

DT 02-050

**PETITION FOR DESIGNATION OF ACWORTH PAYPHONE AS
A PUBLIC INTEREST PAYPHONE**

**Order Approving Settlement Agreement Providing
For Funding of the Acworth Public Interest Payphone**

ORDER NO. 24,359

August 13, 2004

APPEARANCES: Alan Linder, Esq., New Hampshire Legal Assistance on behalf of Heidi Simoneau and Joan Guerrlick; Hanford Auten on behalf of the Acworth Historical Society, Inc. and Acworth Community Project, Inc.; Victor Del Vecchio, Esq., on behalf of Verizon New Hampshire; Deborah Mozden, Director of Women’s Supportive Services; Laurie Jewett, on behalf of Southwestern Community Services; Linda Griebisch, Director of the New Hampshire Coalition Against Domestic and Sexual Violence; Patrick C. McHugh, Esq. on behalf of Granite State Telephone, Inc., Dunbarton Telephone, Inc., Bretton Woods Telephone Company, Inc., Northland Telephone of Maine, Inc., and Dixville Telephone Company; F. Anne Ross, Esq. of the Office of the Consumer Advocate on behalf of New Hampshire residential ratepayers, and E. Barclay Jackson, Esq., on behalf of the Commission Staff.

I. BACKGROUND

On March 27, 2002, the Acworth Historical Society, Inc., the Acworth Community Project, Inc., Women’s Supportive Services, Southwestern Community Services, and two individual residents of Acworth, New Hampshire (Petitioners) filed a Petition for Designation of a Payphone in Acworth, New Hampshire as a Public Interest Payphone (PIP), stating that Verizon New Hampshire (Verizon) had advised the location provider, Acworth Village Store, of its intention to remove the payphone within 30 days of March 1, 2002, unless the location provider agreed to retain the phone as a “Customer Payphone Service,” and incur the associated charges. After receiving written comments and oral comments at a pre-hearing conference held May 13, 2002, and upon the recommendation of the Staff in its report filed June 17, 2002, the New Hampshire Public Utilities Commission (Commission) determined on July 9,

2002 that the payphone located in Acworth, New Hampshire is a PIP, pursuant to the criteria set out in Order No. 23,077 (December 7, 1998). See Order No. 24,008 (July 9, 2002). The Commission solicited comment from parties and interested persons regarding the funding mechanism that should be used to support retention of the Acworth PIP at its location, and approved a schedule of technical sessions, leading to an anticipated Joint Proposal filed September 24, 2002, and a hearing before the Commission on October 24, 2002.

In August and September, 2002, the following entities filed comments: Granite State Telephone, Inc., Dunbarton Telephone, Inc., Bretton Woods Telephone Company, Inc., Northland Telephone of Maine, Inc., and Dixville Telephone Company; the Office of Consumer Advocate (OCA); NH Legal Assistance clients Joan Guerrlich and Heidi Simoneau; State Representative Jay Phinizy; Verizon; and Staff.

The Commission determined that the most appropriate long-term funding mechanisms could not be implemented in time to assure preservation of the Acworth PIP. Accordingly, by Order No. 24,191 (July 10, 2003), the Commission set forth a mechanism to fund the Acworth PIP on an interim basis. The Commission ordered Verizon to assess a surcharge on Verizon customers in the Acworth exchange area and to use the monies raised by the surcharge to pay for the maintenance of the Acworth PIP until such time as the Commission could establish a long-term solution. Order No. 24,191. The Order was issued on a nisi basis.

On August 11, 2003, before the end of the nisi period, Verizon submitted Comments (Comments) on the Order stating that the interim funding mechanism proposed by the Commission was inappropriate and should not be adopted. Verizon stated that the funding mechanism was inconsistent with the requirements of the Telecommunications Act of 1996

(TAct) and Federal Communications Commission (FCC) orders implementing the TAct.

Verizon pointed out that the FCC delegated primary responsibility for both administering and funding PIP programs to the states with the condition that funding mechanisms for PIPs must apportion costs fairly and equitably, and must be implemented on a competitively neutral basis.

See In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report an Order, FCC 96-128 rel. Sept. 20, 1996 (FCC Payphone Order) at ¶¶ 281-283. Verizon stated that imposing the costs for supporting the Acworth PIP on the customers of a single competitor constituted an unfair burden and was competitively disadvantageous to Verizon. In addition, Verizon claimed that implementing the interim funding mechanism would cause it to incur administrative costs in excess of \$400,000. Verizon requested that the Commission either reject Order No. 24,191 or schedule a full evidentiary hearing on the interim funding mechanism.

By Order No. 24,202 (August 22, 2003), the Commission suspended the effective date of Order No. 24,191, and at the same time directed Verizon to continue to maintain the Acworth PIP pending the Commission's consideration of Verizon's Comments.

In the fall of 2003, New Hampshire State Representative James Phinizy of Acworth proposed legislation (HB 1230) Relative to Abandoned Deposits Held by Telephone Utilities and Relative to Public Interest Payphones, to be considered in the 2004 legislative session to fund PIPs. HB 1230, as introduced, would create a fund to support the maintenance of PIPs from telephone utility deposits paid by customers that were unclaimed and would otherwise escheat to the state pursuant to RSA 471-C:19, *Custody and Escheat of Unclaimed and Abandoned Property*. Under HB 1230, such unclaimed utility deposits would be held by the

State Treasurer and appropriated to the Commission for the sole purpose of funding the maintenance of PIPs. The House and Senate approved HB 1230 with minor changes, and Governor Craig Benson signed the legislation into law on May 19, 2004. 2004, Chapter 132 (PIP Funding Law).

The PIP Funding Law as enacted establishes a fund (PIP Fund) to support the maintenance of PIPs designated by the Commission. The PIP Fund is created by Section 3 of the PIP Funding Law which states that “[a]ny public utility that operates any plant or equipment or any part of the same for the conveyance of telephone or telegraph message shall pay 85 percent of the funds which would have presumed to be abandoned under paragraph I [of RSA 471-C:8] to the public interest payphone fund...” Section 3 takes effect July 1, 2005.

Section 2 of the PIP Funding Law establishes requirements for PIPs consistent with those criteria established by the Commission in Docket No. DE 98-048, *Public Interest Payphones Investigation Pursuant to Section 276(b)(2) of the Telecommunications Act of 1996*, Order No. 23,077 (December 7, 1998). Section 2 further provides that the “commission shall make payment of fair compensation from the fund to providers of payphones that have been designated by the commission as public interest payphones, where such providers are required by the commission to maintain the payphones.” Section 2 of the PIP Funding Law took effect on July 18, 2004.

Based on passage of the PIP Funding Law, Verizon, Staff, the OCA, the New Hampshire Coalition Against Domestic, Women’s Supportive Services and Sexual Violence (NHCADSV) and New Hampshire Legal Assistance (collectively, the Signatories) reached an

agreement regarding funding for the Acworth PIP and filed the agreement with the Commission for its consideration on July 12, 2004.

II. STIPULATION AND SETTLEMENT AGREEMENT

The Stipulation and Settlement Agreement (Agreement) embodies the concurrence of the Signatories that the Acworth PIP is eligible for funding under the criteria of the PIP Funding Law. The Signatories agree that the PIP Funding Law requires the Commission to make fair compensation from the PIP Fund for the maintenance of the Acworth PIP, and that such fair compensation requires payment to be made to Verizon which has, and will continue to maintain the Acworth PIP, pursuant to Order No. 24,008. The Agreement states that to provide fair compensation to Verizon, payments must be made from the time the Commission designated the Acworth payphone as a PIP, or July 9, 2002.

The Signatories acknowledge that the Commission cannot make any payments from the PIP Fund until such time as it is established on July 1, 2005 and until such time that it contains adequate monies to compensate Verizon for maintaining the Acworth PIP. The Agreement also establishes a value for fair compensation for the months of July, 2002 through June, 2003, for the months of July, 2003 to June 2004, and a mechanism for determining the costs to Verizon for maintaining the Acworth PIP for months thereafter.

The Signatories agree that the Agreement contains the entire agreement of the Signatories, and that the Agreement shall not be binding upon the Signatories if the Commission does not approve the Agreement in full and without modification or condition.

III. COMMISSION ANALYSIS

We note at the outset that Verizon filed comments regarding Order No. 24,191 for Interim Funding of the Acworth PIP on August 11, 2003. In that filing, Verizon stated that the interim funding mechanism established in Order No. 24,191 was neither fair nor competitively neutral and was contrary to the requirements of the FCC Payphone Order. The passage of the PIP Funding Law, however, provides a mechanism by which to fund PIPs,¹ and therefore the Commission need not address the merits of Verizon's argument or consider the relief Verizon requested in its comments. With the passage of HB 1230, the provisions regarding funding of PIPs supersede the Commission's funding determinations in Order No. 24,191.

We have reviewed the Agreement and we approve it as filed. We agree with the Signatories that the New Hampshire Legislature has created a legislative solution to funding those PIPs designated by the Commission and that the PIP Fund meets the requirements of the FCC Payphone Order by creating a fair and competitively neutral method of funding PIPs. We also agree that the Commission's ability to "make payment of fair compensation from the fund to providers of payphones that have been designated by the commission as public interest payphones" extends in this case from the time the PIP designation was made, i.e., July 9, 2002. Although the actual funds to maintain PIPs will not be available until the PIP Fund is officially

¹ 2004 Chapter 132:2 creates a Public Interest Payphone Fund and states in part "No other state or state associated funds shall be used to maintain public interest payphones other than those contained in the fund, without further authorization from the legislature." In addition, Chapter 132:6 repeals RSA 374:22-p, VI and VII, which had authorized funding of PIPs from a State of New Hampshire universal service fund, in the event such a fund were ever created. The Commission interprets these provisions as limiting the source of funds available for the Commission for supporting PIPs to the PIP Fund created by 2004 Chapter 132.

established on July 1, 2005, Verizon has agreed to continue maintaining the Acworth PIP until such time as PIP funds are available.

Based upon the foregoing, it is hereby

ORDERED, that Verizon shall continue to maintain the Acworth PIP until such time it may be otherwise ordered by this Commission; and it is

FURTHER ORDERED, that the funding determinations set forth in Order No. 24,191 are hereby superseded by passage of HB 1230 and this order; and it is

FURTHER ORDERED, that the Stipulation and Settlement Agreement is hereby approved; and it is

FURTHER ORDERED, that upon funding of the PIP Fund on July 1, 2005, Verizon be compensated for the Acworth payphone as of July 9, 2002, in accordance with the Stipulation.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of August, 2004.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Attested by:

Michelle A. Caraway
Assistant Executive Director