DECISION MEMO

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RITA SCOTT

WORKING FILE

FROM:WAYNE HART

DATE:SEPTEMBER 11, 1998

RE:PUBLIC INTEREST PAYPHONES - GNR-T-98-1

WORKING GROUP REPORT

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 to the states the responsibility for developing and maintaining a program to provide for payphones that serve the public interest, 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 market place.

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 the criteria for public interest payphones.  The working group consisted of U S WEST, Idaho Telephone Association, GTE of the Northwest, the Idaho Association of Counties, the Association of Idaho Cities and Staff.  Citizens Telecommunications of Idaho and AT&T has peripheral involvement as well.

Staff notes that, in its payphone orders, the FCC delegated the responsibility for developing a program to support public interest payphones to the state.  The state must also determine whether such a program is necessary, and if so, the criteria to be used for determining whether a payphone location is eligible for support, how much support is appropriate, the mechanism for providing that support, how the funding for that support is to be raised, and the mechanism for collecting and administering those funds.

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.  A consensus agreed 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. City and county representatives expressed concern that the notice of a pending disconnection be provided with sufficient lead times to allow a response prior to disconnection.

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.  An interim trial period of approximately one year was identified as being sufficient to determine the scope of the problem and to identify solutions.  If the number of such sites grew large enough to become a significant financial burden to the Companies prior to the end of this trial period, the Companies would provide sufficient notice to the Commission to allow the Commission to develop and implement a plan for providing public support for such locations.

At the conclusion of a one year trial period, the Commission should have sufficient information to determine the scope of any program that may be required to support public interest payphone locations.  The group also agreed that if the number of locations that the Commission determines to be eligible for support is small, it would be preferable to expand an existing program, such as the State Universal Service Fund (USF) to address the PIP support needs, rather than creating a separate new program.  Those sites that believe they deserve such support could apply to the Commission, and the Commission could determine on a case by case basis, whether such support is appropriate, and if so, the amount of support to be provided.

The group also felt that  it would be appropriate to recommend criteria, which are identified in the attached report, that the Commission could 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.

Staff recommends that the Commission adopt the approach recommended by the working group for a one year trial period, as a means of further quantifying the extent to which the marketplace will fail to meet the payphone needs of the public.  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, 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 claimed that the utility notice to the site provider should identify the option of an appeal to the Commission, and also identify the criteria the Commission would use in determining whether the site qualified as a public interest payphone.  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 believes the notice should 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.

Commission Decision:

Does the Commission wish to adopt the approach recommended by the working group?

If so, does the Commission wish to require the notice to the payphone site owner/provider include information about the option to petition the Commission?

Wayne Hart

wh:pip.dm