DECISION MEMORANDUM

TO:COMMISSIONER HANSEN

COMMISSIONER NELSON

COMMISSIONER SMITH

MYRNA WALTERS

TONYA CLARK

RITA SCOTT

DON HOWELL

STEPHANIE MILLER

DAVE SCHUNKE

JOE CUSICK

WAYNE HART

DAVID SCOTT

WORKING FILE

FROM:BRAD PURDY

DATE:NOVEMBER 12, 1998

RE:CASE NO. GNR-T-98-1; THE COMMISSION’S OWN INVESTIGATION INTO THE ESTABLISHMENT OF CRITERIA FOR PUBLIC INTEREST PAY TELEPHONES

On October 9, 1998, U S WEST Communications, Inc.  (U S WEST) filed a Motion for Clarification of Order No. 27742 issued by the Commission in this case on September 18, 1998.  That Order was the culmination of the Commission’s investigation into whether criteria should be established for identifying “public interest pay telephones” and, if so, what those criteria should be.  U S WEST seeks clarification of Order No.27742 on four points.  On October 19, 1998, the Commission Staff filed a response to U S WEST’s motion.  Finally, on November 2, 1998, USWEST filed a Reply to Staff’s Response.  The positions of the parties are summarized below.

1)  First, U S WEST notes that the Commission adopted, for the most part, the proposal made by the working group formed in this case.  One of those proposals is that U S WEST will forward to Staff a list of the payphone sites for which semi-public status had been declined and, therefore, had actually been disconnected due to unprofitability.  In Order No. 27742, the Commission acknowledged this recommendation stating:

Staff agreed to forward (FAX) copies of the payphone disconnection reports  provided by the local exchange companies to the Commission onto the Association of Idaho Cities and Idaho Association of Counties, who agreed to forward (FAX) copies to the cities or counties experiencing disconnections.

Order No. 27742 at p. 2.

U S WEST contends that the foregoing statement is correct but requests a clarification that the Company, and other payphone providers, are simply required to supply Staff with a list of (1) only those payphone sites that have actually been disconnected; as opposed to all locations to which a notice offering to convert to semi-public status has been sent, and (2) only those payphone sites that have been disconnected because the site was unprofitable (as opposed to customer-initiated disconnects).

Staff Response

Staff believes that the foregoing clarification is consistent with the goals and original intent of the working group and, therefore, does not oppose U S WEST’s Motion for Clarification on this point.

\*\*\*\*

2)  Second, U S WEST notes that U S WEST and GTE agreed, through their participation in the working group, that in the event the Commission determined that a payphone met the minimal definitional criteria for a public interest payphone as established by the FCC and additional factors to be considered by the Commission, that the payphone would remain in service during the trial period.  This agreement, U S WEST asserts, was based on the expressed assumption that the number of unprofitable payphones that would be deemed public interest payphones would be relatively small.  U S WEST seeks clarification from the Commission that its agreement to keep public interest pay telephones operational during the one-year trial period was “voluntary” on its part.

Staff Response

Strictly speaking, Staff does not believe that clarification of Order No. 27742 is necessary with respect to this issue.  In its Order, the Commission simply adopted the proposal of the working group which was clearly a voluntary process and end product.

\*\*\*\*

3)  Third, U S WEST asserts that if the number of pay telephones designated as public interest during the trial period turns out to be large, then that would be an indication that the approach recommended by the working group and adopted by the Commission is inadequate.  U S WEST seeks clarification from the Commission to the effect that U S WEST shall keep in operation pay telephones designated as public interest during the trial period so long as the number of such telephones is ten or less.  U S WEST “reserved the right to evaluate, on a case-by-case basis, those payphones it will keep in place on an uncontested basis should that number increase.”  Motion at p. 4.

Staff Response

In Order No. 27742 the Commission stated:

If the number of such payphones become 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.

Id. at p. 3.

Staff believes that the foregoing provision adequately addresses U S WEST’s stated concern and that clarification of Order No. 27742 on this issue is unnecessary.

\*\*\*\*

4)  Finally, U S WEST urges the Commission to “reconsider” that portion of Order No. 27742 requiring 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.  U S WEST contends that the foregoing provision is “over broad” in that it addresses all payphone providers when removing or disconnecting service instead of just disconnections relating to unprofitable payphone sites for which the site provider has declined semi-public status.  U S WEST contends that the notice requirement should be limited to disconnections related to unprofitable payphone sites.

Moreover, U S WEST believes that the Commission’s notice requirement will skew market results.  The Company states that, in its experience, consumers will complaint “without any artificial prompting, if they find the manner in which a service is offered to be objectionable.  U S WEST argues that the Commission’s notice requirement will “encourage or generate complaints from its customers.”  U S WEST notes that the Commission’s Orders requires the payphone provider to inform the site owner that it has the right to request that the payphone be designated “public interest” by the Commission when the Commission has not yet adopted specific criteria for determining the term “public interest.”

Staff Response

In Order No. 27742, the Commission stated:

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.

Id. at pp. 3-4.

Staff believes that U S WEST has not stated sufficient basis for the Commission to either reconsider or clarify its Order on this point.  Staff does agree that notice only needs to be given to site owners/providers when the payphone was disconnected due to unprofitability as opposed to other reasons such as customer request and that the Commission could issue a clarification on that point.  Staff believes that, as the Commission noted, requiring notice to site providers/owners for payphones disconnected due to unprofitability does not impose an unreasonable burden on U S WEST and the Commission has the capability of identifying unmeritorious complaints.  Staff believes that that portion of Order No. 27742 should stand without modification.

USWEST Reply

 In its Reply, USWEST suggests that the only matter still at issue is that referred to as # 4 above; i.e., whether USWEST should be required to notify payphone site customers of their right to seek public interest status.  USWEST still argues that providing the degree of notice recommended by Staff “will skew market results,” and generate nonmeritorious complaints.”  The Company opines that notice should only be sent only when (1) the site owner has declined semi-public status and (2) the payphone is removed due to unprofitability.  The Company reasons that if the site owner has declined semi-public status, there is no reason to send notification regarding public interest status.  This is because, under these circumstances, the location would fail two threshold requirements established by the FCC, namely, the location provider would have a contract for the provision of the payphone and the payphone would exist as an operation of a competitive marketplace.

Second, profitable payphones are usually removed because the site owner requested so.  Notice to such customers would be unnecessary.  Moreover, the payphone would fail the FCC’s threshold criteria because but for the decision of the site owner, the phone would exist as a result of the operation of a competitive market.

USWEST concludes that although it is not required to do so under state or federal law, it agrees to provide notice to site owners during the trial period informing them that the “Commission may be contacted to answer questions about the disconnection of a public payphone.”

Commission Decisions:

(1)  Does the Commission wish to clarify Order No. 27742 to the effect that pay phone site providers are required to submit lists of disconnected sites only for those actual disconnections made by U S WEST due to unprofitability?

(2)   Does the Commission wish to clarify Order No. 27742 to affirm that those payphone site providers who agreed with the recommendations of the working group did so voluntarily?

(3)  Does the Commission believe that a clarification of Order No. 27742 regarding funding of public interest pay telephones is necessary?

(4) Should Order No. 27742 be clarified to eliminate the requirement to notify payphone site customers of their right to seek public interest designation?

Brad Purdy

M:GNR-T-981.bp