

ALJ/MFG/avs

Mailed 7/3/98

Decision 98-07-035 July 2, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the  
Commission's own motion into the statewide  
expansion of public policy pay telephones.

R.98-05-031  
(Filed May 21, 1998)

### INTERIM OPINION ADDRESSING APPEAL OF CATEGORY

#### Summary

We deny California Payphone Association's (CPA) appeal of the June 11, 1998 Scoping Memo and Assigned Commissioner's Ruling and affirm the categorization of this proceeding as "quasi-legislative," as described in Rule 5(d) of the Commission's Rules of Practice and Procedure (Rules).

#### Background

This Rulemaking was issued on May 21, 1998 to address the adequacy of our public policy pay telephone program, and the need to expand the public policy pay telephone program statewide, change the payphone enforcement program, and establish funding of the programs on a fair and equitable basis. In compliance with Rule 6(c)(2), as part of this Rulemaking we preliminarily issued a scoping memo and preliminarily determined the categorization of this proceeding to be "quasi-legislative," as that term is defined in Rule 5(d) to include proceedings that establish policy or rules affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.

All parties and interested persons were invited to file a response to the rulemaking within ten days after the effective date of the order. As required in

Rule 6(c)(2), any party filing such a response was directed to state in that response any objection to the order regarding category, need for hearing, and preliminary scoping memo, including the description of issues and the timetable for resolving this proceeding. Any party believing that an evidentiary hearing for the presentation of adjudicative facts is needed in this proceeding was further directed to file a motion as part of its response to the rulemaking.

On June 11, 1998, a Scoping Memo and Assigned Commissioner's Ruling was issued confirming the scope of this proceeding, procedural schedule, and category pursuant to Rule 6.3 and Rule 6(c)(2).

On June 22, 1998, CPA filed a response to the scoping memo and appeal of categorization, pursuant to Rule 6.4. CPA moves for an evidentiary hearing for the presentation of adjudicative facts, changes to the preliminary scope of this proceeding, a procedural timetable for oral argument, and an appeal of the preliminary categorization of this proceeding.

### **Discussion**

CPA's response and motion were stated to be filed pursuant to Rule 6.4. Rule 6.4 sets forth the procedures to appeal the categorization of a proceeding, and Rule 6(c)(2) states that the scoping ruling, "only as to category, is appealable under the procedures in Rule 6.4." Hence, the only matter subject to appeal at this time is this proceeding's category. All other elements of CPA's appeal of the Scoping Memo and Assigned Commissioner's Ruling are subject to appeal as part of an application for rehearing when the proceeding is completed.

CPA acknowledges that the Rulemaking is aimed at assessing and redefining the terms of and funding arrangements for the state's public policy payphone program and its payphone service provider enforcement program on a generic basis, with consideration of expanding the programs from their present coverage of just the Pacific Bell and GTE California service areas to a statewide

scope. However, it contends that a direct and necessary effect of some of the proposals set forth in the Rulemaking will be to require changes in certain tariffed rates of Pacific Bell, GTE California, and perhaps other local exchange carriers.

Accordingly, CPA believes that this rulemaking fits within the ratesetting category under both Public Utilities Code § 1701.1(c)(3) and Rule 5(c).

Ratesetting proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes mechanisms that in turn set the rates for a specifically named utility (or utilities). Ratesetting proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future.

Some of the proposals set forth in the Rulemaking may require changes in certain tariffed rates of Pacific Bell, GTE California, and perhaps other local exchange carriers, as alleged by CPA. However, such changes will be the indirect effect of implementing a statewide program.

Quasi-legislative proceedings are proceedings that establish policy or rules affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.

As a general rule, quasi-legislative proceedings set policy, and ratesetting proceedings implement policy. This Rulemaking is aimed at assessing and redefining the terms of and funding arrangements for the state's public policy payphone program and its payphone service provider enforcement program on a generic basis, with consideration of expanding the programs statewide. Clearly, the emphasis of this Rulemaking is to set policy, not to establish a mechanism that in turn sets the rates for a specifically named utility or utilities.

Accordingly, we conclude that the proceeding fits within the quasi-legislative category under both the statute and our rules. CPA's appeal to re-categorize the Rulemaking from quasi-legislative to ratemaking should be denied.

### **Findings of Fact**

1. The Assigned Commissioner filed and served a Scoping Memo and Ruling categorizing this proceeding as quasi-legislative, consistent with the Commission's preliminary categorization of this Rulemaking.

2. CPA filed an appeal of the Assigned Commissioner's categorization.

3. This proceeding involves the adequacy of our public policy pay telephone program, and the need to expand the public policy pay telephone program statewide, change the payphone enforcement program, and establish funding of the programs on a fair and equitable basis.

### **Conclusions of Law**

1. Since this proceeding is subject to Article 2.5 of the Commission's Rules of Practice and Procedure, it must be categorized in one of three categories: adjudicatory, ratesetting or quasi-legislative.

2. Because the proceeding is one in which the Commission will investigate the expansion of our public policy pay telephone and payphone enforcement programs statewide, the quasi-legislative category is appropriate.

3. As a general rule, quasi-legislative proceedings set policy, and ratesetting proceedings implement policy.

4. The Assigned Commissioner's determination that the Rulemaking is a quasi-legislative proceeding should be affirmed.

5. CPA's appeal of the category for this Rulemaking should be denied.

6. This item did not appear on the agenda mailed on June 22 for the Commission's meeting of July 2, 1998. This item was added to the agenda

pursuant to Government Code Section 11125.3, which allows a state body to act on an item not appearing on its posted agenda when a need to take immediate action exists and the need for action came to the state body's attention after the agenda for the meeting had been posted, and Public Utilities Code Section 306(b). The agenda for the July 2 meeting was mailed on June 22. CPA's appeal of this proceeding's category was also filed on June 22, but it arrived too late to be included on the posted agenda. Public Utilities Code Section 1701.1(a) requires the Commission to render its decision on an appeal of categorization within 30 days. The next scheduled Commission meeting after July 2 is July 23, more than 30 days from the date the appeal was filed. The Commission must render its decision on CPA's appeal July 2 to avoid being in violation of Public Utilities Code Section 1701.1(a). The need for this action came to the Commission's attention after the agenda for the July 2 meeting was posted.

**INTERIM ORDER**

**IT IS ORDERED** that California Payphone Association's appeal of the June 11, 1998 Scoping Memo and Assigned Commissioner's Ruling to change the categorization of Rulemaking 98-05-031 from quasi-legislative to ratesetting is denied.

This order is effective today.

Dated July 2, 1998, at San Francisco, California.

**RICHARD A. BILAS**  
President  
**P. GREGORY CONLON**  
**JESSIE J. KNIGHT, JR.**  
**HENRY M. DUQUE**  
**JOSIAH L. NEEPER**  
Commissioners