

DT 02-050

**Petition for Designation of Acworth Payphone as
A Public Interest Payphone (PIP)**

**Order Approving Acworth Payphone as a PIP and Establishing
Procedural Schedule to Consider Funding Mechanism**

O R D E R N O. 24,008

July 9, 2002

I. BACKGROUND

In response to a Petition for Designation of a Payphone in Acworth, New Hampshire as a Public Interest Payphone, filed on March 27, 2002, and pursuant to an Order of Notice issued on April 15, 2002, the New Hampshire Public Utilities Commission (Commission) convened a public hearing and pre-hearing conference on May 17, 2002. At the pre-hearing conference, the Commission accepted appearances of Alan Linder, Esq. of New Hampshire Legal Assistance (NHLA) on behalf of Heidi Simoneau and Joan Guerrlick; Hanford Auten on behalf of the Acworth Historical Society, Inc. and Acworth Community Project, Inc. (AHS); Victor Del Vecchio of Verizon New Hampshire (Verizon); Deborah Mozden, Director of Women's Supportive Services (WSS); Laurie Jewett on behalf of Southwestern Community Services (SCS); Linda Griebisch, Director of the New Hampshire Coalition Against Domestic and Sexual Violence (Coalition); Anne Ross, Esq. of the Office of the Consumer Advocate (OCA) on behalf of New Hampshire residential ratepayers; and the Staff of the Commission (Staff). The Commission also

accepted public comments regarding the Petition from: Deborah J. Mozden, of WSS; Alan Linder of NHLA; Hanford Auten of AHS; Laurie Jewett of SCS; Victor Del Vecchio of Verizon; Anne Ross of the OCA; Representative Jay Phinizy; Senator George Disnard; George Ross, Director of Hospital & Consumer Affairs of West Central Behavior Health Recovery Center; and Commission Staff. In addition to the individuals heard at the pre-hearing conference, the Commission received numerous letters in support of retaining the payphone at the Acworth Country Store.

In accordance with Section 276(b)(2) of the Telecommunications Act of 1996 (TACT), the Federal Communications Commission (FCC) directed individual state public utility commissions to investigate whether there was a need for a program to support Public Interest Payphones (PIPs) in their respective states. *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *Report and Order (FCC Payphone Order)*, 11 F.C.C.R. 20,341, 11 FCC Rcd. 20,541, 4 Communications Reg. (P&F) 938 (1996), *Order on Reconsideration (FCC Payphone Recon Order)*, 11 F.C.C.R. 21,233, 11 FCC Rcd. 21,233, 5 Communications Reg. (P&F) 321 (1996). In response, the Commission determined that a need for such a program existed in New Hampshire, and directed that a process be established for evaluating individual locations according to a comprehensive definition of a public

interest payphone (PIP). In addition, it was noted that once a location was determined to satisfy the definition, a funding source to support the PIP would have to be developed. *Public Interest Pay Phones*, 83 NH 654, 658 (1998).

The process for determining the status of a payphone was established in Order No. 23,706, 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 (PIP Order), (May 17, 2001). That process requires an investigation and report to the Commission by Staff, which assesses the payphone in terms of the nine criteria in the definition of a PIP. The Commission is then to issue its determination based upon Staff's report. PIP Order at 6. A negative determination by the Commission results in a 30-day opportunity for a petitioner to revise its petition or request a formal hearing before the Commission. *Id.*

In the instant case, the Commission directed Staff to investigate and file its report by June 17, 2002. Staff duly filed its report and recommended designation of the Acworth payphone as a PIP. Having carefully reviewed Staff's report, we conclude, on the basis of our analysis below, that the Acworth payphone meets the definition of a PIP. Therefore, this order also establishes a process for developing a funding source for a PIP.

II. COMMISSION ANALYSIS

A particular payphone must meet each of the nine criteria enumerated in the *PIP Order* in order to qualify as a PIP unless the Commission grants a waiver. *Id.* at p. 4. The Acworth payphone meets eight of those criteria, according to Staff's report. In brief, the Acworth payphone fulfills a public welfare, health and safety policy objective (Item 1), as demonstrated by the comments of healthcare and safety officers. It will not otherwise exist as a result of market forces (Item 2), as demonstrated by Verizon's current plan to remove the phone for lack of income and by the absence of other providers willing to provide the service without public assistance. It is a single, stand-alone payphone and not one of a bank of payphones (Item 4); it is not a coin-less payphone (Item 5); it is physically accessible to the general public 24 hours per day (Item 7); and no other payphone is located less than 751 feet away as measured along the route of ordinary pedestrian travel (Item 8). Also, the Acworth payphone accepts incoming sent-paid calls (Item 6), and provides zero compensation to the owner of the property where it is located (Item 9).

The Acworth payphone does not meet one criterion, Item 3. This item requires that a demonstration of "need" be shown by a minimum number of 3.5 calls per day, where usage can be measured, or by minimum revenues of \$30.00 per month on an annual

average basis. Staff reports that its review of proprietary Verizon data shows that the Acworth payphone annualized usage is over 3.0 calls per day, but under the required daily usage rate of 3.5 calls. Staff's report recommends that the Commission waive the Item 3 requirement of 3.5 calls per day average usage.

Pursuant to Section II(2), of Order No. 23,706, the Commission may waive any of the PIP definition criteria "upon petition demonstrating extraordinary circumstances." *Id.* at 5. Here, the record demonstrates that the geography of Acworth currently precludes cellular service and that law enforcement and public health officials believe that the Acworth payphone is a critical resource to the population of this rural area. We note that Staff's interviews with local police chronicle specific, recurring instances where the Acworth payphone was instrumental in the provision of safety services. We also note the comments made by the state legislative representatives of Acworth regarding the health, safety and underlying economic reasons to designate the Acworth payphone as a PIP.

We find that extraordinary circumstances exist which warrant waiving the "calls per day" or "need" criterion. Therefore, we accept Staff's recommendation and will grant a waiver of the requirement under Item 3 of the PIP definition. We further find that all of the remaining conditions are met. Accordingly, we will designate the Acworth payphone as a PIP.

III. PROCESS FOR DEVELOPING A FUNDING SOURCE

Under the *PIP Order* a funding source for support of the Acworth PIP is to be established before the date that Verizon plans to remove that payphone, which it indicated would occur no sooner than March, 2003. Parties to this docket and those who participated in Docket No. DE 98-048 are requested to file written proposals for funding, consistent with federal and state requirements.

Section 276(b)(2) of the TACT assigned the FCC the task of ensuring that PIPs are supported "fairly and equitably." The FCC, in turn, directed states to use their discretion in choosing a funding method for PIP programs, subject to the following guidelines: A funding mechanism shall (1) operate in a competitively neutral fashion; (2) compensate payphone providers fairly for providing PIPs; and (3) fairly and equitably distribute the costs of the program without cross-subsidies from regulated to non-regulated operations. (*See, FCC Payphone Order*, ¶¶ 264,283.)

In ¶¶283-284 of the *FCC Payphone Order*, the FCC suggested several methods by which a state could fund PIPs, including: (1) from general state revenues; (2) from a state universal service fund (USF); or (3) by including requirements for placing non-profitable payphones as part of voluntary contractual arrangements with payphone services providers that provide profitable payphones on public property. The FCC's list is not exhaustive and is stated in permissive terms; thus we conclude that these are not the only methods available for funding.

New Hampshire has no USF at present, and it is therefore not a viable method for funding the Acworth PIP. In Docket DT 00-015, *Universal Service*, 85 NH PUC 838 (2000), the Commission determined that a USF was not necessary at this time. The order, however, adopted the FCC's definition of Universal Service, and established criteria consisting of six events that could trigger the need for a USF.

Subsequently, in RSA 374:22-p, effective July 1, 2001, the General Court reserved to itself the authority to establish a USF and/or a universal service program. According to Sections III and V of the statute, the goal of RSA 374:22-p is to provide affordable basic telephone services and raise the low income penetration level as close as reasonably possible to the statewide average. The statute requires the Commission to

require carriers to contribute to a fund only "after the statutory establishment of a USF." RSA 374:22-p, IV(a). Prior to requiring contribution and prior to statutory action establishing a USF, the Commission is to inform the legislature of the expected costs of the program, the type of funding, the number of people expected to be served, the projected level of service and administrative design of the fund. *Id.* at IV(d). The Commission is to draft rules to implement the statute, consistent with the six criteria. *Id.* at IV(b). Section VI permits the Commission to fund PIP via the statutorily created USF.

Since a USF is not in place, we conclude that an alternative method must be devised for the Acworth PIP. If a USF is established, however, the funding responsibility for the Acworth PIP may be able to be transferred to the USF. We direct that funding mechanism proposals be filed within 30 days of the date this order is issued. Subsequent to the filings, we direct that the parties and Staff meet in technical session for discussion of all the proposals and to attempt to reach agreement, if possible, on one proposal to recommend for adoption in New Hampshire. These discussions are to be held according to the following schedule:

Technical Session	September 10, 2002
Filing of Joint Proposal	September 24, 2002
Hearing	October 24, 2002

Finally, the Commission will grant all of the oral and filed requests for intervenor status.

Based upon the foregoing, it is hereby

ORDERED, that the Acworth payphone is hereby designated as a Public Interest Payphone; and it is

FURTHER ORDERED, that the procedural schedule detailed herein is hereby approved; and it is

FURTHER ORDERED, that requests for intervenor status, including those made orally at the prehearing conference, are hereby granted.

By order of the Public Utilities Commission of New Hampshire this ninth day of July, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary