

DE 98-048

PUBLIC INTEREST PAYPHONES

Investigation Pursuant to Section 276(b)(2) of the
Telecommunications Act of 1996

Order Approving Revised Definition and Proposed Method for
Designation of Public Interest Payphones

O R D E R N O. 23,706

May 17, 2001

By § 276(b)(2) of the Telecommunications Act of 1996¹ (TAct), Congress required the Federal Communications Commission (FCC) to determine whether public interest payphones (PIPs) should be maintained and, if so, ensure that PIPs are funded fairly and equitably. The TAct describes PIPs as payphones which "are provided in the interest of health, safety, and welfare, in locations where there would not otherwise be a payphone." The Federal Communications Commission interpreted the language in the TAct, in its *Report and Order* FCC 96-388 issued September 20, 1996 in CC Docket 96-128 (*Payphone Order*), as specifying that a PIP (1) fulfills a public policy objective in health, safety, or public welfare , (2) is not provided for a location provider having an existing contract for the provision of a payphone, and (3)

¹Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. §151, et seq.

would not otherwise exist as a result of the operation of the competitive marketplace. The goal of §276(b)(2) is to provide the safety-net of telecommunications to the public where market forces do not.

In the *Payphone Order*, the FCC directed individual states to address the question of the need for a program to support PIPs in light of the elimination of subsidies pursuant to the TAct. The FCC also determined that the states should administer and fund PIP programs in a competitively neutral manner, fairly and equitably compensating the entities providing PIPs without using subsidies prohibited by the TAct.

On December 8, 1998, the New Hampshire Public Utilities Commission (Commission) concluded that a need exists in New Hampshire to implement a PIP program. *Re Public Interest Pay Phones*, 83 NH PUC 654, 657 (1998) (issued December 7, 1998, hereinafter *Public Interest Pay Phones Order*).

In that Order, we adopted with certain modifications the PIP definition contained in the stipulation among the majority of the parties. In addition to requiring certain clarifications, we determined that the definition would be clearer if it were divided into two parts: one part concerning the characteristics of the payphone itself and one part

concerning the characteristics of the location where the payphone is placed. In addition, we directed that the definition be modified in order to provide the opportunity for a waiver from the payphone characteristics requirements, in extraordinary circumstances, such as the requirement that a telephone take incoming calls. With this in mind, we directed our Staff to meet with the parties to reorganize and rewrite the definition to meet these concerns.

Addressing the need to implement a PIP program, we found that there is a need to establish a process for evaluating individual locations in light of the definition adopted. This process would be used to evaluate requests for PIPs that would not otherwise be addressed by the free market situation that exists with payphones in general. We directed Staff to meet with the parties to establish a process for evaluating individual locations for which petitions may be received by the Commission.

As to funding, we noted that in the event that it is determined that there are PIP locations that meet the definition, a process will need to be established for developing a funding source for the PIP. We advised the parties that they could make suggestions on how funding mechanism proposals should be presented to the Commission.

Pursuant to the Commission's direction in that order, on January 19, 2000 the Parties to this docket and the Commission Staff jointly submitted a revised definition of a PIP as well as procedures for designating and for removing a PIP designation in New Hampshire. A complete version of the proposed revised definition and the proposed process follows.

I. Definition

A public interest payphone is one which meets all of the following criteria unless the Commission grants a waiver pursuant to Section II, ¶2 below:

1. It fulfills a public welfare, health or safety policy objective; and
2. It would not otherwise exist as a result of the operation of the competitive marketplace, as demonstrated by evidence presented in the process for designating a PIP; and
3. It is needed, as shown by the fact that it has an actual or projected revenue² paid to the payphone provider of a minimum of \$30 per month on an average annual basis or, where usage can be measured, that it has an actual or projected average usage of 3.5 calls³ per day; and
4. It is a single, stand-alone payphone, not one of a bank of payphones; and
5. It is not a coinless payphone; and
6. It accepts incoming sent-paid phone calls; and
7. It is physically accessible to the general public 24 hours

²Revenue includes all coin and non-coin revenue for local, intra- and inter- LATA calls as well as any commissions or per call compensation paid to the payphone provider.

³Calls include "800", "911" and collect calls.

per day, unless extraordinary circumstances exist; and

8. It is located no less than 750 feet from another payphone*, as measured along the route of ordinary pedestrian travel; and

*The other payphone, if located inside a business establishment, is one which is physically accessible during the regular operating hours of that business establishment.

9. It provides zero compensation to the owner or agent on whose property it is located, whether related to its placement or its revenues.

II. Process for Designating a PIP

1. The NHPUC has authority to designate as a PIP a payphone or payphone location that meets the above definition.

2. The NHPUC has authority to waive the requirement of any of the criteria of the above definition, upon petition demonstrating extraordinary circumstances.

3. Upon receipt of a petition for PIP designation from a qualified petitioner, the NH PUC shall conduct an investigation to determine whether the proposed PIP meets the above definition.

4. A qualified petitioner is an individual, group, or federal, state, or local government agency which does not currently have a signed contract with a payphone provider for the provision of payphones. Agencies or individuals who do have signed contracts with a payphone provider for the provision of payphones can and should include payphones that fulfill public welfare, health or safety policy objectives.

5. A qualified petitioner shall file a petition which:

- A) Identifies the exact location desired, described by reference to existing landmarks in feet and inches; and
- B) States that the petitioner has no contract for that location with any payphone provider; and
- C) States the public welfare, health or safety policy objective which the proposed PIP will fulfill; and
- D) States the name and telephone number of the owner

- of the property where the proposed PIP is to be located and indicates whether the owner has consented to placement of the PIP; and
- E) Explains how the proposed PIP meets each of the 9 elements of the PIP definition, including, in reference to criterion # 2 of the PIP definition, the petitioner shall file documentation that a minimum of 6 payphone providers, including the local exchange carrier, have refused to provide the requested payphone at the location; and
 - F) States whether a waiver is requested and explains the circumstances justifying the request; and
 - G) States that a copy of the petition has been provided to the owner of the property where the proposed PIP is to be located.

6. The Commission Staff shall investigate the proposed PIP to ascertain whether it meets the above PIP definition. Staff's investigation may include a site visit.

7. The Staff shall submit a detailed report of its investigation and conclusions to the Commission, with copies sent to the petitioner; the OCA, and the owner of the property where the proposed PIP is to be located.

8. If, after reviewing Staff's report, the Commission concludes that the proposed site meets the above PIP definition, the NHPUC shall issue an Order to that effect.

9. If, after reviewing Staff's report, the Commission concludes that the proposed site does not meet the above PIP definition, the NHPUC shall notify the petitioner and the parties to this docket of the negative conclusion and the reasons therefor. The petitioner shall then have 30 days to rectify any deficiency identified or request a hearing before the Commission. A request for a hearing shall indicate whether the petitioner wishes to request a waiver of certain criteria of the above definition of a PIP or to contest the Staff conclusion.

10. The Commission shall provide notice of any hearing via an Order of Notice published in a newspaper of local publication in the affected geographic area and provided to the parties of record in this docket.

11. Within 30 days of the public hearing, the Commission shall issue its final order.

III. Process for Removing a PIP Designation

1. Any party may file a petition requesting that the Commission remove the designation of a payphone or payphone location as a PIP, setting forth in detail the reason(s) why the PIP no longer meets the above definition. The removal petitioner shall provide a copy of the petition to the original petitioner for PIP designation.
2. Upon receipt of a removal petition, the NHPUC shall issue an Order of Notice, setting a date for a public hearing, and serve the Order of Notice on the petitioner and on all parties to the original PIP docket.
3. The removal petitioner shall publish the Order of Notice as directed therein, in the form of an advertisement and not as a legal notice, in a newspaper of local publication in the affected geographic area..
4. Prior to the public hearing, Staff shall conduct an investigation and provide a report to the Commission pursuant to the process described above in paragraphs 6 and 7.
5. Within 30 days of the public hearing, the Commission shall issue its final order.

COMMISSION ANALYSIS

We find that the proposed revisions to the definition adequately address the issues raised in our Order. The revised definition has been reorganized into two parts, one concerning the characteristics of the payphone itself and one concerning the characteristics of the payphone's location. In addition, adequate waiver provisions are now included. We will therefore approve the revised definition.

The suggested procedures for designating and for removing a PIP designation specify the persons qualified to apply for the PIP designation, the elements that must be included in the application, the actions which the Commission will undertake to review the application in light of the approved definition, and the processes by which an applicant can obtain a reconsideration of a negative application outcome. We find the proposed process reasonable and fair. We will approve it.

Our *Public Interest Pay Phones Order*, at p. 658, specifically states that a process for developing a funding source for PIPs will occur in the event that it is determined that PIP locations exist that meet the definition. Subsequently, we dealt with the subject of a state universal service fund (USF) in Docket No. DT 00-015, *Re Universal Service*. The joint opinion of a panel studying USF issues recommended that funding PIPs through an established USF could be efficient and that a USF funding requirement to provide an authorized PIP could trigger the need to create a state USF.

On December 22, 2000, we issued an order in the Universal Service docket, Order No. 23,602, determining that there was not then a current need to establish a USF but that draft legislation, authorizing the PUC to "implement a state

USF and collect money to fund it should the need arise", should be forwarded for consideration by the General Court. With amendments, the General Court passed the proposed legislation as HB 402, which will become effective on July 1, 2001. HB 402 requires the Commission to develop draft rules to implement a universal service program and, after legislative passage of a universal service fund, requires the Commission to compel all intrastate service providers to contribute to that fund. Sections VI and VII of HB 402 specifically address the funding of PIPs, stating as follows:

VI. The commission shall have the authority to permit funding from the universal service fund of fair compensation to providers of public interest pay telephones, as defined by the commission, that are provided in the interest of public health, safety, and welfare in locations where there otherwise would not be a payphone.

VII. Funding of public interest payphones shall be fair and equitable, shall be competitively neutral, and shall not involve the use of subsidies prohibited by the Federal Telecommunications Act or rely on federal universal service support.

Pursuant to this legislative direction, in the event that the PIP process determines a need for funding, we will apprise the General Court of the need for statutory establishment of a universal service fund for the funding pursuant to Section VII.

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Based upon the foregoing, it is hereby

ORDERED, that the revised definition of a PIP and the process for designation and removal of the PIP status are hereby APPROVED.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of May, 2001.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Claire D. DiCicco
Assistant Secretary