

Decision 99-06-032 June 10, 1999

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.

Rulemaking 98-05-031
(Filed May 21, 1998)

FINAL OPINION

Summary

This decision provides the Payphone Service Providers Committee (PSP Committee) with the responsibility to implement and administer a public policy payphone bidding process under the direction of the Commission's Telecommunications Division (TD).

Background

This proceeding was opened to assess and evaluate California's public policy payphone and payphone enforcement program. 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. All Local Exchange Carriers (LECs) and Competitive Local Carriers (CLCs) were named respondents to this rulemaking proceeding.

Interested parties participated in this rulemaking proceeding through public participation workshops and in the filing of comments and reply comments. The TD held public participation workshops in Redding, San Francisco, Huntington Beach, and Fresno on June 22, 23, 25, and 29, 1998, respectively. TD submitted a July 30, 1998 compliance report summarizing the

results of the public participation workshops. Only one party, the California Payphone Association (Association), commented on TD's compliance report.

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 GTE California Incorporated (GTEC), Pacific Bell, 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 comments and reply comments generated concerns similar to those 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.

Decision (D.) 98-11-029, dated November 5, 1998, implemented major changes to the public policy payphone and payphone enforcement programs related to the need to continue the public policy payphone program, enforcement program, and funding. However, the bidding process was deferred to a subsequent order after a more careful review and consideration of interested parties comments could be undertaken. The changes implemented by D.98-11-029 included a statewide expansion of the public policy payphone and enforcement programs, limited public policy payphone program to locations designated as an emergency gathering place or where residents cannot individually subscribe to telephone service because of unavailability of facilities,

and established a uniform public policy payphone funding procedure and a uniform enforcement program surcharge rate.

Jurisdiction

Pursuant to Ordering Paragraph 12 of D.98-11-029, this proceeding remained open to establish an appropriate bidding process for the placement, maintenance, and repair of public policy payphones. Hence, this decision addresses the appropriate public policy payphone bidding process that should be used and closes the public policy payphone rulemaking proceeding.

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 quasi-legislative preliminary categorization was affirmed by a June 11, 1998 Scoping memo and Assigned Commissioner's Ruling.

Proposed Bidding Process

TD proposed that a new committee be established to implement state procurement guidelines in generating Requests For Proposals (RFPs) on a county-by-county basis for installing public policy payphones. The committee would consist of one representative each from the Consumer Service Division, ORA, and the Department of Consumer Affairs. Contracts would be approved for a three-to-five-year duration to allow for cost recovery.

Although TD did not intend that this new procedure be applicable to Pacific Bell's and GTEC's public policy payphones currently under contract, it proposed that these utilities should be required to provide pertinent information so competitors can submit meaningful bids. TD identified the pertinent information to consist of the number and location of program payphones by county, and individual contract expiration dates. TD also proposed that the Committee be authorized to negotiate at arms length with any PSP for service in any county where no bids are received or approved.

Workshop Participants Comments

Workshop participants questioned TD's proposal to utilize state procurement bidding process on a county-by-county basis. The group of small LECs favored a process in which individual public policy payphone locations would be open to bid over the county-by-county proposal. This is because many small LECs are not equipped to provide service completely within and between California rural counties which have extreme geographical dissimilarities. The group of small LECs also believe that county-wide franchises could prevent the most efficient providers from assuming the obligation to provide service to specific locations. However, if the county-by-county bidding process is implemented, the group of small LECs believe that they could submit a bid if two or more of the smaller LECs serving portions of the same county are allowed to enter into a joint venture with other smaller LECs.

The group of small LECs also recommended that, if the county franchise proposal is adopted, the Commission mandate a designated PSP to provide service at a public policy payphone location within thirty days of the designation of that location for installation of a public policy payphone. This is because the group of small LECs who currently provide public policy payphone service may discontinue service unless they receive support.

The Association supported the county-by-county contract proposal for providing public policy payphone service. However, the Association and other workshop participants, felt that they were being disadvantaged by the proposed bidding process because Pacific Bell and GTEC have access to historical information which affords them an advantage in the bidding process for a majority of the counties in California.

To alleviate Pacific Bell's and GTEC's perceived advantage, several workshop participants recommended that Pacific Bell and GTEC be required to provide information on the number, locations, and usage of existing public policy payphones in their respective service territories. Other parties suggest that Pacific Bell and GTEC should also be required to provide revenue information on the impacted payphones to all competitors. However, GTEC does not believe that revenue information is needed to produce a bid for a site deemed unprofitable by its nature.

ORA opposed the establishment of a new committee. This is because the Commission is reviewing the organizational structure of established advisory boards and committees and that the creation of a new committee would only complicate this ongoing review. ORA recommended that the RFP task be delegated to a PSP Enforcement subcommittee, a committee already established and operating. ORA suggested that since the PSP Committee's charter was then being reviewed by the Commission, the additional public policy payphone tasks need only be added to the Charter.¹

¹ The PSP Committee's charter was subsequently approved by Resolution T-16181, dated September 17, 1998.

Although Pacific Bell and GTEC did not comment on the proposed bidding process, they objected to being required to provide revenue and other information on their public policy payphones because they deem such payphones unprofitable by nature.

Discussion

Given the Commission's ongoing review of the organizational structure of boards and committees, it is not appropriate to establish a new committee to manage the public policy bidding process at this time. Further, the delegation of the bidding process being approved in this order to an established committee would enable this program to be implemented more expeditiously than if a new committee was established. Hence, the public policy payphone program tasks should be delegated to the PSP Committee, as suggested by ORA. The PSP Committee should review its Charter and submit any changes needed to provide the activities being authorized in this order to the Commission for approval. A copy of this order should be mailed to the PSP Committee.

To provide for Commission oversight and control of the bidding process, the PSP Committee should submit for the Commission's review and approval a proposed plan for conducting the bid process, a budget for the payphone installation and operation program costs, and a proposed RFP. Since the PSP Committee is comprised of various industry representatives including two Local Exchange Carriers (Pacific Bell and GTEC) and three payphone associations (San Diego Payphone Owners Association, Payphone Service Providers Group, and the California Payphone Association), which are payphone service providers or represent the same, the proposed plan shall address and identify how inappropriate conflicts of interest will be minimized. In addition, no PSP should be permitted to submit a bid to install or operate public policy payphones or have such a bid considered if any PSP Committee member who is an owner

officer or employee of that PSP or any company under common ownership or control with that PSP either participated in drafting the RFP to which that bid would respond or will participate in the determination whether that bid was selected.

The Director of the TD (Director) shall then prepare for the Commission's consideration a resolution adopting a plan, budget, and RFP. The Commission's General Counsel shall work in concert with the TD Director to address and minimize any inappropriate conflicts of interest. Once an RFP has been approved by the Commission, the PSP Committee should issue the RFP, select one or more qualified bidders to perform the program services, and submit the proposed provider contract(s) to the Commission for review and approval. The Director shall then prepare for the Commission's consideration a resolution adopting contract(s) to provide the program services.

The proposal to implement an individual location bidding process may be the optimum process. However, such a process would be cumbersome, costly, inefficient to operate and not in the ratepayers' best interest when compared to a county-by-county bidding process. It would also make it difficult, if not impossible, to remove a payphone location from the public policy payphone program if the public policy payphone began to operate at a profit or no longer satisfied the program criteria. Hence, we opt for a county-by-county bidding process. This process will enable any qualified party² to bid for the right to install and operate public policy payphones within a specific county. If there are

² A qualifying entity, partnership, joint venture, or individual demonstrating the ability to install and operate a payphone in conformance with established tariff and Commission payphone criteria.

no approved bids within a county where public policy payphones exist, the Committee responsible for the bid process should negotiate with any PSP to provide the necessary service. The negotiated agreement should be submitted to the TD Director and Commission's General Counsel for review. The TD Director, in concert with the General Counsel, should then prepare for the Commission's consideration a resolution adopting the negotiated agreement.

Although we reject the group of small LECs proposal to seek bids on an individual site basis, they should not be precluded from bidding because they may not be individually equipped to provide service on an entire county basis. Under our competitive bidding process being adopted, any interested party or entity qualified to install public policy payphones may participate. Partnerships or joint ventures between the small LECs may participate in the bidding process.

Both Pacific Bell and GTEC have established sites under the public policy program which receive revenue from customers using the payphones as well as revenue from the public policy program. Hence, the workshop participants raised a valid concern regarding the need to obtain information on each individual public policy payphone location so that Pacific Bell and GTEC do not have an unfair advantage on information regarding the payphones currently under the program. By definition, a public policy payphone does not generate sufficient revenues to cover the cost of installation and operation of the payphone. Hence, it is important to identify the amount of revenue the program payphones generate from customer use for the competitive bidding process to work.

To alleviate this perceived bidding advantage, Pacific Bell and GTEC should submit to the TD Director within 60 days after the effective date of this

order: a list of each payphone under the program by specific location, county, and date that current contracts, if any, are set to expire³ and certify that each of its payphones in the program meet the public policy payphone criteria. Because the competitive bidding process will be by county, Pacific Bell and GTEC should also provide the most recent six months of gross revenue received from each program payphone on a total county basis to the TD Director. Gross revenue should include all revenue accruing to the PSP either as coin in the box or as commissions or compensation paid by carriers, operator service providers, or end users with respect to non-coin calling. This information requirement should be equally applicable to any LEC having a payphone meeting the public policy payphone criteria. In turn, TD should make this information available, as appropriate, to the Committee responsible for implementing the RFP process and to qualified potential bidders as necessary for the purpose of obtaining bids to install, maintain, and repair payphones under this program.

No comments were received on the TD's proposal to solicit and approve public policy payphone contracts for a three-to-five-year time duration. Given that the number of public policy payphones has decreased substantially since 1990 and that a majority of the parties believe that the number of locations eligible for this program will further diminish in the near future, contracts should be approved for a maximum of five years. However, as public policy payphones become profitable or no longer satisfy the public policy criteria, such specific locations should be dropped from the program at the end of the calendar year in which the location becomes profitable or no longer satisfies the public

³ Excludes the exercise of any clause allowing for an option to extend the current contract.

policy criteria. Those entities awarded public policy payphone contracts should provide to the TD Director at the end of each calendar year written certification that each public policy payphone under contract continues to meet the public policy payphone criteria.

We are concerned with the group of small LEC's recommendation to mandate a designated PSP to provide service at public policy payphone locations within 30 days of the designation of that location for the installation of a public policy payphone because the small LECs allegedly providing service to such payphones may discontinue service at their existing locations. However, the competitive bidding process being adopted by this order is intended to provide for an orderly transfer of public policy payphones without interruption of service. Hence, the Committee responsible for the bidding process should ensure that the willing bidder installs payphones at the public policy payphone locations as expeditiously as possible.

Concern was also voiced at the workshops on whether the bidding process would require placement of public policy payphones in unfiled areas of the state. TD staff reassured the interested parties, and we confirm, that we do not intend to do so at this time.

Comments on Draft Decision

The draft decision of the assigned Commissioner in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Timely comments were received from the Association and group of small LECs.

Findings of Fact

1. D.98-11-029 kept this proceeding open to establish an appropriate bidding process for the placement, maintenance, and repair of public policy payphones.

2. It is necessary to establish procedures to minimize inappropriate conflicts of interest of PSP Committee members that may be given responsibility for administering the public policy payphone bidding process.

3. Pacific Bell and GTEC have access to historical public policy payphone information in their respective service territories.

4. No comments were received on the proposal to solicit and approve public policy payphone contracts for a three-to-five year time duration.

Conclusions of Law

1. The PSP Committee should be responsible for implementing and administering the public policy payphone bidding process.

2. No PSP should be permitted to submit a bid to install or operate public policy payphones or have such a bid considered if any PSP Committee member who is an owner, officer or employee of that PSP or any company under common ownership or control with that PSP either participated in drafting the RFP to which that bid would respond or will participate in determining whether that bid will be selected.

3. A county-by-county bidding process should be adopted for the public policy payphone program.

4. Public policy payphone contracts should be approved for a maximum of five years.

5. Entities awarded public policy payphone contracts should be required to annually provide written certification that each payphone under contract continues to meet the public policy criteria.

6. Public policy payphones no longer meeting the program criteria should be dropped from the program.

7. Pacific Bell, GTEC, and other LECs should be required to provide information on their public policy payphone locations as set forth in this order.

8. Public policy payphone gross revenue should include all revenue accruing to the PSP either as coin in the box or as commissions or compensation paid by carriers, operator service providers, or end users with respect to non-coin calling.

FINAL ORDER

IT IS ORDERED that:

1. The Payphone Service Providers Committee (PSP Committee) shall be responsible for implementing and administering the public policy payphone bidding process for the placement, maintenance, and repair of public policy payphones under the direction of the Commission's Telecommunications Division (TD) Director (Director), in concert with the Commission's General Counsel, as set forth in the body of this order.

2. The PSP Committee shall review its Charter and submit any changes needed to provide the activities being authorized in this order to the Director for review. The Director, in concert with the Commission's General Counsel, shall then prepare for the Commission's consideration a resolution adopting necessary changes to the PSP Committee's Charter.

3. The PSP Committee shall submit a proposed plan for conducting the bid process, a budget for the payphone installation and operation program costs, and a proposed Request For Proposal (RFP) to the Director for review. The Director, in concert with the Commission's General Counsel, shall then prepare for the Commission's consideration a resolution adopting the bid process, a budget for the payphone installation and operation program costs, and proposed RFP.

4. Once an RFP has been approved by the Commission, the PSP Committee shall issue the RFP, select one or more qualifying bidders to perform the program services, and submit the proposed provider contract(s) to the Director

for review. The Director, in concert with the Commission's General Counsel, shall then prepare for the Commission's consideration a resolution adopting contract(s) to provide the program services.

5. A county-by-county competitive bidding process shall be used for the public policy payphone program as set forth in this order. However, the PSP Committee shall be authorized to negotiate with any PSP for service in any county where no bids are received or approved.

6. Pacific Bell, GTEC and other Local Exchange Companies (LECs) having public policy payphones meeting the public policy payphone criteria shall submit to the TD Director within 60 days after the effective date of this order: a list of each payphone under the program by specific location, county, and date that current contracts, if any, are set to expire,⁴ the most recent six months of gross revenue received from each program payphone on a total county basis, and a certification that each of its program payphones meets the necessary criteria.

7. TD shall make the information required by Ordering Paragraph 6 available, as appropriate, to the Committee responsible for implementing and administering the public policy payphone bidding process and to qualified potential bidders as necessary.

8. Public policy payphone contracts shall be approved for a maximum of five years.

9. Entities awarded public policy payphone contracts shall annually provide written certification to the PSP Committee and to TD that each payphone under contract continues to meet the public policy criteria.

⁴ Excludes the exercise of any clause allowing for an option to extend the current contract.

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

11. Rulemaking 98-05-031 is closed.

This order is effective today.

Dated June 10, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
LORETTA M. LYNCH
JOEL Z. HYATT
Commissioners