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Decision 98-11-029 November 5, 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.

ORIGINAL

R.98-05-031

(Filed May 21, 1998)

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OPINION

Summary

By this order we conclude our investigation into the statewide expansion of the public policy pay telephone (payphone) and payphone enforcement programs. However, we defer to a subsequent order the bidding process to be utilized for installing and maintaining public policy payphones. The public policy payphone program provides payphones to the general public in the interest of public health, safety, and welfare at no charge at locations where there would otherwise not be a payphone. The enforcement program works to ensure that payphone consumer safeguard tariffs are being followed.

The major changes to the public policy and enforcement programs adopted in this order consist of:

- A statewide expansion of the public policy and enforcement programs.
- Public policy program criteria changes which require:
 - a. Locations designated as an emergency gathering place.
 - b. Locations where residents cannot individually subscribe to telephone service because of unavailability of facilities.
 - c. No other payphone located within 50 yards.
- A uniform public policy payphone funding procedure.
- A \$0.10 uniform enforcement program surcharge rate.

Background

The Federal Communications Commission (FCC) deregulated payphones, effective April 15, 1997, to promote competition among Payphone Service Providers (PSPs) and to encourage widespread deployment of payphone services to the benefit of the general public, as required by Section 276 of the Telecommunications Act of 1996. The terms and conditions of this deregulation

action are set forth in the FCC's final rules in its investigation into Pay Telephone Reclassification and Compensation Provisions of the Act (FCC Docket No. 96-128, as adopted and released on September 20, 1996, and published in the October 7, 1996 Federal Register Volume 61, pages 52307 through 52325).

The FCC, consistent with Section 276(b)(2) of the Act, considered whether public policy payphones should be maintained and, if so, how to ensure that such payphones are supported fairly and equitably. The FCC concluded that there is a need to ensure the maintenance of public policy payphones in locations where, as a result of competition and the elimination of subsidies which helped to support such payphones in the past, there might not otherwise be a payphone. Although the FCC adopted specific guidelines to ensure that these payphones are funded fairly and equitably, it left the primary responsibility for administering and funding such payphones to the individual states.

The FCC, in furtherance of its statutory responsibility under Section 276(b)(2) of the Act, requires each state to review whether the state has adequately provided for public policy payphones in a manner consistent with FCC Docket No. 96-128. It also requires each state to evaluate whether it needs to take any measures to ensure that payphones serving important public interests will continue to exist in light of the elimination of subsidies and other competitive provisions, pursuant to Section 276 of the Act.

California has had a public policy payphone program in place since 1990, pursuant to Decision (D.) 90-06-018 (36 CPUC 2d 446 at 461 (1990)). However, this program exists only in the service territories of Pacific Bell (Pacific) and GTB California, Incorporated (GTEC).

Rulemaking

Given our desire to encourage as many parties as possible to participate in the restructuring of California's public policy payphone program, the

Commission's Telecommunications Division (TD) held a November 12, 1997 public meeting to review and address the FCC's public interest payphone guidelines set forth in Docket No. 96-128 for the purpose of recommending revised procedures for the deployment and funding of a California statewide public policy payphone program. All local exchange carriers (LECs), competitive local exchange carriers (CLCs), PSPs, and a number of consumer organizations were invited to attend the public meeting. This public meeting resulted in the TD preparing a summary of the current public policy payphone program and identifying program issues and changes to be addressed in a rulemaking proceeding.

Upon careful review and consideration of TD's summary, we opened this rulemaking to reassess the Commission's public policy payphone program through public participation workshops and the receipt of comments and reply comments. TD's summary of the current public policy payphone program, issues and proposed changes was attached to the rulemaking as Appendix A. All LECs and CLCs were named respondents to this rulemaking.

Categorization

Pursuant to Rule 6(C)(2) of the Commission's Rules of Practice and Procedure (Rule), we preliminarily determined the categorization of this rulemaking 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. This preliminary categorization was affirmed by a June 11, 1998 Scoping Memo and Assigned Commissioner's Ruling.

Subsequently, on June 22, 1998, the California Payphone Association (Association) appealed the quasi-legislative categorization of this proceeding and

requested that the category be changed to ratesetting. By D.98-07-035, dated July 2, 1998, we considered and rejected the Association's categorization appeal. The final categorization of this proceeding is quasi-legislative.

Public Participation Workshops

TD held a total of four public participation workshops throughout the state to obtain comments from the public on the current program and issues raised by the rulemaking. These workshops were held in Redding, San Francisco, Huntington Beach, and Fresno on June 22, 23, 25, and 29, 1998, respectively. No formal hearings were held in this proceeding (Rule 8(f)(2)).

Pursuant to Ordering Paragraph 9 of the Rulemaking, TD submitted a July 30, 1998 compliance report summarizing the results of the public participation workshops. A total of 16 representatives from the CLCs and PSPs attended the workshops. However, no one from the general public or a consumer group attended any of the workshops. Those interested parties that did attend the workshops agree that changes should be made to the current public policy payphone program.

All interested parties to the Rulemaking were provided an opportunity to comment on TD's compliance report summarizing the results of the public participation workshops. However, only one party, the Association, chose to comment on the compliance report. The Association acknowledged the accuracy of TD's compliance report and emphasized that there has been little or no concern from the public at large or from representatives of consumer or local government interests, the Association also asserted that the bidding process must be fair, and that funding for the public policy payphone and enforcement programs should be closely scrutinized.

Comments

LECs, CLCs, and interested parties were invited to comment on the current public policy payphone criteria attached to the Rulemaking as Appendix A, and to suggest changes to the criteria. Comments and reply comments were filed by GTEC, Pacific, Office of Ratepayer Advocates (ORA), and a group of six small independent LECs (group of small LECs). The group of small LECs consisted of Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company, Foresthill Telephone Co., the Ponderosa Telephone Co., and Sierra Telephone Company, Inc. Comments were also filed by the Association.

The projected submittal date for this proceeding was July 30, 1998, pursuant to the Assigned Commissioner's June 11, 1998 Scoping Memo. However, because TD was granted an extension of time to submit its public participant workshop report,¹ the projected submittal date was extended to August 10, 1998 so parties could comment on the public participant workshop report.

The comments and reply comments generated similar concerns to the interest expressed in the workshops and summarized in TD's workshop compliance report. The four areas that generated the most discussion in the workshops and comments were the need to continue the program, bidding process, enforcement program, and funding.

Program Need

Workshop participants from Pacific raised the issue of whether a California public policy payphone program is needed given that several other states including Missouri and North Carolina have determined that there is no need for

¹ Granted by a July 20, 1998 Executive Director letter pursuant to a Rule 48 request for an extension of time.

such a program. This question of need is attributable to the decreasing number of existing public policy payphones and FCC Orders implementing Section 276 of the Telecommunication Act of 1996.

As explained in Pacific's comments, the 1988 combined list of potential public policy payphone locations, exceeding 67,000 payphones, was reduced to 22,000 in 1989, and further reduced to 1,975 in 1993. Today, Pacific's deregulated business unit, Public Communications, has only about 300 public policy payphones out of a total 140,000 Payphones. Pacific believes that this dramatic decrease in public policy payphones is attributable to the increase in the number of independent PSPs, from 29,000 in 1988 to over 58,000 today, and the increase in the number of payphones under contract to PSPs.

Pacific also believes that the reduction in the number and need for public policy payphones is attributable to FCC Orders implementing Section 276 which require PSPs to receive fair compensation for each and every completed call. For example, with the concurrence of the location provider, usually under contract, a PSP will place a payphone so long as there is sufficient end use demand for service. If usage is high enough, the PSP will pay a commission to the location provider. Alternatively, if usage is low, the PSP may place a payphone but not pay a commission to the location provider. In those locations where PSPs do not place payphones, the location providers can obtain service by combining high and low usage locations under contract or by agreeing to pay a monthly fee to the PSP for the provision of payphone service. Pacific believes that this fair compensation requirement should ensure the continued growth of the competitive marketplace for payphones without requiring public policy payphones.

Pacific recommends that California's public policy payphone program and its monthly \$1.50 payphone line surcharge used to support this program and

other payphone-related programs, such as the enforcement program, be eliminated. In those instances where there is a need to place a public policy payphone, the associated costs should be borne by the Local government bearing the responsibility for ensuring the health, safety, and welfare of the general public.

GTEC also opposes continuation of the public policy program let alone a statewide expansion. It believes that the marketplace can serve any perceived need; several states, including North Carolina, Indiana, Missouri, Oklahoma, Oregon, Idaho, and Iowa, have determined that there is no need to establish a public policy payphone program; not a single member of the general public, public entity, or consumer organization articulated a need for public participation payphones in California, let alone attended, any of the California public participation hearings; most of GTEC's public policy payphones prior to deregulation of the payphone industry now earn sufficient revenue to pay their own way or can be converted to semi-public payphone contracts; and, public policy payphones are subject to competition from other modes of telecommunications services, such as cellular, PCS wireless telephone service, and Lifeline residential service.

GTEC does not believe that the needs of any location will go unfulfilled by California's vigorous and competitive market. This is because most payphones are covered by some form of contract between the location agent and the PSP, which commonly provide for compensation to the location agent, except for some uneconomical locations where a PSP charges a relatively modest semi-public phone fee. Moreover, there is a sizeable industry specializing in providing consulting expertise to location agents on how to get the best deal from PSPs at their locations. GTEC recommends that a trial period be established to allow market forces to act without the existence of any public policy payphones.

Several workshop participants that concur with Pacific's and GTEC's concern about continuing the public policy payphone program have suggested program alternatives. These alternatives include requiring public policy payphones to be included in all payphone placement contracts, letting the market determine the need, and replacing public policy payphones with semi-public payphones.²

ORA also questions the need to continue subsidizing the public policy payphone program at the current level, or at all, in light of regulatory changes since the program was enacted. For example, the 1990 revenue criteria used by the LECs to determine what constitutes an uneconomic payphone were the coins in the box plus the \$0.20 message toll service surcharge. As of October 7, 1997, prices for local coin calls and IntraLATA Directory Assistance became market based. That is, public policy payphone operators are free to charge market rates as envisioned in the Telecommunications Act of 1996.

ORA believes that the current higher payphone charges, ranging from \$0.35 to \$0.50 cents or more per call, coupled with additional income from previously "free" services such as "O" and "800" calls, may be high enough to generate a profit without the need for additional subsidy. ORA also believes that technological advancement may have decreased the need to continue the program and that alternative telecommunications services, such as cellular phones and pagers, may serve as substitutes for public policy payphones.

Comments from the group of small LECs favor an expansion of the public policy payphone program on a statewide basis. This is because they believe that

² Semi-public payphones are payphones installed at the request of the property owner and for which the property owner does not receive any commissions.

payphone competition in rural areas does not provide for the appropriate placement of public policy payphones.

Similar to the group of small LECs, the Association supports the existing public policy payphone criteria as supplemented by the additional criteria proposed in Appendix A to the Rulemaking. However, it believes that very few, if any, payphone locations will continue to meet the criteria for subsidization. This is because of the increases that have occurred in rates charged for local coin calls and future compensation for nearly all non-coin calls. Hence, many of the payphone locations that were formerly uneconomical to serve are becoming profitable locations.

Although the public policy payphone program currently exists only within Pacific's and GTEC's service territories, the small LECs have been able to voluntarily participate in this program since June 1990, pursuant to Article V(H)(4)(c) of the Appendix A settlement agreement to D.90-06-018.³ That decision resulted from our investigation (I.88-04-029, dated June 13, 1988) into the operations, practices, and regulation of customer-owned payphone service. Pursuant to a negotiated settlement agreement in that proceeding, the small LECs may participate in the public policy payphone program by submitting an advice letter describing their payphone operations which fit the Commission's public policy payphone criteria and incorporating a tariff setting forth a public policy payphone surcharge increment in their payphone access line charge. However, it was not until the FCC issued its order deregulating payphone service last year that the funding of public policy payphones in small LEC areas became an issue. Before then, all payphones, regardless of whether or not they would be

³ With the exception of Sierra Telephone, Inc. the group of small LECs participated as interested parties in I.88-04-029 which resulted in the issuance of D.90-06-018.

considered public policy payphones, were included in the rate bases of the small LECs, enabling the small LECs to recover all cost of providing service to public policy payphones. Because small LECs do not participate in the current public policy payphone program, it is not known how many locations, if any, within the small LECs' service areas qualify for the public policy payphone program.

The evidence presented in this proceeding supports the majority of parties' contentions that the need for public policy payphones has substantially diminished since the FCC preempted state authority over payphones in 1990, increased the maximum charge of \$0.20 up to \$0.50 or more per call, and authorized additional charges on previously free services to generate a profit without the need for additional subsidy. Technological changes, such as cellular phones and pagers have further reduced this need. However, no party attempted to explain how a person with a pager stranded in a remote area and needing public assistance could access basic public health, safety, or welfare assistance.

There is no dispute among the majority of parties commenting that the public policy payphone program should remain small and diminish further in years to come. This position is amply supported by Pacific's comments explaining that the number of payphones qualifying for the public policy program has been reduced substantially from a potential list of more than 67,000 in 1990 to 300 of Pacific's payphones.

The public policy payphone program is not intended to be a perpetual program. To this end we concur with the parties' proposals and encourage the parties, to the extent possible, to replace the public policy payphones with alternative services, thereby reducing the need for this program. We also expect that the need for this program will subside. However, this reduction in the number of public policy payphones, growth in alternative services, and changes

to the program criteria, as addressed in the subsequent criteria discussion, being adopted in this order does not guarantee that telephone service necessary for the public health, safety, and welfare will continue to be made available at the current and future unprofitable locations.

Parties have not substantiated that telephone service will continue to be available at unprofitable locations to satisfy public health, safety, and welfare needs. Nor have they convinced us that the marketplace will replace the existing public policy payphones or fulfill the public policy objective in public health, safety, and welfare. Hence, the public policy program should continue on a statewide basis as long as there is a public health, safety, and welfare need to provide payphones at specific locations which cannot support alternative payphone service. This statewide expansion of the public policy program is consistent with the FCC's requirement that necessary measures be taken to ensure that payphones serving important public interests will continue to exist in light of the elimination of subsidies and other competitive provisions, pursuant to Section 276 of the Act.

Criteria

The current public policy payphone criteria require an entity or property owner with a payphone to not have a contract for compensation from a PSP, not have other payphones located at the same address, not compensate the station agent on whose property the payphone is located provide unrestricted public access to the payphone, have signs posted outside and inside the location by the station agent directing the public to the payphone, and meet one of the following conditions:

- a. Location must be designated as an emergency aid gathering place.
- b. Location is where residents cannot individually subscribe because of the unavailability of facilities for access.

c. No other payphone is located within 50 yards.

The TD has proposed expanding this public policy payphone criteria to include need based on public service, health, and safety; payphone profitability based on all revenue sources including interconnection fee arrangements and call termination; seasonal businesses considered based on revenue annualized to determine profitability; and, exclusion of all private clubs.

Although parties in favor of expanding the public policy payphone program concur with the current criteria and TD's proposed additions, the group of small LECs seek to exempt governmental entities from the requirement that public policy payphones not be permitted if an entity has a contract for compensation from a PSP. The group of small LECs explain that under the current rules, a rural county with one high volume location at its county building receiving PSP commissions, and with four potential public policy payphone locations within its jurisdiction, would have to recoup enough revenue from its one commission paying location to fund its four potential locations. The small LECs recognize that the county could forego the revenue opportunity from its high volume location to ensure that it receives funding for the public policy payphone locations within its boundaries. However, under either scenario, the county loses revenue to support a program that the group of small LECs believe benefits all California residents, not just the county's residents.

On the other side of this proposed criteria change, Pacific believes that local governments should bear the responsibility for ensuring the health, safety, and welfare of the general public. Hence, local government agencies requesting the placement of public policy payphones should act as location providers and enter into contracts with PSPs for the provision of such service.

Since the passage of the Telecommunications Act of 1996, contracts to provide payphones within government jurisdictions have become highly sought

after by the PSPs and are frequently subject to a formal bidding process. As explained by Pacific, governmental agencies can leverage the marketplace to require the placement of payphones at most locations where they are needed. In other instances, semi-public payphones may be used.

The public policy program should be the last resort for obtaining telephone service at locations which are needed for public health, safety, and welfare. The requirement which precludes entities, government or otherwise, from having a public policy payphone if it has a contract for compensation from a PSP, precludes an entity from using the program to increase its own profitability. Absent this restriction, entities might contract out only high volume payphone locations to receive higher commissions and obtain public policy payphone service for its lower volume locations. The group of small LECs' proposal to exempt government entities should be denied.

We adopt the public policy program guidelines and changes proposed by TD, as found in Appendix A to this order.

Nomination Process

The group of small LECs are also concerned that Appendix A to the Rulemaking does not specify a process for nominating a potential location for installation of a public policy payphone. To ensure that those individuals most aware of potential safety problems in a particular area will have the opportunity to provide their views to the Commission, the group of small LECs want a process established for nominating potential public policy payphone locations. Accordingly, the group of small LECs recommend that an approval process be established whereby any member of the public may nominate a public policy payphone location to a committee. The committee would then have the responsibility for determining whether the location owner would allow placement of the public policy payphone.

ORA opposes the creation of a new committee to implement any changes to the public policy payphone program because the creation of a new committee would complicate the Commission's ongoing review of the organizational structure of advisory boards and committees that it has created, as addressed in D.97-12-014.

ORA recommends that the task of reviewing the public policy payphone nominations continue to be performed by a panel consisting of ORA, Consumer Services Division, and a representative from either Pacific or GTEC or a PSP.

Although not expressly identified in the Public Policy Payphone Guidelines attached to the Rulemaking as Appendix A, such an approval process was established as part of the D.90-06-018 settlement agreement. By this agreement, a public policy payphone committee was established consisting of three voting members and a Commission staff member (nonvoting except in cases of a tie vote) appointed by the Executive Director. The voting members consisted of one representative each from a private payphone operator, a member from the Association, and a consumer group representative selected by TD (formerly the Commission Advisory and Compliance Division) and approved by the Executive Director.

Currently, the public policy payphone applications are reviewed by a panel comprised of Pacific, GTEC, and the ORA, as explained in Appendix A to the Rulemaking. With the existence of a process to nominate and review applications for public policy payphones, the group of small LECs' request to establish a public policy payphone nomination process is moot.

Bidding Process

Interested parties have commented on the need to establish a committee to generate Requests for Proposals for the installation and maintenance of public policy payphones and to establish a fair bidding process. Although we have

carefully reviewed and considered the interested parties comments, we are not yet ready to resolve this issue. Hence, we defer resolving the bidding process issue to a subsequent order in this proceeding.

Enforcement Program

Pursuant to a settlement agreement approved by D.90-06-018, an enforcement program was established to ensure that payphone consumer safeguards set forth in the tariffs for the service territories of Pacific and GTEC are being followed. These consumer safeguards included signage requirements, rate caps for intraLocal Access and Transport Area (intraLATA), interLocal Access and Transport Area (interLATA), and directory assistance calls within California. Compliance with these consumer safeguards is enforced by actual inspections of the payphones and by advising Pacific and GTEC to disconnect those payphones not in compliance with their respective tariffs.

Subsequent to the enactment of the Telecommunications Act of 1996 and of implementing orders in FCC Docket No. 96-128, all LECs, including the smaller LECs, implemented new arrangements whereby their payphone operations subscribe to the same obligations that apply to independent PSPs. Accordingly, the PSP Enforcement Committee submitted a Charter for Commission approval which, among other matters, redefined its goals to include these new arrangements. The PSP Committee Charter was approved and adopted by Resolution T-16181, dated September 17, 1998. The Committee's redefined goals consist of educating PSPs on the rules and regulations established by the Commission so that PSPs can comply with these requirements; recommending enforcement of Commission established rules and regulations set forth in the telephone utilities tariffs and as directed by Commission orders; and, educating consumers on matters related to payphone services. Apart from these added goals, the functions of the Enforcement Committee do not change.

With the implementation of new arrangements whereby LECs payphone operations subscribe to the same obligations that apply to independent PSPs and the issuance of this rulemaking, the workshop participants, including a group of small LECs, support an expansion of the payphone enforcement program on a statewide basis. ORA, not a workshop participant, also supports a statewide expansion of the enforcement program, as addressed in its comments to the Rulemaking.

In the interest of enhancing consumer payphone safeguards and with no opposition to this issue, the enforcement program should be expanded statewide. The PSP Enforcement Committee should amend its Charter, as necessary, to reflect this change to a statewide enforcement program. The LECs and CLCs providing service to payphone lines should submit a tariff implementing the \$0.10 enforcement program surcharge rate within 60 days after the effective date of this order.

Program Funding

Both the public policy payphone and enforcement programs are funded through a portion of the monthly surcharge rate applied on the payphone access lines within Pacific and GTEC service territories. Pacific's and GTEC's current surcharge rate for funding the public policy payphone program is \$0.086 and \$0.230, respectively. Pacific's and GTEC's surcharge rate for funding the enforcement program prior to November 2, 1998 is \$0.668 and \$0.780 per payphone line, respectively. Subsequently, by Resolution T-16181, dated September 17, 1998, the utilities' enforcement program surcharge rates will be reduced downward to a uniform \$0.10 per payphone line, effective November 2, 1998.

Public Policy Program

TD recommends that funding for the public policy payphone program be changed from the surcharge applicable to each payphone line to a portion of the Universal Lifeline Telephone Service (ULTS) surcharge. To ensure a smooth transition, TD recommends that the current ULTS funding level remain in effect until December 31, 1998 and that a new funding surcharge rate be established on January 1, 1999, or as otherwise determined by the Commission.

The workshop participants do not believe that the program should be funded through the ULTS surcharge, as suggested in the Rulemaking. Such participants believe that the statutory language creating the ULTS prohibits such funds from being used for the public policy program.

The Association concurs with the proposal to fund the public policy payphone program through the ULTS surcharge. However, if the statutory basis for ULTS funding precludes such funds to be used for the public policy payphone program, it recommends either that the California High Cost Fund (CHCF) or California Teleconnect Fund be used as an alternative funding source for the public policy payphone program. The CHCF-A is comprised of revenues collected by telephone corporations in rates authorized by the Commission to fund transfer payments to small independent telephone corporations providing local exchange services in high-cost rural and small metropolitan areas in California in order to create fair and equitable local rate structures, as provided for in Public Utilities (PU) Code § 739.3. The CHCF-B is also comprised of revenues collected by telephone corporations, as authorized by the Commission, to provide transfer payments to telephone corporations providing local exchange services in high-cost areas, as provided for in PU Code § 739.3. California Teleconnect Fund is comprised of revenues collected by telephone corporations in rates to provide discounted rates to qualifying schools, libraries, hospitals,

health clinics, and community organizations as provided for by Chapter 278 of the Statutes of 1994.

Both Pacific and GTEC recommend that funding for the public policy program be discontinued. However, if the program is formalized and expanded at this time or some later time, GTEC recommends that it be funded through a broad based, public service fund.

ORA concludes from its reading of Pacific's and GTEC's comments that the collection of a surcharge in Pacific's and GTEC's service territories is no longer necessary to support the existence of public policy payphones in those territories. However, if the program is expanded statewide, ORA recommends that the need and magnitude of a surcharge for the small independent LECs service areas not be determined until an audit is completed, as addressed in its comments.

ORA also opposes changing the funding obligation for public policy payphones from payphone providers to ratepayers through a ratepayer surcharge because it is contrary to the D.90-06-018 settlement agreement, of which ORA was a signatory. Irrespective of that, ORA believes that any use of ULTS fund for public policy payphones would be an improper use of the ULTS surcharge and contrary to PU Code § 879 which requires telephone corporations providing lifeline service to apply the funding requirement in the form of a surcharge to service rates which may be separately identified on the bills of customers using those services.

The PSPs, Association, Pacific, GTEC, and ORA, as signatories to the D.90-08-018 settlement agreement have committed that the public telephone sector, as opposed to the general body of ratepayers or other source of funding, shall bear the burden of paying for the losses incurred through the placement and operation of public policy payphones, pursuant to Article V, Section C(5) of the Settlement Agreement. No party has explained or justified why funding the

public policy program through a payphone line surcharge established as part of a settlement agreement should be changed to a broad based public service funding method. Hence, the public policy program should continue to be funded from a payphone line surcharge. However, at what rate?

We know that Pacific has approximately 300 payphones and that GTEC, has an unspecified number of payphones in the public policy program. We also know that the remaining LECs and CLCs do not have any of their payphones in the program because they have yet to participate. If the group of small LECs believe that they have payphone locations qualifying for the program, then they should submit the appropriate application for review and approval. As confirmed by ORA, the magnitude of the payphone line surcharge rate cannot be determined until more information is known, e.g., the number of payphones in the program, amount of revenues needed to cover installation and operation costs, and number of statewide payphone lines.

Given that there are payphones currently in the program, the current surcharge rates should continue on a temporary basis. Hence, Pacific and GTEC should continue with their currently authorized payphone line surcharge.

To assist in establishing a uniform surcharge rate, Pacific and GTEC should submit to TD no later than May 28, 1999 a reconciliation of their payphone line surcharges collected and expended, and identify the amount of any surplus or deficit as of March 31, 1999. TD should use this information and obtain any additional information it may need from Pacific, GTEC, and other LECs and CLCs to prepare a resolution recommending a uniform payphone surcharge rate. Pacific's and GTEC's current surcharge rates shall continue until a uniform surcharge rate is adopted by the Commission or by other Commission action. Upon the change of funding with a uniform surcharge, TD should submit a budget augmentation for expansion of the public policy payphone program to

the 1999 PSP Enforcement Program budget. LECs, CLCs, and other entities having payphones in the public policy program should certify to TD's Director at the end of each calendar year that each of its payphones in the program meets the necessary criteria.

Enforcement Program

The enforcement program is currently funded by a distinctly separate monthly surcharge on each payphone line within Pacific's and GTEC's service territory. TD recommends that funding for the statewide enforcement program be based on an equal surcharge on all payphone lines in place of the different surcharge levels currently used for Pacific and GTEC and that the surcharge be eliminated until the surplus of funds totaling approximately \$2 million is used.

Concerns regarding the \$2 million surplus in the enforcement program fund and the disproportionate funding of the program by Pacific and GTEC were also raised by the parties in favor of the statewide expansion of the enforcement program.

The Association recommends that the enforcement program surcharge be set at zero until the current surplus of approximately \$2 million is exhausted and further revenues for the program are needed, which the Association does not expect to occur until sometime after the year 2000.

However, the PSP Enforcement Committee has proposed to use the surplus funds and to reduce Pacific's and GTEC's monthly surcharge rate to a uniform \$0.10 rate per payphone line as part of its 1998 budget request. Resolution T-16181, dated September 17, 1998, approved a uniform enforcement program surcharge rate of \$0.10 per payphone line to become effective on November 2, 1998 and continue through December 31, 1999. The resolution also requires the PSP Enforcement Committee to submit a new budget and surcharge

rate no later than August 31, 1999 to be applicable for the year 2000 and beyond. Hence, the enforcement program surplus and surcharge rate concern is moot.

The uniform \$0.10 monthly surcharge rate applicable to each payphone line service of Pacific's and GTEC's should be consistent throughout the state. Hence, all LECs and CLCs providing intrastate payphone line service should be subject to the same enforcement program surcharge rate. Those LECs and CLCs providing payphone access line service should submit an advice letter to TD within 60 days after the effective date of this order implementing the \$0.10 surcharge rate set forth in Resolution T-16181 for Pacific and GTEC.

The PSP Enforcement Committee should request a budget augmentation to its pending 1999 budget to fund the statewide expansion of the enforcement program. The PSP Enforcement Committee should submit a report to the TD summarizing the actual payphone line surcharge revenues received and actual cost incurred due to the statewide expansion of the enforcement program as part of its next budget and/or surcharge rate due August 31, 1999. Any surplus or deficit due to the statewide expansion of the program should be utilized in recommending a new surcharge rate due August 31, 1999. However, any proposed change to the surcharge rate should be applicable on a statewide basis.

Section 311 Comments

The Assigned Commissioner's proposed decision on this matter was filed with the Docket Office and mailed to all parties of record on October 6, 1998, pursuant to Section 311 of the PU Code. Comments to the Assigned Commissioner's proposed decision was timely received from GTEC, Pacific Bell, group of small LECs, ORA, and the Association.

Rule 77.3 of the Commission's Rules of Practice and Procedure specifically requires Section 311 comments to focus on factual, legal, or technical errors in the Proposed Decision and in citing such errors requires the party to make specific

references to the record. Comments which merely reargue positions taken in briefs accord no weight and are not to be filed. New factual information, untested by cross-examination, must not be included in comments and must not be relied on as the basis for assertions made in post publication comments. Rule 77.4 requires comments proposing specific changes to the Proposed Decision to include supporting findings of fact and conclusions of law.

The comments filed by the parties to this proceeding have been carefully reviewed and considered. To the extent that such comments required discussion or changes to the Proposed Decision, the discussion or changes have been incorporated into the body of this order. Comments which have not complied with Rule 77.3 were not considered.

Findings of Fact

1. The FCC left the primary responsibility for administering and funding public policy payphones to the individual states.
2. The FCC requires each state to review whether the state has adequately provided for public policy payphones in a manner consistent with FCC Docket No. 96-128.
3. The FCC requires each state to evaluate whether it needs to take any measures to ensure that payphones serving important public interests will continue to exist.
4. A public policy payphone program has existed in Pacific's and GTEC's service territories since 1990.
5. This rulemaking was opened to reassess the public policy payphone program through public participation workshops and from comments and reply comments from interested parties.
6. All LECs and CLCs have been named respondents to this rulemaking.

7. The final categorization of this proceeding is quasi-legislative as defined in Rule 5(d) of the Commission's Rule; no formal hearings were held in this proceeding.

8. A July 30, 1998 compliance report summarizes the results of the public participation workshops.

9. Interested parties attending the public participation workshops concur that changes should be made to the current public policy program.

10. The 1988 combined list of potential public policy payphone locations exceeding 67,000 payphones was reduced to 22,000 in 1989, and further reduced to 1,975 in 1993.

11. Pacific's deregulated business unit currently has only 300 public policy payphones out of a total of 140,000 payphones.

12. A PSP will place a payphone so long as there is sufficient end-use demand for service.

13. Most payphones are covered by some form of contract between the location agent and the PSP.

14. Public policy payphones are free to charge market rates.

15. The small LECs have been able to voluntarily participate in the public policy payphone program since June 1990.

16. Parties have not substantiated that telephone service will continue to be available at unprofitably locations to satisfy public health, safety, and welfare should the public policy payphone program be discontinued.

17. There is no dispute among the parties that the public policy payphone program should remain small and diminish further in years to come.

18. The public policy payphone program is not intended to be a perpetual program.

19. The statewide expansion of the public policy payphone program is consistent with the FCC's requirement to ensure that payphones serving important public interest will continue to exist.

20. A process for nominating potential locations for the installation of public policy payphones was established as part of the D.90-06-018 settlement agreement.

21. The PSP Enforcement Committee Charter was approved by Resolution T-16181.

22. A payphone enforcement program was established to ensure that payphone consumer safeguards are being followed.

23. The PSP Enforcement Committee manages the current payphone enforcement program.

24. None of the small LECs are currently participating in the enforcement program.

25. There is no opposition to expanding the enforcement program statewide.

26. The public policy payphone and enforcement programs are funded through a portion of the monthly surcharge rate applied on the payphone access lines within Pacific's and GTEC's service territories.

27. The statutory language creating the ULTS prohibits such funds from being used for the public policy program.

28. The PSPs, Association, Pacific, GTEC, and ORA, as signatories to the D.90-06-018 settlement agreement, have committed that the public telephone sector shall bear the burden of paying for the losses incurred through the placement and operation of public policy payphones.

29. The magnitude of the payphone line surcharge rate for the enforcement program cannot be determined until more information is known.

30. A Resolution approved a uniform enforcement program \$0.10 surcharge rate per payphone line to become effective on November 2, 1998.

Conclusions of Law

1. The public policy payphone program should continue and be expanded on a statewide basis as long as there is a need to provide payphones at specific locations which cannot support alternative payphone service for the public health, safety, and welfare.

2. The public policy payphone program should be the last resort for obtaining telephone service at locations which are needed for public health, safety, and welfare.

3. Government entities should not be exempted from meeting the public policy program criteria.

4. The public policy program guidelines and changes set forth in Appendix A to the Rulemaking should be adopted as the revised public policy payphone criteria.

5. The public policy payphone program tasks identified in this order should be delegated to a subcommittee of the PSP Enforcement Committee.

6. The PSP Enforcement Committee should amend its Charter, as needed, to reflect that the enforcement program is a statewide program.

7. The public policy payphone program should continue to be funded from a payphone line surcharge.

8. Pacific and GTEC should provide a reconciliation of their public policy payphone line surcharges collected and expended, and identify the amount of any surplus or deficit as of March 31, 1999 to TD no later than May 28, 1999.

9. TD should have access to the information provided by the prior Conclusion of Law and any necessary information from other LECs and CLCs to

prepare a resolution recommending a uniform public policy program surcharge rate.

10. Pacific and GTEC should continue with their public policy payphone surcharge rate until a uniform surcharge rate is adopted.

11. All LECs and CLCs providing intrastate payphone line service should be subject to the same enforcement program surcharge rate as Pacific and GTEC

12. The PSP Enforcement Committee should submit a report summarizing the actual payphone line surcharge revenues received and actual cost incurred due to the statewide expansion of the enforcement program as part of its next budget and surcharge rate request.

13. The PSP Enforcement Committee's 1999 budget should be augmented to fund the statewide expansion of the Payphone Enforcement program.

ORDER

IT IS ORDERED that:

1. The public policy payphone program shall be expanded statewide as set forth in the body of this order.

2. The criteria for a payphone to be classified as a public policy payphone shall be revised as set forth in Appendix A to this order.

3. The payphone enforcement program shall be expanded statewide.

4. The Payphone Service Providers (PSP) Enforcement Committee shall amend its Charter to indicate its responsibility to manage the statewide enforcement program, if necessary.

5. The public policy payphone program shall continue to be funded from a payphone line surcharge as set forth in the body of this order.

6. Pacific Bell (Pacific) and GTE California, Incorporated's (GTEC) public policy payphone program surcharge rates shall remain in effect until a uniform surcharge rate is adopted.

7. All Local Exchange Carriers (LECs) and Competitive Local Exchange Carriers (CLCs) providing intrastate payphone line service shall be subject to the same \$0.10 enforcement program surcharge rate that is applicable to Pacific and GTEC.

8. All LECs and CLCs providing intrastate payphone line service shall be required to provide the number of payphone lines in their service territory on a monthly basis, effective February 1, 1999, to the PSP Enforcement Program Manager.

10. The LECs, other than Pacific and GTEC, and CLCs shall submit an advice letter filing within 45 days to be effective 60 days after the effective date of this order implementing the \$0.10 enforcement program surcharge rate set forth in Resolution T-16181.

11. The Executive Director shall cause a copy of this order to be served on the PSP Enforcement Committee and respondent LECs and CLCs.

12. Rulemaking 98-05-031 shall remain open to establish an appropriate bidding process for the placement, maintenance, and repair of public policy payphones.

This order is effective today.

Dated November 5, 1998, at San Francisco, California.

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

APPENDIX A

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PUBLIC POLICY PAYPHONE CRITERIA

For a payphone to be classified as a public policy payphone the following criteria must be satisfied:

- Necessity must be based on public service, health, and safety.
- The payphone must not generate revenues to cover the cost of installation or operation of the payphone.
- All revenue sources, including interconnection fee arrangements and call termination should be considered in determining profitability.
- Seasonal businesses may qualify based on annualized revenue to determine profitability.
- An entity (including but not limited to a city or county government, airport authority or shopping center) is not permitted a public policy payphone if it has a contract for compensation from a Payphone Service Provider (PSP).
- No other payphones may be located at the same address.
- The station agent upon whose property the public policy payphone is located agrees to no compensation.
- The public must be granted unrestricted access to the public policy payphone. However, all private clubs are excluded.
- The station agent agrees to post signs outside and inside directing public to the public policy payphone.

APPENDIX A

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- One of the following conditions must be met:
 - Location must be designated as an emergency gathering place, or
 - Payphone is located where residents cannot individually subscribe because of unavailability of facilities for access, or
 - there is no other payphone within 50 yards of the public policy payphone.

(END OF APPENDIX A)

**APPENDIX B
TABLE OF ACRONYMS AND ABBREVIATIONS**

| | |
|---------------------|--|
| Association | - California Payphone Association |
| CHCF | - California High Cost Fund |
| CLCs | - Competitive Local Exchange Carriers |
| D. | Decision |
| Director | Director of the Telecommunications Division |
| FCC | - Federal Communications Commission |
| GTEC | GTE California, Inc. |
| group of small LECs | - Calaveras Telephone Company, Cal-Ore Telephone, Ducor Telephone Company, Foresthill Telephone Company, The Ponderosa Telephone Co., and Sierra Telephone Company, Inc. |
| I. | - Investigation |
| LECs | - Local Exchange Carriers |
| ORA | - Office of Ratepayer Advocates |
| Pacific | Pacific Bell |
| payphone | - pay telephones |
| PSP | - Payphone Service Providers |
| PU Code | Public Utilities Code |
| RFP | Request for Proposal |
| Rule | - Commission's Rules of Practice and Procedure |
| TD | - Telecommunications Division |
| ULTS | - Universal Telephone Service Surcharge |

(END OF APPENDIX B)