

MAILED 5/26/98

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.

FILED
PUBLIC UTILITIES COMMISSION
May 21, 1998
SAN FRANCISCO OFFICE
R.98-05-031

ORIGINAL

ORDER INSTITUTING RULEMAKING

Summary

By this order, we open a rulemaking proceeding to assess the adequacy of our public policy pay telephone program (payphone program or program), and the need to expand the program statewide, change the payphone enforcement program, and establish funding of the programs on a fair and equitable basis. Public policy payphones are payphones made available to the general public in the interest of public health, safety, and welfare at locations where there would otherwise not be a payphone.

Background

The Federal Communications Commission (FCC) deregulated payphones effective April 15, 1997, to promote competition among Payphone Service Providers 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 (Act). 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 Telecommunications Act of 1996 (FCC Docket No.96-128 as adopted and released

Although California does not currently have a statewide public policy payphone program, a public policy payphone program has been in place for Pacific Bell's and GTE California Incorporated's (GTEC) service territories since 1990, pursuant to Decision (D.) 90-06-018 (36 CPUC2d 446 (1990)) issued in Investigation 88-04-029, an investigation into the regulation of payphones.

Given our desire to encourage as many parties as possible to participate in the restructuring of California's public policy payphone program, and in consideration of the FCC's November 8, 1998 date for completion of our program review, the Commission's Telecommunications Division held and completed a 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 to the Commission revised procedures for the deployment and funding of a California statewide public policy payphone program. This public meeting was held on November 12, 1997. All local exchange carriers (LECs), competitive local exchange carriers (CLCs), payphone service providers (PSPs), as well as a number of consumer organizations were invited to attend the public workshop. Participants from all groups were represented at the public meeting.

The Telecommunications Division has reviewed and considered the existing payphone program and discussions which took place at the public meeting to identify program changes to be considered in this rulemaking. Any expansion of a public policy payphone program impacts the payphone enforcement program. Hence, changes to the payphone enforcement program, identified in Appendix A, also need to be considered. Appendix A to this rulemaking identifies the existing program criteria and the Telecommunications Division suggested changes for the public policy payphone and payphone enforcement programs. All respondents and interested parties are invited to comment on the current program and suggested changes within 60 days after the

(Rules), which are posted on the Commission's web site (<http://www.cpuc.ca.gov>). Pursuant to Rule 4(a), the rules in Article 2.5 shall apply to this proceeding.

Pursuant to Rule 6(C)(2), we preliminarily determine the categorization of this rulemaking 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.

Consistent with the quasi-legislative category of this proceeding, we anticipate that there may be full panel hearings where we will receive information on legislative facts (that is, general facts that help us decide questions of law and policy and discretion (Rule 8(f)(3))). At this time, we do not see a need for hearings for the presentation of adjudicative facts (which answer questions such as who did what, where, when, how, why, or with what motive of intent (Rule 8(f)(1))). We intend to resolve this proceeding by the FCC's November 8, 1998 completion date, as detailed in the proposed timetable in Appendix B. However, in no event will this rulemaking proceeding remain open for more than 18 months. Commissioner Bilas and Administrative Law Judge (ALJ) Galvin are assigned to this proceeding.

As required in Rule 6(C)(2), any person filing a response to this rulemaking shall state in that response any objections to the order regarding the category, need for evidentiary hearings, need for an opportunity to make an oral argument, preliminary scope, and timetable as set forth in Appendix B to this rulemaking. Any such response should be filed within ten days after the effective date of this rulemaking.

2. Any person or representative of an entity interested in participating in the rulemaking as a party must send a letter to the Commission's Process Office identifying the extent of their participation and party status within ten days from the date of this order. Any person or representatives of an entity not seeking party status but interested in being placed on the "Information Only" portion of the service list must send a letter to the Commission's Process Office within ten days from the date of this order. A service list shall be created and distributed within 20 days from the date of this order.

3. Pursuant to Rule 6 (C)(2) of the Commission's Rules of Practice and Procedure, we preliminary determine the categorization of this rulemaking proceeding to be "quasi-legislative," as that term is defined in Rule 5(d). Consistent with the quasi-legislative categorization of this proceeding there may be hearings at which we anticipate receiving information on legislative facts. At this time, we do not see a need for hearings for the presentation of adjudicative facts.

4. All local exchange telephone companies (LECs) and competitive local carriers (CLCs) are named respondents to this rulemaking.

5. Respondents and interested parties may file and serve comments on the current payphone criteria and suggested changes to the payphone policy attached as Appendix A to this rulemaking with the Docket Office within 60 days from the date of this order. Replies, if any, to the comments shall be filed and served within ten days after the date comments are filed with the Docket Office.

6. Any party or interested person may file a response to this rulemaking within ten days after the effective date of this order. As required in Rule 6(C)(2), any party filing a response shall state in that response any objections to the order regarding category, need for hearing, and preliminary scoping memo, including the description of issues and the timetable for resolving this proceeding.

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11. The Executive Director shall cause a copy of this rulemaking to be served upon respondent LECs and CLCs, the service list of Investigation 88-04-029, and on all cities and counties within California.

This order is effective today.

Dated May 21, 1998, at San Francisco, California.

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

APPENDIX A

PUBLIC POLICY PAYPHONES

I. GUIDELINES

The existing criteria for placement of Public Policy Payphones (PPP) in PacBell and GTEC service areas consists of the following:

- An entity (including but not limited to a city or county government, airport authority or shopping center) is not permitted a (PPP) 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 PPP is located agrees to no compensation
- The public must be granted unrestricted access to the PPP
- The station agent agrees to post signs outside and inside directing public to PPP
- One of the following conditions must be met:
 - location must be designated as an emergency aid gathering place OR
 - phone 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 PPP

The Telecommunications Division (TD) suggests adding the following criteria for the statewide program:

- Necessity based on public service, health and safety
- In determining profitability, all revenue sources should be considered, i.e., interconnection fee arrangements and call termination
- Seasonal businesses may be considered, but revenue must be annualized to determine profitability
- Private clubs should be excluded even if placement allows public access

II. FUNDING

The current program is funded through a portion of the surcharge on pay telephone lines in PacBell and GTEC service territories only.

TD Recommends that funding for the state-wide program be achieved through a portion of the Universal Lifeline Telephone Service surcharge. Using the surcharge will result in all customers contributing to PPP funding. To ensure a smooth transition, TD recommends that the current funding level remain in effect until 12/31/98 with the new funding beginning on 1/1/99, or as otherwise determined by the Commission.

APPENDIX A

PUBLIC POLICY PAYPHONES

PUBLIC MEETING SCHEDULE

Redding
Monday, June 22, 1998
7 to 9 PM
Redding Senior Center
2290 Benton Dr.
Redding, CA 96003

San Francisco
Tuesday, June 23, 1998
7 to 9 PM
California Public Utilities Commission, Hearing Room A
505 Van Ness Ave.
San Francisco, CA 94102

Huntington Beach
Thursday, June 25, 1998
7 to 9 PM
City Council Chambers
2000 Main Street
Huntington Beach, CA 92648

Fresno
Monday, June 29, 1998
7 to 9 PM
Fresno City Hall, City Council Chambers
2600 Fresno Street
Fresno, CA 93721

(End of Appendix A)

APPENDIX B
PUBLIC POLICY PAYPHONE PROGRAM

Proposed Timetable

<u>DATE</u>	<u>ACTIVITY</u>
May 21, 1998	Commission issues Rulemaking Proceeding.
June 1, 1998	Notice of participation and party status.
June 1, 1998	Responses to Rulemaking regarding category, need for evidentiary hearings, need for oral argument, and preliminary scope and timetable.
June 10, 1998	Service list distributed.
June 11, 1998	Assigned Commissioner's scoping memo.
June 22, 1998	Appeals, if any, to categorization.
June 26, 1998	Responses, if any, to appeals of categorization.
July 20, 1998	Comments on the payphone program criteria and suggested changes. Compliance filing on results of public participation workshops.
July 30, 1998	Replies to public participation workshop compliance filing, if any. Replies, if any, to comments; proposed submittal date.

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September 11, 1998	Draft decision issued for comment.
October 1, 1998	Comments filed on draft decision.
October 6, 1998	Reply to comments filed on draft decision.
November 5, 1998	Commission Order.

(End of Appendix B)