STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a Session of the Public Service Commission held in the City of Albany on July 15, 1998

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman
John B. Daly
Thomas J. Dunleavy
James D. Bennett

CASE 96-C-1174 - Proceeding on Motion of the Commission to Review Regulation of Coin Telephone Services Under Revised Federal Regulations Adopted Pursuant to the Telecommunications Act of 1996.

CASE 93-C-0142 - In the Matter of the Rules and Regulations of the Public Service Commission, contained in 16 NYCRR, Chapter VI, Telephone and Telegraph Corporations, Subchapter D, Records, Reports — Proposed Amendments to Part 650 - Regulations Applicable to COCOTs filed in C 27946.

CASE 94-C-0095 - Proceeding on Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market.

ORDER ESTABLISHING A PUBLIC INTEREST PAYPHONE PROCESS AND AUTHORIZING TARGETED ASSISTANCE FUND SUPPORT

(Issued and Effective September 25, 1998)

BY THE COMMISSION:

BACKGROUND

The Commission initiated this proceeding to address and implement the requirements of the Telecommunications Act of 1996 and new federal payphone regulations adopted by the FCC. [1/] By Notice issued July 30, 1997, the Commission sought comments on

[1/] FCC 96-388, Report and Order, and FCC 96-439, Order on Reconsideration, in CC Docket Nos. 96-128 and 91-35.

federal payphone regulations, the need for changes to the Commission's COCOT regulations and certain LEC payphone tariffs.[1/] Comments were received, among other things, on "public interest payphones" as defined by the Federal Communication (FCC). In this order, the Commission concludes that there appears to be little need for an elaborate public interest payphone (PIP) program. However, to ensure that public health, safety and welfare is maintained in the event the need arises, we will establish a process for identifying, selecting, and funding public interest payphones..

COMMENTS RECEIVED FROM THE PARTIES

Four parties submitted comments: Bell Atlantic/New York Telephone Company (NYT), AT&T Communications of New York, Inc. (AT&T), the New York State Telecommunications Association (NYSTA), and the Independent Payphone Association of New York (IPANY). The commenters generally agree that PIPs should be narrowly defined, and that the FCC definition is a good starting point. The FCC defines a PIP as "...a payphone which (1) fulfills a public policy objective in health, safety, or public welfare, (2) is not provided for a location provider with an existing contract for the provision of a payphone, and (3) would not otherwise exist as a result of the operation of the competitive marketplace."[2/]

The commenters generally believe that there will be little need for PIPs. NYT states that unprofitable payphones that exist today as a result of contracts requiring both profitable and unprofitable locations to be served should not be defined as PIPs. AT&T indicates that the number of PIPs should decline over time, primarily as a result of the increasing effectiveness of Lifeline programs. IPANY projects that the primary need for PIPs will be in isolated, rural areas. IPANY is

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[1/] Notice Requesting Comments Addressing Aspects of the Federal Payphone Regulations, the Need for Changes to the Commission's COCOT Regulations and Certain LEC Payphone Tariffs (issued July 30, 1997) (hereafter the July 30 Notice).

[2/] FCC 96-388, Paragraph 282.

mindful of the need for payphones in certain urban areas where residential telephone penetration levels are relatively low, but believes that providing payphone service in these areas will generally be economically viable. Therefore, IPANY believes such areas will be served by the competitive market. IPANY also advocates that payphone providers not be precluded from removing payphones that they no longer wish to provide and which are ultimately determined to be PIPs.

The commenters claim that PIPs will require little or no regulatory oversight. NYT favors giving local government authorities primary responsibility for determining where PIPs are required, and for administering and funding them. It believes that large cities have the ability to assure that areas where there is public need for payphones are served by conditioning permits to serve attractive areas with obligations to serve unattractive areas as well. NYT advocates that local government authorities put PIPs out for bid. AT&T agrees with NYT that local government authorities should have primary or exclusive control over PIPs.

As to the administration of a PIP program, AT&T favors using an existing "public welfare program" administrator, e.g., the telephone relay administrator, as opposed to the Commission having direct involvement. IPANY argues that overall administration of a PIP program should be done by the Targeted Assisted Fund (TAF) administrator as opposed to the Commission. NYT prefers that overall PIP administrative responsibility rest with local governments.

With regard to funding of PIPs, NYT advocates funding by local governments, with no involvement by the Commission or the payphone industry. AT&T favors a system whereby PIP funding is totally supported by the payphone industry, with each payphone provider being required to contribute to the fund according to its share of the payphone market; this approach is specifically opposed by NYT, which argues that it would be difficult, if not impossible, to administer. AT&T opposes funding PIPs with revenues derived from provision of other telephone services, like the TAF, on the basis that it would amount to a reintroduction of cross-subsidies. IPANY favors PIP funding through the TAF.

NYSTA believes that no formal PIP programs need or should be instituted, and that neither payphone providers nor local exchange telephone companies should be required to fund PIPs. Instead, NYSTA argues that PIP funding and administration should be wholly a local government responsibility.

As to selection of PIP providers, only IPANY offers specific recommendations. It favors putting PIP locations out to bid, with awards going to companies willing to provide a PIP with the least amount of funding. IPANY argues that locations where no bids are submitted should be funded by all payphone providers serving the area in proportion to the market share of each provider.

DISCUSSION

Prior to the federal changes in payphone regulation, the need for additional payphones for public safety and welfare purposes was brought to our attention by local government representatives or consumer groups and considered on a case-by-case basis. Local exchange carriers were requested, on an informal basis, to place additional payphones where there was a public safety or welfare need. To the extent additional payphones were unprofitable, they were subsidized with revenue from other regulated LEC services. Under the new federal payphone regulation regime, however, cross subsidies of LEC payphones by regulated LEC services are now prohibited; the LECs were required to eliminate any such subsidies at the time payphone terminal equipment was deregulated.

The Commission agrees with the commenters that the number of PIPs that will be required in New York appears to be limited. Few complaints have been received recently regarding inadequate payphone coverage. The number of payphones available for the public's use appears to be increasing. New York City, in particular, has received applications to place thousands of additional payphones on city streets, due in part to a revision of its rules which allow non-LEC payphones to be placed at curbside locations.

Although a compelling need for PIPs does not appear to currently exist in New York, we nonetheless find it advisable to put in place a process to facilitate the placing and funding of PIPs, should they become necessary.

We adopt the federal public interest payphone definition. The PIP process will be triggered by requests from local government entities or consumer organizations for one or more additional payphones at specific locations that conform to this definition. The Department's internet website and other means, as required, will be used to disseminate information about the PIP program and facilitate the submission of PIP applications. Staff will investigate PIP applications to ensure they meet the definition.

When applications for PIPs are confirmed by the Director of the Communications Division, they will become candidate PIP locations and will be publicly posted (e.g., in the Weekly Bulletin and on our internet web site). Bids to serve candidate PIPs will be sought with awards made by the Director of the Communications Division based on smallest subsidy (including zero) acceptable to a qualified bidder. In case of tied bids, a low bidder will be randomly selected from those who are tied. Payphone providers operating in violation of the Commission's payphone regulations may be disqualified from bidding.

PIPs will be funded from the Targeted Assistance Fund (TAF).[1/] However, in municipalities that have payphone permit programs or location fees, TAF funding will generally not be available. We would expect these programs to have a means for providing public interest payphones. The level of public funding for each PIP will be capped at an amount equal to the recurring and local usage charges for access line services and features used to serve the PIP. Payments will be made to the carrier providing access line service to the PIP which, in turn, will credit that amount to the PIP provider's account.

[1/] The TAF was established in Case 94-C-0095, Opinion 96-13. Opinion and Order Adopting Regulatory Framework (issued May 22, 1996).

Continuation of TAF-based PIP funding beyond a two-year point after a PIP is established will be conditioned upon the PIP provider demonstrating that the PIP continues to be needed to fulfill a public safety or welfare need, and that the provision of payphone service there is not economically viable without a subsidy. Primary input to the economic viability analysis will be billing statements issued by, and any available call usage details available from, the carrier serving the payphone. Compensation paid by long distance carriers to the PIP provider for use of the PIP by their customers will also be considered. If, subsequent to a PIP being established, one or more competing, unsubsidized payphones are placed in the same area, the location will no longer qualify for TAF-based funding.

CONCLUSION

To protect public health, safety and welfare, we establish a PIP process and direct the use of TAF revenues to provide limited PIP funding, as herein described.

The Commission orders:

1. A Public Interest Payphone process is established as set out in this order.

2. Funding for the Public Interest Payphone program is authorized from the Targeted Assistance Fund, established under Opinion 96-13 in Case 94-C-0095.

3. These proceedings are continued.

By the Commission,

(SIGNED) JOHN C. CRARY
Secretary