (and to all other parties on the OII service list) requesting that changes be made to the current mechanism. Parties should be given no less than 30 days to comment on the workshop report. The Commission will then issue an order granting or denying the workshop request~~).

After a six-month interim period, the Committee will submit a report to the workshop, which will reconvene to discuss the Committee report and evaluate the effectiveness of the current mechanism to determine if changes are necessary. If the workshop determines that changes to the current mechanism are needed, the workshop will submit a report to the Commission's Advisory and Compliance Division Director requesting that the Commission issue an order instituting investigation into changing the public policy pay phone procedures.

Once the Committee evaluates pending applications for public policy pay phones, the chairperson will bring submit the Committee's decisions recommendations to the CPUC's Executive Director. The Executive Director will then issue an Executive Authority Resolution adopting the Committee's decisions. The Executive Authority Resolution shall state the applications that were approved by the committee, as well as those that were denied by the committee review the Committee's recommendations and approve or deny applications for public policy pay phones.

~~A copy of the Executive Authority Resolution will be sent to the applicants. This will serve as a way to notify each applicant whether his or her application for a public policy pay phone has been granted or denied.~~

A copy of the Executive Director's approval or denial of the request for a public policy pay phone will then be sent to the applicant. This will serve as a way to notify each applicant of the Executive Director's decision.

~~The DRA staff still needs to consult its legal counsel regarding any liability concerns which may be directly associated with the placement or non-placement of a public policy pay phone by a committee such as the one suggested here.~~

~~(It is not clear from the workshop's decision whether this Committee should be responsible to setting or adjusting the funding level, or budget, for the public policy pay phone fund -- we recommend that this should be discussed when the workshop deals with the funding mechanism to be used for public policy pay phones)~~