(text box: 1)BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF THE COMMISSION’S OWN INVESTIGATION INTO THE ESTABLISHMENT OF CRITERIA FOR PUBLIC INTEREST PAY TELEPHONES. | )  )  )  )  ) | CASE NO. GNR-T-98-1  ORDER NO. 27742 |

On March 10, 1998, the Commission issued Order No. 27402 initiating this case for the purpose of establishing criteria for public interest pay telephones.  Section 276(b)(2) of the federal Telecommunications Act (the Act) directed the Federal Communications Commission (FCC) to determine whether there was a need for maintaining payphones serving public health, safety and welfare goals and, if so, to ensure that such payphones are supported fairly and equitably.  In subsequent Orders, the FCC delegated the responsibility for developing and maintaining a program to provide for payphones that serve the public interest to the states , subject to minimum guidelines established by the FCC.  According to the Act, those guidelines include the following definition of “public interest payphone.”

A payphone which (1) fullfils 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.

The Act further mandates that any funding mechanism used to support a public interest payphone program must (1) fairly and equitably distribute the costs of such a program, and (2) does not involve the use of subsidies prohibited by Section 276(b)(1)(B) of the 1996 Act.  In addition to the foregoing, the Act requires that each state review whether it has adequately provided for public interest payphones before September 20, 1998.

In Order No. 27402, the Commission scheduled a prehearing conference for the purpose of gathering all interested parties to begin discussing what actions the state of Idaho should take with respect to the establishment of criteria for public interest payphones.  The working group consisted of U S WEST, the Idaho Telephone Association, GTE of the Northwest, the Idaho Association of Counties (Counties), the Association of Idaho Cities (Cities) and Staff.  Citizens Telecommunica­tions of Idaho and AT&T had peripheral involvement as well.

While the working group was not able to reach a consensus on the extent to which public interest payphones exist in Idaho, the group was able to agree that it is not necessary or appropriate at this time to create a separate, comprehensive, new program to address public interest payphones.  The working group reached a consensus that an approach of allowing the marketplace to function was the most appropriate way of identifying the extent to which public interest payphones may require some form of public support.

Under this approach, local payphone companies would continue to identify under-performing locations and notify the site providers of the option to either convert to semi-public status or the pay phone would be disconnected.  If a site provider felt the payphone at their location served a vital public interest, they would have the option of contacting the Commission and requesting such a determination. The working group was not able to reach a consensus as to the content of the notice to the customer.  In addition, Staff agreed to forward (fax) copies of the payphone disconnection reports provided by the local exchange companies to the Commission on to the Association of Idaho Cities and Idaho Association of Counties, who agreed to forward (fax) copies to the cities or counties experiencing disconnections.

Most of the utility participants agreed, for the short term, to continue to provide service to any payphone location the Commission determined to be serving a vital public interest.  It was also agreed that an interim trial period of approximately one year is sufficient to determine whether a formal public interest payphone program should be established.  If the number of public interest payphone sites grows large enough to become a significant financial burden to the payphone providers prior to the end of this trial period, the providers will provide sufficient notice to the Commission to allow the Commission to develop and implement a plan for providing public support for such locations.

The working group also recommends criteria that the Commission consider in determining whether a payphone location is truly a public interest payphone.  The consensus recommendation is that, with the exception of the FCC criteria, the criteria be identified as “among the items” the Commission will consider in its determination, rather than as rigid eligibility requirements.  Participants felt that the Commission should be free to consider other items, and that simply because a location met all the identified criteria, it should not automatically be eligible for support.

The one relevant issue in which the working group failed to reach a consensus was whether the notice to a payphone site owner/provider that service might be terminated should inform the owner/provider of the option to petition the Commission for public interest designation, and the criteria the Commission would consider in determining whether the site qualified for public interest payphone support.  GTE and U S West did not believe the notice should contain any reference to any option other than semi-public service or removal.  They claim that any reference to an appeal process with the Commission would distort the operation of the marketplace, and skew the results of the trial.

Staff, Cities and Counties contend that the utility notice to the site provider should identify the option of an appeal to the Commission.  Staff believes the effectiveness of the marketplace depends upon a knowledgeable consumer, and that all the customer’s options should be identified in the notice.  Staff also recommends the notice include the criteria the Commission will consider in its deliberations, and that such information will help limit the appeals to those with a realistic public interest claim.

FINDINGS

We agree with the recommendations of the working group and hereby find that it is not necessary, at this time, to develop a separate, comprehensive public interest payphone program.  We accept the working group’s proposal that, whenever the Commission receives a complaint concerning the removal of a payphone, it will investigate the actual site and determine whether it constitutes a public interest payphone.  Rather than identifying specific criteria at this time, the Commission will take all factors into consideration if it receives a request for public interest designation, including the FCC’s threshold criteria, in determining whether the site constitutes a public interest payphone.  If it does, the payphone shall remain in operation.  If the number of such payphones becomes large enough to constitute a significant financial or administrative burden for any provider, then that provider shall notify the Commission and we will take the necessary steps to develop and implement a plan for providing public support for such payphones.  The Staff is directed to prepare a report, after one year from the date of this Order, providing all information relevant to payphones, including the number of payphones removed throughout the state during the year and the number of complaints received regarding payphones being removed.  The Commission will then determine whether the public interest is being adequately met by the marketplace or whether a formal program should be established.  The Commission will also determine how any payphones that have been designated “public interest” shall be funded.

Regarding the notice that should be provided in the event of payphone site termination, we find that it would not impose an unreasonable burden nor prompt unreasonable complaints to require all payphone providers, when removing or disconnecting service to a payphone, to inform the payphone site owner/provider of their right to file a complaint or request with the Commission  seeking to have the site designated as a public interest payphone.  This Commission is fully capable of discerning between such requests that have merit and those that do not.  Staff is directed to forward copies of payphone disconnection reports provided by local exchange companies on to the Association of Idaho Cities and the Idaho Association of Counties.

O R D E R

IT IS HEREBY ORDERED that the Commission adopts the recommendations of the working group and that any requests to designate a payphone as “public interest” shall be handled on a case-specific basis.  Moreover, all local exchange companies removing or disconnecting service to payphones located in the state of Idaho shall provide the site owner/provider with notice that they have the right to request that the payphone be designated “public interest” by the Commission.

THIS IS A FINAL ORDER.  Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. GNR-T-98-1  may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. GNR-T-98-1 .  Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration.  See Idaho Code § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of September 1998.

                                                                                                                                      DENNIS S. HANSEN, PRESIDENT

                                                                                           RALPH NELSON, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

vld/O:GNR-T-98-1.bp2

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

September 18, 1998